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UNITED STATES DEPARTMENT OF THE INTERIOR

WASHINGTON, D.C. 20240

Secretary of the Interior -- William P. Clark

Office of Hearings and Appeals -- Paul T. Baird

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INDEX-DIGEST

JANUARY 1980 - DECEMBER 1984

This index-digest covers all published and unpublished decisions and opinions of the Department of the Interior from January 1, 1980 through December 30, 1984, rendered in the Office of Hearings and Appeals, Ballston Towers, Building No. 3, 4015 Wilson Boulevard, Arlington, VA 22203, and in the Office of the Solicitor, Interior Building, 18th and C Streets, N.W., Washington, D.C. 20240.

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SYMBOLS

ANCAB - Alaska Native Claims Appeals Board
IA-T - Indian Appeals--Tort
IBCA - Interior Board of Contract Appeals
IBIA - Interior Board of Indian Appeals
IBLA - Interior Board of Land Appeals
IBSMA - Interior Board of Surface Mining Appeals
M - Solicitor's Opinion
OHA - Office of Hearings and Appeals
SEC - Office of the Secretary

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Adams, Bill, IBLA 79-236, Order dated Mar. 10, 1979, dismissing appeal for lack of jurisdiction

Adams v. Andrus, Civil No. C-79-0220, D. Utah. Remanded, Sept. 29, 1980; amended order Nov. 2, 1980; appeal withdrawn, Feb. 28, 1981.

Adams, Scott Q., 60 IBLA 288, 88 I.D. 1110 (1981)

Adams v. Watt, Civil No. 82-35-BLG, D. Mont. Suit pending.

Adler Construction Co. (On Reconsideration), 67 I.D. 21 (1960)

Adler Construction Co. v. U.S., Cong. 10-60. Dismissed, 423 F.2d 1362 (1970); rehearing denied, July 15, 1970; cert. denied, 400 U.S. 993 (1970); rehearing denied, 401 U.S. 949 (1971).

Adler Construction Co. v. U.S., Cong. 3-70. Trial Commr's report accepting & approving the stipulated agreement filed Sept. 11, 1972.

Adomkus, Walter, 67 IBLA 177 (1982)

Adomkus v. Watt, Civil No. 82-260 BLG. Suit pending.

Ahtone v. Canan, 8 IBIA 278 (1981)

Kiowa Business Committee v. Dept. of the Interior, Civil No. CIV-81-386D, W.D. Okla. Suit pending.

Akers, John J., Estate of, 1 IBIA 8, 77 I.D. 268 (1970)

Akers v. Dept. of the Interior, Civil No. 907, D. Mont. Judgment for defendant, Sept. 17, 1971; order staying execution of judgment for 30 days issued Oct. 15, 1971; appeal dismissed for lack of prosecution, May 3, 1972; appeal reinstated, June 29, 1972; aff'd, 499 F.2d 44 (9th Cir. 1974).

Alaska v. Juneau Area Acting Dir., BIA, 9 IBIA 126, 88 I.D. 1020 (1981)

Alaska v. 13.90 Acres of Land, Civil No. F81-40, D. Alaska. Suit pending.

Alaska v. Lestenkof, Civil No. F81-49, D. Alaska. Suit pending.

Alaska, State of, 73 I.D. 1 (1966)

Kalerak v. Udall, Civil No. A-35-66, D. Alaska. Judgment for plaintiff, Oct. 20, 1966; rev'd, 396 F.2d 746 (9th Cir. 1968); cert. denied, 393 U.S. 1118 (1969).

Alaska, State of, 3 ANCAB 285 (1979), Order dismissing appeal & decision dated June 11, 1979.

Alaska v. Andrus, Civil No. A79-168-CIV, D. Alaska. Suit pending.

Alaska, State of, 2 ANCAB 1, 84 I.D. 349 (1977)

Richards v. Secretary of the Interior, Civil No. A78-170-CIV, D. Alaska. Suit pending.

Rhyneer v. Andrus, Civil No. A78-240 CIV, D. Alaska. Suit pending.

Aleutian/Pribilof Islands Ass'n v. Acting Dep. Ass't Secretary--Indian Affairs (Operations), 9 IBIA 254, 89 I.D. 196 (1982)

Aleutian/Pribilof Islands Ass'n v. Powers, Civil No. A82-163 CIV, D. Alaska. Suit pending.

Alexander, Robert D., 59 IBLA 118 (1981); William J. McGrath, 62 IBLA 110 (1982); Clyde K. Kobbeman, 58 IBLA 268, 88 I.D. 915 (1981); Dr. Jose Trabal, 60 IBLA 97 (1981); Ben M. Powell III, 59 IBLA 146 (1981)

Alexander v. Watt, Civil No. 82-0231.

Kennett v. Dept. of the Interior, Civil No. 82-0250.

McGrath v. Watt, Civil No. 82-0774.

Kobbeman v. Watt, Civil No. 82-0495.

Trabal v. Watt, Civil No. 82-0450.

Powell v. Dept. of the Interior, Civil No. 82-0249.

For above cases:
Actions consolidated by order filed May 25, 1982. Suits pending.

Alexander, William T., 21 IBLA 56 (1975). Petition for reconsideration denied by Order, Jan. 5, 1976, 28 IBLA 277 (1976) (Supp. I); 41 IBLA 1 (1979)

Alexander v. Frizzell, Civil No. CIV 75-538, D.N.M. Remanded, Apr. 23, 1976.

Alexander v. Andrus, Civil No. 79-603-B, D.N.M. Judgment for defendant, July 7, 1980. No appeal.

Allen, E. H., A-30182 (July 9, 1964)

Allen v. Udall, Civil No. 1001, D. Ariz. Judgment for defendant, Apr. 27, 1967; no appeal.

Suits for Judicial Review

Allen, William, 17 IBLA 1 (1974)

Allen v. Morton, Civil No. C-74-331, D. Utah. Rev'd & remanded, Apr. 20, 1976; no appeal.

Allied Contractors, Inc., 68 I.D. 145 (1961)

Allied Contractors, Inc. v. U.S., Ct. Cl. No. 163-63. Stipulation of settlement filed Mar. 3, 1967; compromised.

Altex Oil Corp., 61 IBLA 270 (1982)

Altex Oil Corp. v. Watt, Civil No. C82-0424A, D. Utah. Suit pending.

American Coal Co., 8 IBMA 64, 84 I.D. 394 (1977)

American Coal Co. v. Dept. of the Interior, No. 77-1604, U.S. Ct. of Appeals, 10th Cir. Dismissed on motion of Petitioner, Nov. 23, 1977.

American Quasar Petroleum Co., 42 IBLA 243 (1979)

Arjay Oil Co. v. Andrus, Civil No. C-80-0002-W, D. Utah. Suit pending.

American Telephone & Telegraph Co., 25 IBLA 341 (1976)

American Telephone & Telegraph Co. v. Dept. of the Interior, Civil No. 5695, D. Wyo. Dismissed with prejudice, Dec. 26, 1973; order amending judgment filed Feb. 15, 1974.

Anadarko Production Co., 66 IBLA 174 (1982)

Anadarko Production Co. v. Watt, Civil No. 82-1278, D.N.M. Suit pending.

Arjay Oil Co., 31 IBLA 260 (1977)

Arjay Oil Co. v. Andrus, Civil No. C-77-1167, D. Idaho. Dismissed without prejudice Jan. 19, 1978; dismissed for lack of prosecution, Dec. 22, 1978.

Armco Steel Corp., 8 IBMA 88, 84 I.D. 454 (1977)

United Mine Workers of America v. Andrus, No. 77-1839, U.S. Ct. of Appeals, D.C. Cir. Suit pending.

Ashley, Charles D., Estate of, 37 IBLA 367 (1978)

Ashley v. Andrus, Civil No. 79-C-60, D. Wis. Rev'd, Mar. 27, 1980; appeal filed May 23, 1980; aff'd, July 27, 1981; no petition.

Associated Investors, IA-2252 (Dec. 10, 1971); reconsideration denied, Mar. 27, 1972; Wooding v. Comm'r, BIA, 4 IBIA 255 (1975); reconsideration denied, 5 IBIA 9 (1976); Wooding v. Portland Area Dir., BIA, 9 IBIA 158 (1982)

Wooding v. Morton, Civil No. 77-72C3, W.D. Wash. Remanded to the Secretary for reconsideration, Aug. 13, 1973.

Wooding v. Kleppe, Civil No. C76-86T, W.D. Wash. Judgment for defendant, Nov. 4, 1976, appeal dismissed for failure to prosecute, June 3, 1977.

Atchison, Topeka & Santa Fe Railway Co. v. Cox, 4 IBLA 279 (1972)

Rawls v. U.S., Civil No. 73-19 PCT CAM, D. Ariz. Judgment for defendant, Apr. 22, 1975; reconsideration denied, Nov. 18, 1975; aff'd, 566 F.2d 1373 (9th Cir. 1978); no petition.

Atchison, Virginia Gail, 13 IBLA 18 (1973); George Ondola, 17 IBLA 363 (1974); petition for reconsideration denied by Order, Mar. 17, 1975; Susie Ondola, 17 IBLA 359 (1974); petition for reconsideration denied by Order, Mar. 17, 1975.

Ondola v. Hathaway, Civil No. A75-111, D. Alaska. Suit pending.

Atlantic Richfield Co., 16 IBLA 329, 81 I.D. 457 (1974)

Marathon Oil Co. v. Morton, Civil No. C 74-180, D. Wyo.

Atlantic Richfield Co. v. Morton, Civil No. C74-181, D. Wyo.

For above cases:
Actions consolidated; judgment for Plaintiff, 407 F. Supp. 1301 (1975); aff'd, 556 F.2d 982 (10th Cir. 1977).

Attocknie, Albert, Estate of, IA-1442 (Feb. 7, 1966)

Attocknie v. Udall, Civil No. 1646-66. Dismissed with prejudice, 261 F. Supp. 876 (1966); rev'd, 390 F.2d 686 (10th Cir. 1968); cert. denied, 393 U.S. 833 (1968).

Babcock, Harold, A-30301 (June 16, 1965)

Babcock v. Udall, Civil No. 1-66-87, S.D. Idaho. Judgment for defendant, June 24, 1969; no appeal.

Babcock, J. C., 25 IBLA 316 (1976); reconsideration denied, Aug. 12, 1976

Babcock v. Secretary of the Interior, Civil No. C-77-15, E.D. Wash. Judgment for defendant aff'd, Aug. 31, 1979.

Suits for Judicial Review

Badger Coal Co., 2 IBSMA 117 (1980)

Badger Coal Co. v. Andrus, Civil No. 80-0333-E, N.D. W. Va. Suit pending.

Badger Coal Co. v. OSM, 2 IBSMA 95 (1980)

Badger Coal Co. v. Andrus, Civil No. 80-0094-C, N.D. W. Va. Dismissed, Oct. 14, 1980.

Bagley, David C., A-30138 (Dec. 29, 1964)

Bagley v. Udall, Civil No. 109-65, D. Utah. Judgment for plaintiff, June 13, 1966; decree of Dist. Ct. vacated, case remanded to be dismissed as moot, Jan. 20, 1967, 10th Cir.; dismissed, Apr. 24, 1967.

Bailey, Robert V., 12 IBLA 253 (1973)

Krueger v. Morton, Civil No. 74-1256. Dismissed, Jan. 28, 1975; no appeal.

Baker, Leslie N., A-28454 (Oct. 26, 1960); Autrice C. Copeland (On Reconsideration), 69 I.D. 1 (1962)

Freeman v. Udall, Civil No. 1578, D. Ariz. Judgment for defendant, Sept. 3, 1963 (opinion); aff'd, 336 F.2d 706 (9th Cir. 1964); no petition.

Baker v. North American Coal Co., 8 IBMA 164, 84 I.D. 877 (1977)

Baker v. Dept. of the Interior, No. 77-1973, U.S. Ct. of Appeals, D. C. Cir.; aff'd in part, rev'd in part, Nov. 29, 1978.

Baldwin, H. E., 3 IBLA 71 (1971)

Baldwin v. Morton, Civil No. 72-438 PHX CAM, D. Ariz. Dismissed, May 29, 1974; appeal dismissed, Jan. 16, 1976.

Ball Brothers Sheep Co., 2 IBLA 166 (1971)

Ball Brothers Sheep Co. v. Morton, Civil No. 1-72-35, D. Idaho. Dismissed, Oct. 12, 1973; no appeal.

Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974)

Ballard E. Spencer Trust, Inc. v. Morton, Civil No. 75-060, D.N.M. Judgment for defendant, Aug. 19, 1975; aff'd, 544 F.2d 1067 (10th Cir. 1976).

Bangs, Myron, Jr., Estate of, IA-1327 (Feb. 7, 1966)

Matin v. Johnson, Civil No. 6444, N.D. Okla. Sustained, June 2, 1967; dismissed, June 25, 1970.

Barash, Max, 63 I.D. 51 (1956)

Barash v. McKay, Civil No. 939-56. Judgment for defendant, June 13, 1957; rev'd & remanded, 256 F.2d 714 (1958); judgment for plaintiff, Dec. 18, 1958. Supp. decision, 66 I.D. 11 (1959); no petition.

Barnard-Curtiss Co., 64 I.D. 312 (1957); 65 I.D. 49 (1958)

Barnard-Curtiss Co. v. U.S., Ct. Cl. No. 491-59. Judgment for plaintiff, 301 F.2d 909 (1962).

Barnett, Pearl C., 52 IBLA 273 (1981)

Barnett v. Watt, Civil No. 81-0322-S(I), S.D. Cal. Suit pending.

Barton, R. M., 4 IBLA 229 (1972); 5 IBLA 1 (1972); 7 IBLA 68 (1972)

Barton v. Morton, Civil No. 9322, D.N.M.

Barton v. Morton, Civil No. 9415, D.N.M.

Barton v. Morton, Civil No. 9692, D.N.M.

For above cases:
Dismissed with prejudice, Dec. 20, 1972; no appeal.

Bass Enterprises Production Co., 48 IBLA 11 (1980)

Bass Enterprises Production Co. v. Andrus, Civil No. Civ 80-431 C, D.N.M. Judgment for defendant, June 29, 1982.

Bate, Eugenia, 69 I.D. 230 (1962)

Foster v. Udall, Civil No. 5258, D.N.M. Judgment for defendant, Jan. 8, 1964; rev'd, 335 F.2d 828 (10th Cir. 1964); no petition.

Battle Mountain Co., A-29146 (Jan. 31, 1963)

Battle Mountain Co. v. Udall, Civil No. 64-29, D. Or. Per curiam decision, 225 F. Supp. 382 (1966); rev'd, 385 F.2d 90 (9th Cir. 1967); cert. denied, 390 U.S. 957 (1968).

Bay Construction Co., IBCA-77 (Nov. 30, 1960)

Bay Construction Co. v. U.S., Ct. Cl. No. 302-6 Dismissed with prejudice.

Beery, Robert L., 25 IBLA 287, 83 I.D. 249 (1976)

Steele v. Kleppe, Civil No. C76-1840, N.D. Cal. Aff'd, June 27, 1978; no appeal.

Suits for Judicial Review

Belknap, Robert E., 55 IBLA 200 (1981)

Belknap v. Watt, Civil No. C81-0267, D. Wyo. Suit pending.

Geosearch, Inc. v. Watt, Civil No. C81-0266 D. Wyo. Suit pending.

Bender, Jack J., 54 IBLA 375, 88 I.D. 550 (1981)

Bender v. Watt, Civil No. CIV 81-0682JB, D.N.M. Suit pending.

Benson-Montin-Greer Drilling Corp. v. Albuquerque Acting Area Dir., 7 IBIA 67 (1978)

Benson-Montin-Greer Drilling Corp. v. Andrus, Civil No. CIV 78-468-B, D.N.M. Dismissed without prejudice, June 30, 1981; no appeal.

Benter, Julius, Estate of, 1 IBIA 24 (1970); (Supp.), 1 IBIA 59 (1971)

Brazie v. Morton, Civil No. S-2360, E.D. Cal. Stipulated dismissal with prejudice.

Bergesen, Sam, 62 I.D. 295 (1955); reconsideration denied, IBCA-11 (Dec. 19, 1955)

Bergesen v. U.S., Civil No. 2044, D. Wash. Complaint dismissed Mar. 11, 1958; no appeal.

Berndt, Diane M., 62 IBLA 288 (1982)

Meyers v. Watt, Civil No. C82-0167, D. Wyo. Suit pending.

Big Delta Minerals, Inc. v. OSM, 2 IBSMA 32 (1980)

Big Delta Minerals, Inc. v. Andrus, Civil No. C-80-0041-0, W.D. Ky. Suit pending.

Bigheart, William, Jr., Estate of, IA-T-21 (Aug. 8, 1969), IA-T-21 (Supp.) (Sept. 4, 1969)

Bigheart v. Pappan, Civil No. 69-C-303, D. Okla. Order to Stay Proceedings issued May 15, 1970; amendment to complaint filed Dec. 17, 1971; judgment for defendant, July 31, 1972; reconsideration denied, Aug. 23, 1972; aff'd, 482 F.2d 1066 (10th Cir. 1973); cert. denied, 416 U.S. 937 (1974); rehearing denied, 417 U.S. 977 (1974).

Bishop Coal Co., 5 IBMA 231, 82 I.D. 553 (1975)

Bennett v. Kleppe, No. 75-2158, U.S. Ct. of Appeals, D.C. Cir. Suit pending.

Bitseedy, Anthony, Estate of, 5 IBIA 270 (1976)

Dawson v. Kleppe, Civil No. CIV-77-0237, D. Okla. Judgment for defendant, Oct. 27, 1977; no appeal.

Black Fox Mining & Development Corp., 2 IBSMA 110, 87 I.D. 207 (1980)

Black Fox Mining & Development Corp. v. Andrus, Civil No. 80-913 K, W.D. Pa. Judgment for plaintiff, Jan. 21, 1981; no appeal.

Blackhawk Mining Co., Inc. v. OSM, 1 IBSMA 215 (1979)

Blackhawk Mining Co. v. Andrus, Civil No. 79-136, E.D. Ky. Judgment for defendant, Feb. 11, 1982.

Blackwood Fuel Co. v. OSM, 2 IBSMA 233 (1980)

Blackwood Fuel Co. v. Andrus, Civil No. 80-0289-B, D. Va. Suit pending.

BLM-A-045569, 70 I.D. 231 (1963)

New York State Natural Gas Corp. v. Udall, Civil No. 2109-63.

Consolidated Gas Supply Corp. v. Udall, Civil No. 2109-63. Judgment for defendant, Sept. 20, 1965; per curiam decision, aff'd, Apr. 28, 1966; no petition.

BLM v. Holland Livestock Ranch, 39 IBLA 272, 86 I.D. 133 (1979)

Holland Livestock Ranch v. U.S., Civil No. R-79-78-HEC, D. Nev. Judgment for defendant, Aug. 7, 1979; aff'd, 655 F.2d 1002 (9th Cir. 1981).

BLM (Appellant), Diamond Ring Ranch (Appellee) & Bureau of Sport Fisheries & Wildlife (Amicus Curiae), 12 IBLA 358 (1973)

Diamond Ring Ranch, Inc. v. Morton, Civil No. 5934, D. Wyo. Judgment for plaintiff, Dec. 20, 1974.

Bobb, Harold Russell, Estate of, 5 IBIA 92 (1976)

Bobb v. U.S., Civil No. C-77-314, E.D. Wash. Suit pending.

Boesche, F. W. C., A-27997 (Aug. 5, 1959)

Boesche v. Seaton, Civil No. 2463-59. Judgment for defendant, Nov. 23, 1960 (opinion); aff'd, 303 F.2d 204 (1961); cert. granted, 371 U.S. 886 (1962); aff'd, 373 U.S. 472 (1963).

Suits for Judicial Review

Boudreaux, Leroy G., 62 IBLA 255 (1982)

Boudreaux v. Watt, Civil No. 82-1328. Suit pending.

Brice, William B., 53 IBLA 174 (1981)

Brice v. Watt, Civil No. C81-0155, D. Wyo. Suit pending.

Brick, Irving B., 36 IBLA 235 (1978); vacated by Order Sept. 26, 1980.

Brick v. Andrus, Civil No. 78-1814. Judgment for defendant, June 8, 1979; rev'd & remanded to Secretary with instructions, 628 F.2d 213 (1980).

Brookhaven Oil Co., A-27459 (July 29, 1957)

Brookhaven Oil Co. v. Seaton, Civil No. 2120-57. Judgment for plaintiff, Oct. 1, 1958; no appeal.

Brown, Jessie A., 23 IBLA 23 (1975); On Reconsideration, 28 IBLA 339 (1977)

Brown v. Andrus, Civil No. F-77-128-Civ, D. Cal. Remanded to the Dept., June 29, 1979; no appeal.

Brown, Melvin A., 69 I.D. 131 (1962)

Brown v. Udall, Civil No. 3352-62. Judgment for defendant, Sept. 17, 1963; rev'd, 335 F.2d 706 (1964); no petition.

Brown, Tom, 37 IBLA 381 (1978)

Brown v. Dept. of the Interior, Civil No. 80-3046, W.D. Ark. Dismissed with prejudice, Sept. 17, 1981; appeal filed Oct. 7, 1981.

Brown v. Dept. of the Interior, Civil No. 81-3003, W.D. Ark.

Buch, R. C., 75 I.D. 140 (1968)

Buch v. Udall, Civil No. 68-1358-PH, C.D. Cal. Judgment for plaintiff, 298 F. Supp. 381 (1969); rev'd, 449 F.2d 600 (9th Cir. 1971); judgment for defendant, Mar. 10, 1972.

Buell Brothers, A-30679 (Mar. 29, 1967)

U.S. v. Buell, U.S. Atty. No. M-371. Compromised, Oct. 23, 1968.

Bunch, Evelyn M., 25 IBLA 44 (1976)

Bunch v. Kleppe, Civil No. A76-115 CIV, D. Alaska. Dismissed, Aug. 13, 1976.

Burglin, C., 21 IBLA 234 (1975)

Burglin v. Secretary of the Interior, Civil No. A75-232 CIV, D. Alaska. Consolidated with Burglin v. Kleppe, Civil No. A75-113.

Burn Construction Co., IBCA 1042-9-74, 85 I.D. 353 (1978)

Burn Construction Co. v. U.S., Ct. Cl. No. 474-79C. Judgment for defendant, Dec. 30, 1981.

Burr, David, 56 IBLA 225 (1981)

Burr v. Watt, Civil No. C81-0308, D. Wyo. Suit pending.

Geosearch, Inc. v. Watt, Civil No. C81-0305, D. Wyo. Suit pending.

Burton/Hawks, Inc., 47 IBLA 125 (1980); aff'd by Order dated Oct. 1, 1981; Energy Trading, Inc., 50 IBLA 9 (1980); 55 IBLA 167 (1981)

Burton/Hawks, Inc. v. Watt, Civil No. C-81-0961J, D. Utah. Suit pending.

Bushman Construction Co., IBCA-103 (Mar. 29, 1957)

Bushman Construction Co. v. U.S., Ct. Cl. No. 437-57. Petition dismissed, 164 F. Supp. 239 (1958).

Byrd v. Comm'r, BIA, 7 IBIA 142 (1979)

Byrd v. Andrus, Civil No. C-79-229, E.D. Wash. Suit pending.

Cabax Mills, 32 IBLA 225 (1977)

BPS Associates v. U.S., Civil No. 77-845, D. Or. Dismissed, Oct. 24, 1978. No appeal.

Calder, Zelph S., A-30039 (Sept. 18, 1963)

Calder v. Udall, Civil No. C-219-63, D. Utah. Judgment for defendant, Aug. 10, 1964; no appeal.

California Ass'n of Four-Wheel Drive Clubs, 38 IBLA 361 (1978)

California Ass'n of 4WD Clubs, Inc. v. Andrus, Civil No. 79-1797-H, S.D. Cal. Judgment for defendant Aug. 5, 1980; aff'd, Jan. 22, 1982.

California Co., 66 I.D. 54 (1959)

California Co. v. Udall, Civil No. 980-59. Judgment for defendant, 187 F. Supp. 445 (1960); aff'd, 296 F.2d 384 (1961).

Suits for Judicial Review

California v. Doria Mining & Engineering Corp., 17 IBLA 390 (1974)

Doria Mining & Engineering Corp. v. Morton, Civil No. CV 75-899-FW, C.D. Cal. Judgment for defendant, 420 F. Supp. 837 (1976); vacated & remanded, Nov. 2, 1979.

California Portland Cement Co., 40 IBLA 339 (1979)

California Portland Cement Co. v. Andrus, Civil No. C-79-0477, D. Utah.; rev'd, Dec. 30, 1980.

Western Slope Carbon, Inc. v. Andrus, Civil No. C-79-350, C.D. Utah. Suit pending.

Rosebud Coal Sales Co. v. Andrus, Civil No. C79-160, D. Wyo. Rev'd, June 9, 1980; aff'd, Jan. 8, 1982. No petition.

Cameron Parish, Louisiana, In the Matter of, June 3, 1968; appealed by Secretary, July 5, 1968, 75 I.D. 289 (1968)

Cameron Parish Police Jury v. Udall, Civil No. 14,206, W.D. La. Judgment for plaintiff, 302 F. Supp. 689 (1969); order vacating prior order issued Nov. 5, 1969.

Canon, Jack D., 30 IBLA 112 (1977)

Canon v. Andrus, Civil No. S78-51-PCW, E.D. Cal. Suit pending.

Canon, James W., 1 Sec. 1, 84 I.D. 176 (1977)

Ringstad v. U.S., Civil No. A78-32-Civ, D. Alaska. Suit pending.

Canterbury Coal Co., 6 IBMA 276, 83 I.D. 325 (1976)

Canterbury Coal Co. v. Kleppe, No. 76-2323, U.S. Ct. of Appeals, 3d Cir.; aff'd per curiam, June 15, 1977.

Capital Fuels, Inc., 2 IBSMA 261, 87 I.D. 430 (1980)

Capital Fuels, Inc. v. Andrus, Civil No. 80-2438, S.D. W. Va. Suit pending.

Carbon Fuel Co., 6 IBMA 20, 83 I.D. 39 (1976)

United Mine Workers of America v. Kleppe, No. 76-1208, U.S. Ct. of Appeals, D.C. Cir. Rev'd & remanded, 581 F.2d 891 (1978); cert. denied, Oct. 30, 1978.

Carl, Jack E., A-27870; A-27900 (Apr. 23, 1959)

Carl v. Seaton, Civil No. 3069-59. Judgment for defendant, June 20, 1961; aff'd, 309 F.2d 653 (1962).

Carson Construction Co., 62 I.D. 422 (1955)

Carson Construction Co. v. U.S., Ct. Cl. No. 487-59. Judgment for plaintiff, Dec. 14, 1961; no appeal.

C. F. Lytle Co., IBCA-172 (Sept. 30, 1958)

C. F. Lytle Co. v. U.S., Ct. Cl. No. 174-59. Compromised.

Chahesenah, George, Estate of, IA-T-4 (June 20, 1967)

Atewooftakewa (Tate) v. Udall, Civil No. 67-323, W.D. Okla. Judgment for plaintiff, 277 F. Supp. 464 (1967); rev'd & remanded to dismiss for want of jurisdiction, 407 F.2d 394 (10th Cir. 1969); cert. granted, 396 U.S. 815 (1969); rev'd, 397 U.S. 598 (1970).

Chambers, Evelyn, 33 IBLA 271 (1978)

Chambers v. Andrus, Civil No. C-78-0111, D. Utah. Settled by stipulation, Dec. 22, 1978.

Chaparral Resources, Inc., 39 IBLA 269 (1979)

Chaparral Resources, Inc. v. Andrus, Civil No. C79-077, D. Wyo. Judgment for defendant, Jan. 31, 1980; no appeal.

Chargeability of Acreage Embraced in Oil & Gas Lease Offers, 71 I.D. 337 (1964); Shell Oil Co., A-30575 (Oct. 31, 1966)

Shell Oil Co. v. Udall, Civil No. 216-67. Stipulation of dismissal filed Aug. 19, 1968.

Chemi-Cote Perlite Corp. v. Bowen, 72 I.D. 403 (1965)

Bowen v. Chemi-Cote Perlite, No. 2 CA-Civ. 248, Ariz. Ct. App. Decision against Dept. by the lower court; aff'd, 423 P.2d 104 (1967); rev'd, 432 P.2d 435 (1967).

Choate, Fannie Newrobe, Estate of, 7 IBIA 171 (1979)

Sherman v. Andrus, Civil No. CV-79-73-GF, D. Mont. Suit pending.

Suits for Judicial Review

Christiansen Oil, Inc., 37 IBLA 52 (1978)

Christiansen Oil & Gas, Inc. v. Andrus, Civil No. C78-257, D. Wyo. Suit pending.

Christy Corp., IBCA-461 & 569 (June 20, 1966)

Christy Corp. v. U.S., Ct. Cl. No. 291-66. Judgment for defendant, Harbor Boat Building Co., 387 F.2d 395 (1967); compromised, July 10, 1968.

U.S. v. Harco Engineering, Civil No. 68-827-S, D. Cal. Dismissed with prejudice, Feb. 24, 1970.

Citizens Committee to Save Our Public Lands, 29 IBLA 48 (1977)

Citizens Committee to Save our Public Lands v. Kleppe, Civil No. C-76032 SC, D. Cal. Suit pending.

Citizens Committee to Save Our Public Lands v. Andrus, Civil No. C77-0633, N.D. Cal. Judgment for defendant, May 19, 1977.

City of Homer, 6 ANCAB 203, 88 I.D. 1047 (1981)

City of Homer v. McVee, Civil No. A82-043 CIV, D. Alaska. Suit pending.

Clark County, Nevada, 28 IBLA 210 (1976)

County of Clark v. Kleppe, Civil No. LV-77-13 RDF, D. Nev. Rev'd, Jan. 18, 1978; no appeal.

Clark, Donald L., 71 IBLA 169 (1983)

Clark v. Watt, Civil No. 83-1125, D. Idaho. Suit pending.

Clarkson, Stephen H., 72 I.D. 138 (1965)

Clarkson v. U.S., Cong. Ref. 5-68. Trial Commr's report adverse to U.S. issued Dec. 16, 1970; Chief Commr's report concurring with Trial Commr's report issued Apr. 13, 1971. P.L. 92-108, 85 Stat. 331, Aug. 11, 1971, enacted accepting the Chief Commr's report.

Clasby, Ethyl D. & Charles J., 2 ANCAB 302 (1978)

Wagner v. U.S., Civil No. A78-106 CIV, D. Alaska. Suit pending.

Clear Gravel Enterprises, Inc., A-27967, A-27970 (Dec. 29, 1959)

Dredge Corp. v. Palmer, No. 366, D. Nev. Judgment for defendant, Sept. 25, 1962; remanded, 338 F.2d 456 (9th Cir. 1964); judgment for plaintiff Aug. 8, 1966; rev'd & remanded with direction to enter judgments for defendants, 398 F.2d 791 (9th Cir. 1968); cert. denied, 393 U.S. 1066 (1969).

COAC, Inc., IBCA-1004-9-73, 81 I.D. 700 (1974)

COAC, Inc. v. U.S., Ct. Cl. No. 395-75. Suit pending.

Cobb, P., A-29769 (May 27, 1964)

Cobb v. U.S., Civil No. 967, W.D. Ark. Motion to dismiss denied, 240 F. Supp. 574 (1965); dismissed Jan. 17, 1966.

Cohen, Hannah, 70 I.D. 188 (1963)

Cohen v. U.S., Civil No. 3158, D.R.I. Compromised.

Colorado-Ute Electric Ass'n, 46 IBLA 35 (1980)

Colorado-Ute Electric Ass'n v. Andrus, Civil No. 80-C-500, D. Colo. Suit pending.

Colson, Barney R., 70 I.D. 409 (1963)

Colson v. Udall, Civil No. 63-26-Civ.-Oc, M.D. Fla. Dismissed with prejudice, 278 F. Supp. 826 (1968); aff'd, 428 F.2d 1046 (5th Cir. 1970); cert. denied, 401 U.S. 911 (1971).

Colson, Barney R., 7 IBLA 40 (1972)

Colson v. Morton, Civil No. 1960-72. Dismissed with prejudice, Feb. 7, 1974; per curiam decision, aff'd, Jan. 24, 1975; no petition.

Columbian Carbon Co., 63 I.D. 166 (1956)

Liss v. Seaton, Civil No. 3233-56. Judgment for defendant, Jan. 9, 1958; appeal dismissed for want of prosecution, Sept. 18, 1958, D.C. Cir. No. 14,647.

Suits for Judicial Review

Commercial Metals Co., IBCA-99 (Aug. 27, 1959)

Commercial Metals Co. v. U.S., Ct. Cl. No. 458-59. Judgment for plaintiff, June 16, 1966.

Confederated Salish & Kootenai Tribes of the Flathead Reservation, IA-1972-X-9, 77 I.D. 116 (1970)

Baciarelli v. Morton, Civil No. C-70-2200 SC, D. Cal. Judgment for defendant, Aug. 27, 1971; aff'd, 481 F.2d 610 (9th Cir. 1973); no petition.

Consolidated Mines & Smelting Co., A-30760 (Sept. 19, 1967)

Brown v. U.S., Civil No. 69-2332-F, D. Cal. Dismissed with prejudice, Mar. 20, 1970; reconsideration denied, May 20, 1970.

Consolidation Coal Co., 1 IBSMA 273, 86 I.D. 523 (1979); 2 IBSMA 21, 87 I.D. 59 (1980)

Consolidation Coal Co. v. Andrus, Civil No. 80-3037, S.D. Ill. Judgment for defendant, Feb. 8, 1982.

Constitution Petroleum Co., 25 IBLA 319 (1976)

Constitution Petroleum Co. v. Kleppe, Civil No. C-76-257, D. Utah. Suit pending.

Continental Oil Co., 68 I.D. 337 (1961)

Continental Oil Co. v. Udall, Civil No. 366-62. Judgment for defendant, Apr. 29, 1966; aff'd, Feb. 10, 1967; cert. denied, 389 U.S. 839 (1967).

Continental Oil Co. v. Aztec Exploration & Development Co., 32 IBLA 1 (1977)

Aztec Exploration & Development Co. v. Dept. of the Interior, Civil No. CIV 77-827 PHX, D. Ariz. Suit pending.

Conway, Joe, 59 IBLA 314 (1981)

Conway v. Watt, Civil No. C82-0029, D. Wyo. Suit pending.

Cook, Hubert Franklin, Estate of, 5 IBIA 42, 83 I.D. 75 (1976)

Johnson v. Kleppe, Civil No. CIV-76-0362-E, W.D. Okla. Suit pending.

Cooley, David E., Jr., 62 IBLA 87 (1982)

Cooley v. Watt, Civil No. C82-0188, D. Wyo. Suit pending.

Cooper, Gordon L., 51 IBLA 191 (1980)

Cooper v. Andrus, Civil No. 81-151-EDP, E.D. Cal. Suit pending.

Copper Valley Machine Works, Inc., IBLA 78-606, Order dismissing appeal dated Dec. 13, 1978.

Copper Valley Machine Works, Inc. v. Andrus, Civil No. 78-1572. Judgment for defendant, June 29, 1979; appeal filed Aug. 28, 1979.

Cord, E. L., 10 IBLA 363, 80 I.D. 301 (1973)

Neuhoff v. Morton, Civil No. R-2921, D. Nev. Dismissed, Sept. 12, 1975 (opinion); aff'd, July 17, 1978; no petition.

Cornell, Jay Frederick, 4 IBLA 11 (1971)

Cornell v. Morton, Civil No. A-5-72, D. Alaska. Judgment for defendant, Mar. 23, 1973; aff'd, Sept. 3, 1974; no petition.

Cornia, William D., Wyoming 4-63-1, etc.; Utah 1-63-1, etc. (Aug. 25, 1965)

Cornia v. Udall, Civil No. 4-66, N.D. Utah. Dismissed with prejudice, Sept. 1, 1967.

Cortella Coal Corp., 13 IBLA 158 (1973)

Cortella Coal Corp. v. McVee, Civil No. A-169-73, D. Alaska. Dismissed with prejudice, Jan. 13, 1976.

Cosmo Construction Co., 73 I.D. 229 (1966)

Cosmo Construction Co. v. U.S., Ct. Cl. No. 119-68. Ct. opinion setting case for trial on the merits issued Mar. 19, 1971.

Cotton Petroleum Corp. v. Samedan Oil Corp., 29 IBLA 13 (1977)

Cotton Petroleum Corp. v. Andrus, Civil No. CIV 77-0415f D. Okla. Aff'd, Jan. 19,

Council of the Southern Mountains, Inc. v. OSM, 3 IBSMA 44, 88 I.D. 394 (1981)

Council of the Southern Mountains, Inc. v. Watt, Civil No. 81-1022. Suit pending.

Cowin & Co., 83 I.D. 409 (1976)

United Mine Workers of America v. Kleppe, No. 76-1980, U.S. Ct. of Appeals, D.C. Cir. Suit pending.

Suits for Judicial Review

Coy, Glenn, Estate of, 52 IBLA 182, 88 I.D. 236 (1981)

Coy v. Watt, Civil No. 81-0984. Suit pending.

Cramer, Philip, 57 IBLA 386 (1981)

Cramer v. Watt, Civil No. CIV 81-1356, D. Idaho. Suit pending.

Crosby, Jonah, 2 IBIA 289, 81 I.D. 279 (1974)

Price v. Morton, Civil No. 74-0-189, D. Neb. Remanded to the Secretary for further admin. action, Dec. 16, 1975.

Crouse, Elizabeth Barndt, A-30542 (Mar. 7, 1968)

Crouse v. K. Ranch, Inc., Civil No. R-2063, D. Nev. Dismissed without prejudice, Apr. 15, 1969; no appeal.

Crow, Elsie May Pikok, 3 IBLA 114 (1971)

Crow v. U.S., Civil No. F-27-71 Civ., D. Alaska. Dismissed, July 13, 1972; no appeal.

Cultee, William Mason, Estate of, 9 IBLA 43 (1981)

Cultee v. Watt, Civil No. C811164, W.D. Wash. Suit pending.

Cunningham, Bill. Protest dismissed, dated Jan. 11, 1982, approved by the Ass't Secretary, Jan. 15, 1982.

Bob Marshall Alliance v. Watt, Civil No. 82-15 GF, D. Mont. Suit pending.

D'Amico, Vincent M., 55 IBLA 116 (1981)

D'Amico v. Watt, Civil No. 81-2050. Suit pending.

Daniel Brothers Coal Co., 2 IBSMA 45, 87 I.D. 138 (1980)

Daniel v. Andrus, Civil No. 80-49, E.D. Ky. Suit pending.

Daniels, George, IA-1295 (Nov. 2, 1965)

Daniels v. Johnson, Civil No. 6443, N.D. Okla. Dismissed with prejudice, Jan. 9, 1967.

David Excavating Co. v. OSM, 3 IBSMA 163 (1981); 3 IBSMA 215 (1981)

David Excavating Co. v. Watt, Civil No. EV-81-171-C S.D. Ind. Suit pending.

David Excavating Co. v. OSM, 4 IBSMA 2 (1982)

David Excavating Co. v. Secretary of the Interior, Civil No. EV-87-40-C, S.D. Ind. Suit pending.

Dawson, Susan, 35 IBLA 123 (1978)

Dawson v. Andrus, Civil No. C78-167, D. Wyo. Judgment for defendant, Mar. 22, 1979; appeal filed Apr. 17, 1979.

Day, Oma Belle, AA-5702 (Dec. 30, 1969)

Day v. Hickel, Civil No. A-9-70, D. Alaska. Judgment for defendant, Feb. 19, 1971; aff'd, 481 F.2d 473 (9th Cir. 1973); no petition.

Dean Trucking Co., 1 IBSMA 229, 86 I.D. 437 (1979)

Dean Trucking Co. v. Andrus, Civil No. 80-0006-B, W.D. Va. Suit pending.

deArmas, John C., Jr., 63 I.D. 82 (1956)

McKenna v. Davis, Civil No. 2125-56. Judgment for defendant, June 20, 1957; aff'd, 259 F.2d 780 (1958); cert. denied, 358 U.S. 935 (1958).

DeBord, Wayne E., 50 IBLA 216 (1980)

Landis v. Andrus, Civil No. 80-2110, D. Idaho. Suit pending.

Delasco, H. R., 39 IBLA 194, 84 I.D. 192 (1979); Blanche V. White, 40 IBLA 152, 85 I.D. 408 (1979)

Stewart Capital Corp. v. Andrus, Civil No. C79-123, D. Wyo. Aff'd in part, rev'd in part, Apr. 24, 1980; appeal withdrawn.

Desens, Wilbur C., 54 IBLA 271 (1981)

Desens v. Watt, Civil No. C81-0213, D. Wyo. Suit pending.

Geosearch, Inc. v. Watt, Civil No. C81-0214, D. Wyo. Suit pending.

Suits for Judicial Review

DiMarco, Richard J., 53 IBLA 130 (1981)

DiMarco v. Watt, Civil No. 81-2243. Suit pending.

Dinco Coal Sales, Inc., 4 IBSMA 35, 89 I.D. 113 (1982)

DeBord v. Watt, Civil No. 82-99, D. Ky. Suit pending.

Dolezal, Carol, 56 IBLA 52 (1981)

Alker v. Watt, Civil No. 81-0847, D.N.M. Suit pending.

Downtown Properties, Inc. v. Sacramento Area Dir., BIA, 8 IBIA 248 (1981)

Downtown Properties, Inc. v. Andrus, Civil No. 80-1724-N(M), S.D. Cal. Suit pending.

Downtown Properties, Inc. v. Andrus, Civil No. 81-0835-N(H), S.D. Cal. Suit pending.

Dredge Corp., 64 I.D. 368 (1957); 65 I.D. 336 (1958)

Dredge Corp. v. Penny, Civil No. 475, D. Nev. Judgment for defendant, Sept. 9, 1964; aff'd, 362 F.2d 889 (9th Cir. 1966); no petition. See also Dredge Co. v. Husite Co., 369 P.2d 676 (1962); cert. denied, 371 U.S. 821 (1962).

Drummond Coal Co., 2 IBSMA 96, 87 I.D. 196 (1980)

Drummond Coal Co. v. Andrus, Civil No. C-V-80-M-0829, N.D. Ala. Judgment for plaintiff, Apr. 20, 1981.

Dye, Lawrence E., 57 IBLA 360 (1981)

Dye v. Watt, Civil CIV-81-982-HB, D.N.M. Suit pending.

Easterday, Alfred L., 34 IBLA 195 (1978); Donald W. Coyer, 36 IBLA 181 (1978); 50 IBLA 306 (1980)

Coyer v. Andrus, Civil No. C78-104, D. Wyo.

Coyer v. Andrus, Civil No. C78-213, D. Wyo.

Coyer v. Andrus, Civil No. C78-214, D. Wyo.

For above cases:
Actions consolidated. Remanded to Wyo. State Office Feb. 12, 1979; order of dismissal filed Feb. 13, 1979.

Coyer v. Andrus, Civil No. C80-0372, D. Wyo. Suit pending.

Eastern Associated Coal Corp., 4 IBMA 1, 82 I.D. 22 (1975)

Internat'l Union of United Mine Workers of America v. Morton, No. 75-1107, U.S. Ct. of Appeals, D.C. Cir. Dismissed by stipulation, Oct. 29, 1975.

Eastern Associated Coal Corp., 4 IBMA 298, 82 I.D. 311 (1975)

United Mine Workers of America v. IBMA, No. 75-1727, U.S. Ct. of Appeals, D.C. Cir. Petition for Review withdrawn, July 28, 1975.

Eastern Associated Coal Corp., 82 I.D. 506 (1975); On Reconsideration, 83 I.D. 425 (1976); aff'd en banc, 83 I.D. 695 (1976); 7 IBMA 152 (1976)

United Mine Workers of America v. Andrus, No. 77-1090, U.S. Ct. of Appeals, D.C. Cir. Voluntary dismissal, Apr. 4, 1977.

Eastover Mining Co., 2 IBSMA 5, 87 I.D. 9 (1980)

Eastover Mining Co. v. Andrus, Civil No. 80-17, E.D. Ky. Suit pending.

Edwards, Lawrence, A-30696, A-30705 (Apr. 21, 1967)

Edwards v. Udall, Civil No. 2714, D. Mont. Rev'd & remanded, Nov. 18, 1968; stipulation for dismissal & order filed Aug. 4, 1970.

Edwards v. Unruh, 33 IBLA 277 (1978)

Edwards v. U.S., Civil No. 77-0050 BRI, D. Nev. Judgment for defendant, Oct. 31, 1978; appeal filed Dec. 27, 1978.

Ehbrecht, Martha E., 62 IBLA 382 (1982)

Ehbrecht v. Dept. of the Interior, Civil No. 82-1329. Suit pending.

Ekker, Riter & Kerry, 38 IBLA 277 (1978)

Ekker v. Andrus, Civil No. C-80-180A, Utah. Suit pending.

Eklutna, Inc., 1 ANCAB 165, 83 I.D. 500 (1976)

Alaska v. ANCAB, Civil No. A76-236, D. Alaska. Suit pending.

Elkay Mining Co. v. OSM, 2 IBSMA 19 (1980)

Elkay Mining Co. v. Andrus, Civil No. 80-2030, S.D. W. Va. Suit pending.

Suits for Judicial Review

Eluska, Heldina, 21 IBLA 292 (1975)

Eluska v. Kleppe, Civil No. A-76-26 CIV, D. Alaska. Remanded for exhaustion of admin. remedies; reconsideration denied, Dec. 10, 1976; appeal dismissed; judgment denying plaintiffs' motion for summary judgment & remanding case to Agency, Apr. 20, 1977; appeal dismissed without prejudice, Dec. 11, 1978.

Enevoldsen, H. J., 44 IBLA 70, 86 I.D. 643 (1979)

Enevoldsen v. Andrus, Civil No. C80-0047, D. Wyo. Suit pending.

Ernst, Henry J., A-27196 (Nov. 7, 1955)

Ernst v. Secretary of the Interior, Civil No. 9303, D. Alaska. Return of service quashed & complaint dismissed, Dec. 28, 1956 (opinion); aff'd, 244 F.2d 344 (9th Cir. 1957).

Evans v. Little, A-31044 (Apr. 10, 1970); 1 IBLA 269, 78 I.D. 47 (1971)

Evans v. Morton, Civil No. 1-71-41, D. Idaho. Order granting motion of Ralph C. Little for leave to intervene as a party defendant issued June 5, 1972. Judgment for defendants, July 27, 1973; aff'd, Mar. 12, 1975; no petition.

Farington, Elsie V., 9 IBLA 191 (1973)

Farington v. Morton, Civil No. S2768, E. D. Cal. Dismissed with prejudice, Dec. 5, 1973 (opinion); no appeal.

Farrelly, John J., 62 I.D. 1 (1955)

Farrelly v. McKay, Civil No. 3037-55. Judgment for plaintiff, Oct. 11, 1955; no appeal.

Faulkner, Ralph G., 26 IBLA 110 (1976)

Faulkner v. Kleppe, Civil No. 1-77-99, D. Idaho. Judgment for defendant, Nov. 16, 1979; appeal filed Jan. 10, 1980.

Federal Energy Corp., 51 IBLA 144 (1980)

Federal Energy Corp. v. Dept. of the Interior, Civil No. 81-0433. Voluntary dismissal, Apr. 27, 1981.

Feinberg, Milton D., 37 IBLA 39, 85 I.D. 380 (1978); On Reconsideration, 40 IBLA 222, 86 I.D. 234 (1979)

Lamp v. Andrus, Civil No. 79-1804. Dismissed as to defendant Feinberg, Mar. 17, 1981.

Ferguson, Chester H., 20 IBLA 224 (1975)

Ferguson v. Morton, Civil No. 75-404-Civ-T-K, M.D. Fla. Dismissed without prejudice, July 16, 1975.

Finnesand v. Comm'r of Indian Affairs, 3 IBIA 263 (1975)

Finnesand v. Morton, Civil No. A75-42, D. Alaska. Consent decree approved by the Judge.

Flickinger, Thomas R., 40 IBLA 53 (1979); Pamela W. Kay, 40 IBLA 240 (1979); Robert B. Coen, 41 IBLA 55 (1979)

Ahrens v. Andrus, Civil No. C79-166, D. Wyo. Judgment for plaintiff.

Held v. Andrus, Civil No. CA-80-0133-G, N.D. Tex. Suit pending.

Foote Mineral Co., 34 IBLA 285, 85 I.D. 171 (1978)

Foote Mineral Co. v. Andrus, Civil No. LV-78-141 RDF, D. Nev. Dismissed without prejudice Nov. 15, 1979. No appeal.

Foote Mineral Co. v. U.S., Ct. Cl. No. 12-78. Suit pending.

Forsberg, Carl E., A-29158 et al. (Aug. 19, 1963)

Forsberg v. Udall, Civil No. 63-472, D. Or. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, Oct. 13, 1966. See Linn Land Co. v. Udall.

Fort Berthold Land & Livestock Ass'n v. Aberdeen Area Dir., 8 IBIA 90, 87 I.D. 201 (1980)

Danks v. Fields, Civil No. A4-80-39, D.N.D. Suit pending.

Foster, Robert K., A-29857 (June 15, 1964)

Foster v. Manager, Riverside Land Office, Civil No. 64-1110-WM, S.D. Cal. Judgment for defendant, 296 F. Supp. 1348 (1966); no appeal.

Foster, T. Jack, 75 I.D. 81 (1968)

Foster v. Udall, Civil No. 7611, D.N.M. Judgment for plaintiff, June 2, 1969; no appeal.

Suits for Judicial Review

Franco Western Oil Co., 65 I.D. 316, 427 (1958)

Hansen v. Seaton, Civil No. 2810-59. Judgment for plaintiff, Aug. 2, 1960 (opinion); no appeal.

See Safarik v. Udall, 304 F.2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Freer, Myrtle A., A-29221 (Apr. 2, 1963)

Ritter v. Morton, Civil No. 1-70-74, D. Idaho. Judgment for plaintiff, Nov. 14, 1972.

Fuel Resources Development Co., 43 IBLA 19 (1979)

Fuel Resources Development Co. v. Andrus, Civil No. 79-1639, D. Colo. Suit pending.

Fullerton, Harold W., 46 IBLA 116 (1980)

Fullerton v. Andrus, Civil No. 80-22-M, D. Mont. Judgment for defendant, Mar. 23, 1981.

Funderburg, Coral V., A-30514 (June 14, 1966)

Funderburg v. Udall, Civil No. 2818 ND, S.D. Cal. Dismissed with prejudice, Feb. 15, 1967; aff'd, 396 F.2d 638 (9th Cir. 1968); no petition.

Gabbs Exploration Co., 67 I.D. 160 (1960)

Gabbs Exploration Co. v. Udall, Civil No. 219-61. Judgment for defendant, Dec. 1, 1961; aff'd, 315 F.2d 37 (1963); cert. denied, 375 U.S. 822 (1963).

Gaffney, Bernard J. & Myrle A., A-30327 (Oct. 28, 1965)

Gaffney v. Udall, Civil No. 3-66-22, D. Minn. Stipulated dismissal without prejudice, Jan. 17, 1969; no appeal.

Gahr, John, 65 IBLA 268 (1982)

Gahr v. Watt, Civil No. C82-0410. Suit pending.

Gallagher, D. R., 54 IBLA 72 (1981)

Gallagher v. U.S., Civil No. C81-505J, D. Utah. Suit pending.

Gardafee, Temens (Timens) Vivian, Estate of, 5 IBIA 113, 83 I.D. 216 (1976)

Confederated Tribes & Bands of the Yakima Indian Nation v. Kleppe, Civil No. C-76-200, E.D. Wash. Suit pending.

Garthofner, Stanley, 67 I.D. 4 (1960)

Garthofner v. Udall, Civil No. 4194-60. Judgment for plaintiff, Nov. 27, 1961; no appeal.

Gei-kaun-mah (Bert), Estate of, 4 IBIA 129, 82 I.D. 408 (1975)

Mammedaty v. Morton, Civil No. CIV 75-1010-E, W.D. Okla. Judgment for defendant, 412 F. Supp. 283 (1976); no appeal.

Gelb, Sidney, Uniform Relocation Assistance Appeal of, 2 OHA 59 (1976)

Gelb v. Kleppe, Civil No. 76-1931. Suit pending.

General Excavating Co., 67 I.D 344 (1960)

General Excavating Co. v. U.S., Ct. Cl. No. 170-62. Dismissed with prejudice, Dec. 16, 1963.

Snipe, Walter George & Minnie Racehorse George, Estate of, 9 IBIA 20 (1980)

Hughes v. Watt, Civil No. 81-671-HB, D.N.M. Suit pending.

Geosearch, Inc., IBLA 80-128. Appeal dismissed by by Order dated Jan. 2, 1980.

Geosearch, Inc. v. Andrus, Civil No. C80-0084, D. Wyo. Judgment for defendant, Oct. 15, 1980.

Geosearch, Inc., 40 IBLA 267 (1979)

Geosearch, Inc. v. Andrus, Civil No. C-79-0593, D. Utah. Judgment for defendant, Aug. 22, 1980; no appeal.

Geosearch, Inc., 40 IBLA 401 (1979)

Geosearch, Inc. v. Andrus, Civil No. C-79-350, D. Wyo. Dismissed for want of jurisdiction, 494 F. Supp. 978 (1980); no appeal.

Suits for Judicial Review

Geosearch, Inc., 41 IBLA 291 (1979); James Koch, 61 IBLA 235 (1982)

Geosearch, Inc. v. Getty Oil Co., Civil No. 82-1109. Suit pending.

Koch v. Watt, Civil No. 82-1189. Suit pending.

Geosearch, Inc., 47 IBLA 39 (1980)

Geosearch, Inc. v. Andrus, Civil No. C80-0205, D. Wyo. Dismissed, 508 F. Supp. 839 (1981).

Geosearch, Inc., 48 IBLA 51 (1980)

Geosearch, Inc. v. Andrus, Civil No. C-80-0258. Dismissed, 508 F. Supp. 839 (1981)

Geosearch, Inc., 48 IBLA 76 (1980)

Geosearch, Inc. v. Andrus, Civil No. C-80-0259, D. Wyo. Dismissed, 508 F. Supp. 839 (1981)

Geosearch, Inc., 48 IBLA 333 (1980)

Geosearch, Inc. v. Andrus, Civil No. C-80-0292, D. Wyo. Dismissed, 508 F. Supp. 839 (1981)

Geosearch, Inc., 49 IBLA 19 (1980)

Geosearch, Inc. v. Andrus, Civil No. C-80-0300, D. Wyo. Judgment for defendant, 517 F. Supp. 1245 (1981)

Gerttula, Nelson A., 64 I.D. 225 (1957)

Gerttula v. Udall, Civil No. 685-60. Judgment for defendant, June 20, 1961; motion for rehearing denied, Aug. 3, 1961; aff'd, 309 F.2d 653 (1962); no petition.

Gonsales, Charles B., A-27944 (Apr. 22, 1959)

Gonsales v. Seaton, Civil No. 2497-59. Plaintiff's amended complaint dismissed with prejudice, Jan. 12, 1962; no appeal.

Gonsales, Charles B., 69 I.D. 236 (1962)

Pan American Petroleum Corp. v. Udall, Civil No. 5246, D.N.M. Judgment for defendant, June 4, 1964; aff'd, 352 F.2d 32 (10th Cir. 1965); no petition.

Gonsales, Charles B., A-29010 (Mar. 27, 1963)

Gonsales v. Udall, Civil No. 5378 D.N.M. Dismissed with prejudice, Nov. 12, 1963.

Gonzales, John, A-30604 (Sept. 26, 1968)

Gonzales v. Udall, Civil No. A-128-68, D. Alaska. Order to Stay Proceedings for 6 months filed June 3, 1970; judgment for plaintiff, June 30, 1972; upon stipulation of the parties, appeal dismissed, Nov. 30, 1972.

Goodrich, Charles, 60 IBLA 25 (1981)

Goodrich v. Watt, Civil No. 82-0405. Suit pending.

Goodwin, Jack, 68 IBLA 400 (1982)

Goodwin v. Watt, Civil No. A1-83-17, D.N.D. Suit pending.

Goodwin, James C., 80 I.D. 7 (1973)

Goodwin v. Andrus, Civil No. C-5105, D. Colo. Dismissed, Nov. 29, 1975 (opinion); appeal dismissed, Mar. 9, 1976.

Granat, Ray, 25 IBLA 115 (1976)

Granat v. Kleppe, Civil No. C 76-274, D. Utah. Suit pending.

Green, George, Estate of, IA-T-11 (June 7, 1968)

Crenshaw v. Secretary of the Interior, Civil No. 68-317, W.D. Okla. Dismissed, Feb. 4, 1969; no appeal.

Grewell, LaVonne E., 23 IBLA 190 (1976)

Grewell v. Kleppe, Civil No. C76-602V, W.D. Wash. Judgment for defendant, May 9, 1978; appeal filed July 18, 1978.

Grindstone Butte Project, 18 IBLA 16 (1974); 24 IBLA 49 (1976)

Grindstone Butte Project v. Kleppe, Civil No. 1-76-173, D. Idaho. Judgment for plaintiff, Sept. 8, 1977; rev'd, 638 F.2d 100 (9th Cir. 1981).

Growing Thunder, James, Estate of, 3 IBIA 18 (1974)

Growing Thunder v. Morton, Civil No. 74-73 BLG, D. Mont. Dismissed, Mar. 15, 1976.

Grynberg, Celeste C., 44 IBLA 197 (1979)

Grynberg v. Andrus, Civil No. 79-1771, D. Colo. Judgment for defendant, Jan. 20, 1981; appeal filed Feb. 11, 1981.

Suits for Judicial Review

Gulf Oil Corp., 69 I.D. 30 (1962)

Southwestern Petroleum Corp. v. Udall, Civil No. 2209-62. Judgment for defendant, Oct. 19, 1962; aff'd, 325 F.2d 633 (1963); no petition.

Gulf Oil Corp., 21 IBLA 1 (1975)

Gulf Oil Corp. v. Hathaway, Civil No. 75-2396, Sec. F, E.D. La. Remanded to the Secretary of the Interior for a hearing, Apr. 13, 1977.

Gullo, Thomas V., 29 IBLA 126 (1977)

Gullo v. Dept. of the Interior, Civil No. 77-0869. Aff'd, Oct. 11, 1977.

Guntert, Ronald M. & Marion G., 60 IBLA 200 (1981)

Guntert v. Watt, Civil No. CIVS-82-508-PCW, E.D. Cal. Suit pending.

Gustav Hirsch Organization, Inc., IBCA-175 (Oct. 30, 1958)

Gustav Hirsch Organization, Inc. v. U.S., Ct. Cl. No. 416-59. Compromised.

Guthrie Electrical Construction, 62 I.D. 280 (1955); IBCA-22 (Supp.) (Mar. 30, 1956)

Guthrie Electrical Construction Co. v. U.S., Ct. Cl. No. 129-58. Stipulation of settlement filed Sept. 11, 1958. Compromise offer accepted & case closed Oct. 10, 1958.

Haas, Ottlin D., 61 IBLA 338 (1982)

Haas v. Dept. of the Interior, Civil No. 82-1327. Suit pending.

Haas, Walter S., Jr., 55 IBLA 283 (1981)

Haas v. Watt, Civil No. 81-816, D. Or. Suit pending.

Hagood, L. H., 65 I.D. 405 (1958)

Still v. U.S., Civil No. 7897, D. Colo. Compromise accepted.

Hall, Charles, Sr., Estate of, 8 IBLA 53 (1980)

Hall v. Andrus, Civil No. CV-80-67-GF, D. Mont. Suit pending.

Hall, William, A-30849; A-30852; A-30857 (Sept. 16, 1968)

Hall v. Secretary of the Interior, Civil No. A-169-68, D. Alaska. Dismissed, July 25, 1969; no appeal.

Hamel, Lester J., A-28830 (Sept. 17, 1962)

Hamel v. Nelson, Civil No. 8565, N.D. Cal. Judgment for defendant, Dec. 13, 1963 (opinion); judgment entered Feb. 11, 1964; appeal docketed Feb. 14, 1964; dismissed by plaintiff, Mar. 20, 1964.

Hanan, Albert, 6 ANCAB 111 (1981)

Sealaska Corp. v. Secretary of the Interior, Civil No. A81-513 CIV, D. Alaska. Suit pending.

Hansen, Raymond J., 67 I.D. 362 (1960)

Hansen v. Udall, Civil No. 3902-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Schulein v. Udall, Civil No. 4131-60. Judgment for defendant, June 23, 1961; aff'd, 304 F.2d 944 (1962); no petition.

Hansen, Raymond J., A-30179 (Mar. 5, 1965)

Brandt v. Udall, Civil No. 2659-ND, S.D. Cal. Dismissed, Sept. 30, 1965; amended complaint filed Nov. 15, 1965; judgment for defendant, June 7, 1966; dismissed for lack of jurisdiction, Nov. 15, 1967; judgment for defendants, Mar. 26, 1968; rev'd, 427 F.2d 53 (9th Cir. 1970); no petition.

Brandt v. Udall, Civil No. 2715-ND, S.D. Cal. Dismissed, Dec. 3, 1965.

Harrell, Beverly, 12 IBLA 276 (1973)

Harrell v. Hillsamer, Civil No. CIV-LV-2137, RDF, D. Nev. Dismissed, Dec. 7, 1973; motion for new trial denied, Feb. 6, 1974; no appeal.

Harris, Royal, 45 IBLA 87 (1980)

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City of Homer v. McVee, Civil No. A82-043 CIV, D. Alaska. Suit pending.

Clark County, Nevada, 28 IBLA 210 (1976)

County of Clark v. Kleppe, Civil No. LV-77-13 RDF, D. Nev. Rev'd, Jan. 18, 1978; no appeal.

Clark, Donald L., 71 IBLA 169 (1983)

Clark v. Watt, Civil No. 83-1125, D. Idaho. Suit pending.

Clarkson, Stephen H., 72 I.D. 138 (1965)

Clarkson v. U.S., Cong. Ref. 5-68. Trial Commr's report adverse to U.S. issued Dec. 16, 1970; Chief Commr's report concurring with Trial Commr's report issued Apr. 13, 1971. P.L. 92-108, 85 Stat. 331, Aug. 11, 1971, enacted accepting the Chief Commr's report.

Clasby, Ethyl D. & Charles J., 2 ANCAB 302 (1978)

Wagner v. U.S., Civil No. A78-106 CIV, D. Alaska. Suit pending.

Clear Gravel Enterprises, Inc., A-27967, A-27970 (Dec. 29, 1959)

Dredge Corp. v. Palmer, No. 366, D. Nev. Judgment for defendant, Sept. 25, 1962; remanded, 338 F.2d 456 (9th Cir. 1964); judgment for plaintiff Aug. 8, 1966; rev'd & remanded with direction to enter judgments for defendants, 398 F.2d 791 (9th Cir. 1968); cert. denied, 393 U.S. 1066 (1969).

COAC, Inc., IBCA-1004-9-73, 81 I.D. 700 (1974)

COAC, Inc. v. U.S., Ct. Cl. No. 395-75. Suit pending.

Cobb, P., A-29769 (May 27, 1964)

Cobb v. U.S., Civil No. 967, W.D. Ark. Motion to dismiss denied, 240 F. Supp. 574 (1965); dismissed Jan. 17, 1966.

Cohen, Hannah, 70 I.D. 188 (1963)

Cohen v. U.S., Civil No. 3158, D.R.I. Compromised.

Colorado-Ute Electric Ass'n, 46 IBLA 35 (1980)

Colorado-Ute Electric Ass'n v. Andrus, Civil No. 80-C-500, D. Colo. Suit pending.

Colson, Barney R., 70 I.D. 409 (1963)

Colson v. Udall, Civil No. 63-26-Civ.-Oc, M.D. Fla. Dismissed with prejudice, 278 F. Supp. 826 (1968); aff'd, 428 F.2d 1046 (5th Cir. 1970); cert. denied, 401 U.S. 911 (1971).

Colson, Barney R., 7 IBLA 40 (1972)

Colson v. Morton, Civil No. 1960-72. Dismissed with prejudice, Feb. 7, 1974; per curiam decision, aff'd, Jan. 24, 1975; no petition.

Columbian Carbon Co., 63 I.D. 166 (1956)

Liss v. Seaton, Civil No. 3233-56. Judgment for defendant, Jan. 9, 1958; appeal dismissed for want of prosecution, Sept. 18, 1958, D.C. Cir. No. 14,647.

Suits for Judicial Review

Commercial Metals Co., IBCA-99 (Aug. 27, 1959)

Commercial Metals Co. v. U.S., Ct. Cl. No. 458-59. Judgment for plaintiff, June 16, 1966.

Confederated Salish & Kootenai Tribes of the Flathead Reservation, IA-1972-X-9, 77 I.D. 116 (1970)

Baciarelli v. Morton, Civil No. C-70-2200 SC, D. Cal. Judgment for defendant, Aug. 27, 1971; aff'd, 481 F.2d 610 (9th Cir. 1973); no petition.

Consolidated Mines & Smelting Co., A-30760 (Sept. 19, 1967)

Brown v. U.S., Civil No. 69-2332-F, D. Cal. Dismissed with prejudice, Mar. 20, 1970; reconsideration denied, May 20, 1970.

Consolidation Coal Co., 1 IBSMA 273, 86 I.D. 523 (1979); 2 IBSMA 21, 87 I.D. 59 (1980)

Consolidation Coal Co. v. Andrus, Civil No. 80-3037, S.D. Ill. Judgment for defendant, Feb. 8, 1982.

Constitution Petroleum Co., 25 IBLA 319 (1976)

Constitution Petroleum Co. v. Kleppe, Civil No. C-76-257, D. Utah. Suit pending.

Continental Oil Co., 68 I.D. 337 (1961)

Continental Oil Co. v. Udall, Civil No. 366-62. Judgment for defendant, Apr. 29, 1966; aff'd, Feb. 10, 1967; cert. denied, 389 U.S. 839 (1967).

Continental Oil Co. v. Aztec Exploration & Development Co., 32 IBLA 1 (1977)

Aztec Exploration & Development Co. v. Dept. of the Interior, Civil No. CIV 77-827 PHX, D. Ariz. Suit pending.

Conway, Joe, 59 IBLA 314 (1981)

Conway v. Watt, Civil No. C82-0029, D. Wyo. Suit pending.

Cook, Hubert Franklin, Estate of, 5 IBIA 42, 83 I.D. 75 (1976)

Johnson v. Kleppe, Civil No. CIV-76-0362-E, W.D. Okla. Suit pending.

Cooley, David E., Jr., 62 IBLA 87 (1982)

Cooley v. Watt, Civil No. C82-0188, D. Wyo. Suit pending.

Cooper, Gordon L., 51 IBLA 191 (1980)

Cooper v. Andrus, Civil No. 81-151-EDP, E.D. Cal. Suit pending.

Copper Valley Machine Works, Inc., IBLA 78-606, Order dismissing appeal dated Dec. 13, 1978.

Copper Valley Machine Works, Inc. v. Andrus, Civil No. 78-1572. Judgment for defendant, June 29, 1979; appeal filed Aug. 28, 1979.

Cord, E. L., 10 IBLA 363, 80 I.D. 301 (1973)

Neuhoff v. Morton, Civil No. R-2921, D. Nev. Dismissed, Sept. 12, 1975 (opinion); aff'd, July 17, 1978; no petition.

Cornell, Jay Frederick, 4 IBLA 11 (1971)

Cornell v. Morton, Civil No. A-5-72, D. Alaska. Judgment for defendant, Mar. 23, 1973; aff'd, Sept. 3, 1974; no petition.

Cornia, William D., Wyoming 4-63-1, etc.; Utah 1-63-1, etc. (Aug. 25, 1965)

Cornia v. Udall, Civil No. 4-66, N.D. Utah. Dismissed with prejudice, Sept. 1, 1967.

Cortella Coal Corp., 13 IBLA 158 (1973)

Cortella Coal Corp. v. McVee, Civil No. A-169-73, D. Alaska. Dismissed with prejudice, Jan. 13, 1976.

Cosmo Construction Co., 73 I.D. 229 (1966)

Cosmo Construction Co. v. U.S., Ct. Cl. No. 119-68. Ct. opinion setting case for trial on the merits issued Mar. 19, 1971.

Cotton Petroleum Corp. v. Samedan Oil Corp., 29 IBLA 13 (1977)

Cotton Petroleum Corp. v. Andrus, Civil No. CIV 77-0415T D. Okla. Aff'd, Jan. 19,

Council of the Southern Mountains, Inc. v. OSM, 3 IBSMA 44, 88 I.D. 394 (1981)

Council of the Southern Mountains, Inc. v. Watt, Civil No. 81-1022. Suit pending.

Cowin & Co., 83 I.D. 409 (1976)

United Mine Workers of America v. Kleppe, No. 76-1980, U.S. Ct. of Appeals, D.C. Cir. Suit pending.

Suits for Judicial Review

Coy, Glenn, Estate of, 52 IBLA 182, 88 I.D. 236 (1981)

Coy v. Watt, Civil No. 81-0984. Suit pending.

Cramer, Philip, 57 IBLA 386 (1981)

Cramer v. Watt, Civil No. CIV 81-1356, D. Idaho. Suit pending.

Crosby, Jonah, 2 IBIA 289, 81 I.D. 279 (1974)

Price v. Morton, Civil No. 74-0-189, D. Neb. Remanded to the Secretary for further admin. action, Dec. 16, 1975.

Crouse, Elizabeth Barndt, A-30542 (Mar. 7, 1968)

Crouse v. K. Ranch, Inc., Civil No. R-2063, D. Nev. Dismissed without prejudice, Apr. 15, 1969; no appeal.

Crow, Elsie May Pikok, 3 IBLA 114 (1971)

Crow v. U.S., Civil No. F-27-71 Civ., D. Alaska. Dismissed, July 13, 1972; no appeal.

Cultee, William Mason, Estate of, 9 IBIA 43 (1981)

Cultee v. Watt, Civil No. C811164, W.D. Wash. Suit pending.

Cunningham, Bill. Protest dismissed, dated Jan. 11, 1982, approved by the Ass't Secretary, Jan. 15, 1982.

Bob Marshall Alliance v. Watt, Civil No. 82-15 GF, D. Mont. Suit pending.

D'Amico, Vincent M., 55 IBLA 116 (1981)

D'Amico v. Watt, Civil No. 81-2050. Suit pending.

Daniel Brothers Coal Co., 2 IBSMA 45, 87 I.D. 138 (1980)

Daniel v. Andrus, Civil No. 80-49, E.D. Ky. Suit pending.

Daniels, George, IA-1295 (Nov. 2, 1965)

Daniels v. Johnson, Civil No. 6443, N.D. Okla. Dismissed with prejudice, Jan. 9, 1967.

David Excavating Co. v. OSM, 3 IBSMA 163 (1981); 3 IBSMA 215 (1981)

David Excavating Co. v. Watt, Civil No. EV-81-171-C S.D. Ind. Suit pending.

David Excavating Co. v. OSM, 4 IBSMA 2 (1982)

David Excavating Co. v. Secretary of the Interior, Civil No. EV-82-40-C, S.D. Ind. Suit pending.

Dawson, Susan, 35 IBLA 123 (1978)

Dawson v. Andrus, Civil No. C78-167, D. Wyo. Judgment for defendant, Mar. 22, 1979; appeal filed Apr. 17, 1979.

Day, Oma Belle, AA-5702 (Dec. 30, 1969)

Day v. Hickel, Civil No. A-9-70, D. Alaska. Judgment for defendant, Feb. 19, 1971; aff'd, 481 F.2d 473 (9th Cir. 1973); no petition.

Dean Trucking Co., 1 IBSMA 229, 86 I.D. 437 (1979)

Dean Trucking Co. v. Andrus, Civil No. 80-0006-B, W.D. Va. Suit pending.

deArmas, John C., Jr., 63 I.D. 82 (1956)

McKenna v. Davis, Civil No. 2125-56. Judgment for defendant, June 20, 1957; aff'd, 259 F.2d 780 (1958); cert. denied, 358 U.S. 835 (1958).

DeBord, Wayne E., 50 IBLA 216 (1980)

Landis v. Andrus, Civil No. 80-2110, D. Idaho. Suit pending.

Delasco, H. R., 39 IBLA 194, 84 I.D. 192 (1979); Blanche V. White, 40 IBLA 152, 85 I.D. 408 (1979)

Stewart Capital Corp. v. Andrus, Civil No. C79-123, D. Wyo. Aff'd in part, rev'd in part, Apr. 24, 1980; appeal withdrawn.

Desens, Wilbur G., 54 IBLA 271 (1981)

Desens v. Watt, Civil No. C81-0213, D. Wyo. Suit pending.

Geosearch, Inc. v. Watt, Civil No. C81-0214, D. Wyo. Suit pending.

Suits for Judicial Review

DiMarco, Richard J., 53 IBLA 130 (1981)

DiMarco v. Watt, Civil No. 81-2243. Suit pending.

Dinco Coal Sales, Inc., 4 IBSMA 35, 89 I.D. 113 (1982)

DeBord v. Watt, Civil No. 82-99, D. Ky. Suit pending.

Dolezal, Carol, 56 IBLA 52 (1981)

Alker v. Watt, Civil No. 81-0847, D.N.M. Suit pending.

Downtown Properties, Inc. v. Sacramento Area Dir., BIA, 8 IBIA 248 (1981)

Downtown Properties, Inc. v. Andrus, Civil No. 80-1724-N(M), S.D. Cal. Suit pending.

Downtown Properties, Inc. v. Andrus, Civil No. 81-0835-N(H), S.D. Cal. Suit pending.

Dredge Corp., 64 I.D. 368 (1957); 65 I.D. 336 (1958)

Dredge Corp. v. Penny, Civil No. 475, D. Nev. Judgment for defendant, Sept. 9, 1964; aff'd, 362 F.2d 889 (9th Cir. 1966); no petition. See also Dredge Co. v. Husite Co., 369 P.2d 676 (1962); cert. denied, 371 U.S. 821 (1962).

Drummond Coal Co., 2 IBSMA 96, 87 I.D. 196 (1980)

Drummond Coal Co. v. Andrus, Civil No. C-V-80-M-0829, N.D. Ala. Judgment for plaintiff, Apr. 20, 1981.

Dye, Lawrence E., 57 IBLA 360 (1981)

Dye v. Watt, Civil CIV-81-982-HB, D.N.M. Suit pending.

Easterday, Alfred L., 34 IBLA 195 (1978); Donald W. Coyer, 36 IBLA 181 (1978); 50 IBLA 306 (1980)

Coyer v. Andrus, Civil No. C78-104, D. Wyo.

Coyer v. Andrus, Civil No. C78-213, D. Wyo.

Coyer v. Andrus, Civil No. C78-214, D. Wyo.

For above cases:
Actions consolidated. Remanded to Wyo. State Office Feb. 12, 1979; order of dismissal filed Feb. 13, 1979.

Coyer v. Andrus, Civil No. C80-0372, D. Wyo. Suit pending.

Eastern Associated Coal Corp., 4 IBMA 1, 82 I.D. 22 (1975)

Internat'l Union of United Mine Workers of America v. Morton, No. 75-1107, U.S. Ct. of Appeals, D.C. Cir. Dismissed by stipulation, Oct. 29, 1975.

Eastern Associated Coal Corp., 4 IBMA 298, 82 I.D. 311 (1975)

United Mine Workers of America v. IBMA, No. 75-1727, U.S. Ct. of Appeals, D.C. Cir. Petition for Review withdrawn, July 28, 1975.

Eastern Associated Coal Corp., 82 I.D. 506 (1975); On Reconsideration, 83 I.D. 425 (1976); aff'd en banc, 83 I.D. 695 (1976); 7 IBMA 152 (1976)

United Mine Workers of America v. Andrus, No. 77-1090, U.S. Ct. of Appeals, D.C. Cir. Voluntary dismissal, Apr. 4, 1977.

Eastover Mining Co., 2 IBSMA 5, 87 I.D. 9 (1980)

Eastover Mining Co. v. Andrus, Civil No. 80-17, E.D. Ky. Suit pending.

Edwards, Lawrence, A-30696, A-30705 (Apr. 21, 1967)

Edwards v. Udall, Civil No. 2714, D. Mont. Rev'd & remanded, Nov. 18, 1968; stipulation for dismissal & order filed Aug. 4, 1970.

Edwards v. Unruh, 33 IBLA 277 (1978)

Edwards v. U.S., Civil No. 77-0050 BRT, D. Nev. Judgment for defendant, Oct. 31, 1978; appeal filed Dec. 27, 1978.

Ehbrecht, Martha E., 62 IBLA 382 (1982)

Ehbrecht v. Dept. of the Interior, Civil No. 82-1329. Suit pending.

Ekker, Riter & Kerry, 38 IBLA 277 (1978)

Ekker v. Andrus, Civil No. C-80-180A, Utah. Suit pending.

Eklutna, Inc., 1 ANCAB 165, 83 I.D. 500 (1976)

Alaska v. ANCAB, Civil No. A76-236, D. Alaska. Suit pending.

Elkay Mining Co. v. OSM, 2 IBSMA 19 (1980)

Elkay Mining Co. v. Andrus, Civil No. 80-2030, S.D. W. Va. Suit pending.

Suits for Judicial Review

Eluska, Heldina, 21 IBLA 292 (1975)

Eluska v. Kleppe, Civil No. A-76-26 CIV, D. Alaska. Remanded for exhaustion of admin. remedies; reconsideration denied, Dec. 10, 1976; appeal dismissed; judgment denying plaintiffs' motion for summary judgment & remanding case to Agency, Apr. 20, 1977; appeal dismissed without prejudice, Dec. 11, 1978.

Enevoldsen, H. J., 44 IBLA 70, 86 I.D. 643 (1979)

Enevoldsen v. Andrus, Civil No. C80-0047, D. Wyo. Suit pending.

Ernst, Henry J., A-27196 (Nov. 7, 1955)

Ernst v. Secretary of the Interior, Civil No. 9303, D. Alaska. Return of service quashed & complaint dismissed, Dec. 28, 1956 (opinion); aff'd, 244 F.2d 544 (9th Cir. 1957).

Evans v. Little, A-31044 (Apr. 10, 1970); 1 IBLA 269, 78 I.D. 47 (1971)

Evans v. Morton, Civil No. 1-71-41, D. Idaho. Order granting motion of Ralph C. Little for leave to intervene as a party defendant issued June 5, 1972. Judgment for defendants, July 27, 1973; aff'd, Mar. 12, 1975; no petition.

Farington, Elsie V., 9 IBLA 191 (1973)

Farington v. Morton, Civil No. S2768, E. D. Cal. Dismissed with prejudice, Dec. 5, 1973 (opinion); no appeal.

Farrelly, John J., 62 I.D. 1 (1955)

Farrelly v. McKay, Civil No. 3037-55. Judgment for plaintiff, Oct. 11, 1955; no appeal.

Faulkner, Ralph G., 26 IBLA 110 (1976)

Faulkner v. Kleppe, Civil No. 1-77-99, D. Idaho. Judgment for defendant, Nov. 16, 1979; appeal filed Jan. 10, 1980.

Federal Energy Corp., 51 IBLA 144 (1980)

Federal Energy Corp. v. Dept. of the Interior, Civil No. 81-0433. Voluntary dismissal, Apr. 27, 1981.

Feinberg, Milton D., 37 IBLA 39, 85 I.D. 380 (1978); On Reconsideration, 40 IBLA 222, 86 I.D. 234 (1979)

Lamp v. Andrus, Civil No. 79-1804. Dismissed as to defendant Feinberg, Mar. 17, 1981.

Ferguson, Chester H., 20 IBLA 224 (1975)

Ferguson v. Morton, Civil No. 75-404-Civ-T-K, M.D. Fla. Dismissed without prejudice, July 16, 1975.

Finnesand v. Comm'r of Indian Affairs, 3 IBLA 263 (1975)

Finnesand v. Morton, Civil No. A75-42, D. Alaska. Consent decree approved by the Judge.

Flickinger, Thomas E., 40 IBLA 53 (1979); Pamela W. Kay, 40 IBLA 240 (1979); Robert B. Coen, 41 IBLA 55 (1979)

Ahrens v. Andrus, Civil No. C79-166, D. Wyo. Judgment for plaintiff.

Held v. Andrus, Civil No. CA-80-0133-G, N.D. Tex. Suit pending.

Foote Mineral Co., 34 IBLA 285, 85 I.D. 171 (1978)

Foote Mineral Co. v. Andrus, Civil No. LV-78-141 RDF, D. Nev. Dismissed without prejudice Nov. 15, 1979. No appeal.

Foote Mineral Co. v. U.S., Ct. Cl. No. 12-78. Suit pending.

Forsberg, Carl E., A-29158 et al. (Aug. 19, 1963)

Forsberg v. Udall, Civil No. 63-472, D. Or. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, Oct. 13, 1966. See Linn Land Co. v. Udall.

Fort Berthold Land & Livestock Ass'n v. Aberdeen Area Dir., 8 IBIA 90, 87 I.D. 201 (1980)

Danks v. Fields, Civil No. A4-80-39, D.N.D. Suit pending.

Foster, Robert K., A-29857 (June 15, 1964)

Foster v. Manager, Riverside Land Office, Civil No. 64-1110-WM, S.D. Cal. Judgment for defendant, 296 F. Supp. 1348 (1966); no appeal.

Foster, T. Jack, 75 I.D. 81 (1968)

Foster v. Udall, Civil No. 7611, D.N.M. Judgment for plaintiff, June 2, 1969; no appeal.

Suits for Judicial Review

Franco Western Oil Co., 65 I.D. 316, 427 (1958)

Hanson v. Seaton, Civil No. 2810-59. Judgment for plaintiff, Aug. 2, 1960 (opinion); no appeal.

See Safarik v. Udall, 304 F.2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Freer, Myrtle A., A-29221 (Apr. 2, 1963)

Ritter v. Morton, Civil No. 1-70-74, D. Idaho. Judgment for plaintiff, Nov. 14, 1972.

Fuel Resources Development Co., 43 IBLA 19 (1979)

Fuel Resources Development Co. v. Andrus, Civil No. 79-1639, D. Colo. Suit pending.

Fullerton, Harold W., 46 IBLA 116 (1980)

Fullerton v. Andrus, Civil No. 80-22-M, D. Mont. Judgment for defendant, Mar. 23, 1981.

Funderburg, Coral V., A-30514 (June 14, 1966)

Funderburg v. Udall, Civil No. 2818 ND, S.D. Cal. Dismissed with prejudice, Feb. 15, 1967; aff'd, 396 F.2d 638 (9th Cir. 1968); no petition.

Gabbs Exploration Co., 67 I.D. 160 (1960)

Gabbs Exploration Co. v. Udall, Civil No. 219-61. Judgment for defendant, Dec. 1, 1961; aff'd, 315 F.2d 37 (1963); cert. denied, 375 U.S. 822 (1963).

Gaffney, Bernard J. & Myrle A., A-30327 (Oct. 28, 1965)

Gaffney v. Udall, Civil No. 3-66-22, D. Minn. Stipulated dismissal without prejudice, Jan. 17, 1969; no appeal.

Gahr, John, 65 IBLA 268 (1982)

Gahr v. Watt, Civil No. C82-0410. Suit pending.

Gallagher, D. R., 54 IBLA 72 (1981)

Gallagher v. U.S., Civil No. C81-505J, D. Utah. Suit pending.

Gardafee, Temens (Timens) Vivian, Estate of, 5 IBIA 113, 83 I.D. 216 (1976)

Confederated Tribes & Bands of the Yakima Indian Nation v. Kleppe, Civil No. C-76-200, E.D. Wash. Suit pending.

Garthofner, Stanley, 67 I.D. 4 (1960)

Garthofner v. Udall, Civil No. 4194-60. Judgment for plaintiff, Nov. 27, 1961; no appeal.

Gei-kaun-mah (Bert), Estate of, 4 IBIA 129, 82 I.D. 408 (1975)

Mammedaty v. Morton, Civil No. CIV 75-1010-E, W.D. Okla. Judgment for defendant, 412 F. Supp. 283 (1976); no appeal.

Gelb, Sidney, Uniform Relocation Assistance Appeal of, 2 OHA 59 (1976)

Gelb v. Kleppe, Civil No. 76-1931. Suit pending.

General Excavating Co., 67 I.D. 344 (1960)

General Excavating Co. v. U.S., Ct. Cl. No. 170-62. Dismissed with prejudice, Dec. 16, 1963.

Snipe, Walter George & Minnie Racehorse George, Estate of, 9 IBIA 20 (1980)

Hughes v. Watt, Civil No. 81-671-HB, D.N.M. Suit pending.

Geosearch, Inc., IBLA 80-128. Appeal dismissed by by Order dated Jan. 2, 1980.

Geosearch, Inc. v. Andrus, Civil No. C80-0084, D. Wyo. Judgment for defendant, Oct. 15, 1980.

Geosearch, Inc., 40 IBLA 267 (1979)

Geosearch, Inc. v. Andrus, Civil No. C-79-0593, D. Utah. Judgment for defendant, Aug. 22, 1980; no appeal.

Geosearch, Inc., 40 IBLA 401 (1979)

Geosearch, Inc. v. Andrus, Civil No. C-79-350, D. Wyo. Dismissed for want of jurisdiction, 494 F. Supp. 978 (1980); no appeal.

Suits for Judicial Review

Geosearch, Inc., 41 IBLA 291 (1979); James Koch, 61 IBLA 235 (1982)

Geosearch, Inc. v. Getty Oil Co., Civil No. 82-1109. Suit pending.

Koch v. Watt, Civil No. 82-1189. Suit pending.

Geosearch, Inc., 47 IBLA 39 (1980)

Geosearch, Inc. v. Andrus, Civil No. C80-0205, D. Wyo. Dismissed, 508 F. Supp. 839 (1981).

Geosearch, Inc., 48 IBLA 51 (1980)

Geosearch, Inc. v. Andrus, Civil No. C-80-0258. Dismissed, 508 F. Supp. 839 (1981)

Geosearch, Inc., 48 IBLA 76 (1980)

Geosearch, Inc. v. Andrus, Civil No. C-80-0259, D. Wyo. Dismissed, 508 F. Supp. 839 (1981)

Geosearch, Inc., 48 IBLA 333 (1980)

Geosearch, Inc. v. Andrus, Civil No. C-80-0292, D. Wyo. Dismissed, 508 F. Supp. 839 (1981)

Geosearch, Inc., 49 IBLA 19 (1980)

Geosearch, Inc. v. Andrus, Civil No. C-80-0300, D. Wyo. Judgment for defendant, 517 F. Supp. 1245 (1981)

Gerttula, Nelson A., 64 I.D. 225 (1957)

Gerttula v. Udall, Civil No. 685-60. Judgment for defendant, June 20, 1961; motion for rehearing denied, Aug. 3, 1961; aff'd, 309 F.2d 653 (1962); no petition.

Gonsales, Charles B., A-27944 (Apr. 22, 1959)

Gonsales v. Seaton, Civil No. 2497-59. Plaintiff's amended complaint dismissed with prejudice, Jan. 12, 1962; no appeal.

Gonsales, Charles B., 69 I.D. 236 (1962)

Pan American Petroleum Corp. v. Udall, Civil No. 5246, D.N.M. Judgment for defendant, June 4, 1964; aff'd, 352 F.2d 32 (10th Cir. 1965); no petition.

Gonsales, Charles B., A-29010 (Mar. 27, 1963)

Gonsales v. Udall, Civil No. 5378 D.N.M. Dismissed with prejudice, Nov. 12, 1963.

Gonsales, John, A-30604 (Sept. 26, 1968)

Gonsales v. Udall, Civil No. A-128-68, D. Alaska. Order to Stay Proceedings for 6 months filed June 3, 1970; judgment for plaintiff, June 30, 1972; upon stipulation of the parties, appeal dismissed, Nov. 30, 1972.

Goodrich, Charles, 60 IBLA 25 (1981)

Goodrich v. Watt, Civil No. 82-0405. Suit pending.

Goodwin, Jack, 68 IBLA 400 (1982)

Goodwin v. Watt, Civil No. Al-83-17, D.N.D. Suit pending.

Goodwin, James C., 80 I.D. 7 (1973)

Goodwin v. Andrus, Civil No. C-5105, D. Colo. Dismissed, Nov. 29, 1975 (opinion); appeal dismissed, Mar. 9, 1976.

Granat, Ray, 25 IBLA 115 (1976)

Granat v. Kleppe, Civil No. C 76-274, D. Utah. Suit pending.

Green, George, Estate of, IA-T-11 (June 7, 1968)

Crenshaw v. Secretary of the Interior, Civil No. 68-317, W.D. Okla. Dismissed, Feb. 4, 1969; no appeal.

Grewell, LaVonne E., 23 IBLA 190 (1976)

Grewell v. Kleppe, Civil No. C76-602V, W.D. Wash. Judgment for defendant, May 9, 1978; appeal filed July 18, 1978.

Grindstone Butte Project, 18 IBLA 16 (1974); 24 IBLA 49 (1976)

Grindstone Butte Project v. Kleppe, Civil No. 1-76-173, D. Idaho. Judgment for plaintiff, Sept. 8, 1977; rev'd, 638 F.2d 100 (9th Cir. 1981).

Growing Thunder, James, Estate of, 3 IBIA 18 (1974)

Growing Thunder v. Morton, Civil No. 74-73 BLG, D. Mont. Dismissed, Mar. 15, 1976.

Grynberg, Celeste C., 44 IBLA 197 (1979)

Grynberg v. Andrus, Civil No. 79-1771, D. Colo. Judgment for defendant, Jan. 20, 1981; appeal filed Feb. 11, 1981.

Suits for Judicial Review

Gulf Oil Corp., 69 I.D. 30 (1962)

Southwestern Petroleum Corp. v. Udall, Civil No. 2209-62. Judgment for defendant, Oct. 19, 1962; aff'd, 325 F.2d 633 (1963); no petition.

Gulf Oil Corp., 21 IBLA 1 (1975)

Gulf Oil Corp. v. Hathaway, Civil No. 75-2396, Sec. F, E.D. La. Remanded to the Secretary of the Interior for a hearing, Apr. 13, 1977.

Gullo, Thomas V., 29 IBLA 126 (1977)

Gullo v. Dept. of the Interior, Civil No. 77-0869. Aff'd, Oct. 11, 1977.

Guntert, Ronald M. & Marion G., 60 IBLA 200 (1981)

Guntert v. Watt, Civil No. CIVS-82-508-PCW, E.D. Cal. Suit pending.

Gustav Hirsch Organization, Inc., IBCA-175 (Oct. 30, 1958)

Gustav Hirsch Organization, Inc. v. U.S., Ct. Cl. No. 416-59. Compromised.

Guthrie Electrical Construction, 62 I.D. 280 (1955); IBCA-22 (Supp.) (Mar. 30, 1956)

Guthrie Electrical Construction Co. v. U.S., Ct. Cl. No. 129-58. Stipulation of settlement filed Sept. 11, 1958. Compromise offer accepted & case closed Oct. 10, 1958.

Haas, Ottlin D., 61 IBLA 338 (1982)

Haas v. Dept. of the Interior, Civil No. 82-1327. Suit pending.

Haas, Walter S., Jr., 55 IBLA 283 (1981)

Haas v. Watt, Civil No. 81-816, D. Or. Suit pending.

Hagood, L. H., 65 I.D. 405 (1958)

Still v. U.S., Civil No. 7897, D. Colo. Compromise accepted.

Hall, Charles, Sr., Estate of, 8 IBIA 53 (1980)

Hall v. Andrus, Civil No. CV-80-67-GF, D. Mont. Suit pending.

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67 IBLA 97 (Sept. 13, 1982)
76 IBLA 192 (Oct. 6, 1983)
2477 ---------- 5 ANCAB 147, 88 I.D. 14 (1981)
5 ANCAB 307, 88 I.D. 629 (1981)
7 ANCAB 188, 89 I.D. 346 (1982)
55 IBLA 151 (June 8, 1981)
55 IBLA 360 (June 26, 1981)
64 IBLA 318 (June 10, 1982)
72 IBLA 125 (Apr. 18, 1983)
77 IBLA 270 (Nov. 30, 1983)
82 IBLA 165 (Aug. 6, 1984)
3689 ---------- M-36942, 88 I.D. 1090 (1981)

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(B) REVISED STATUTES

(C) UNITED STATES CODES

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sec. 301 ----------12 IBIA 49, 90 I.D. 474 (1983)
452-458e ------ IBCA-1234-12-78 (Apr. 14, 1983)
504 ----------9 IBIA 281, 89 I.D. 241 (1982)
11 IBIA 285, 90 I.D. 389 (1983)
79 IBLA 182, 91 I.D. 138 (1984)
504(a)(1) ---- IBCA-1672-4-83, 90 I.D. 379 (1983)
11 IBIA 285, 90 I.D. 389 (1983)
504(a)(3) ---- IBCA-1672-4-83, 90 I.D. 379 (1983)
504(b)(1)
(A)(ii) ----79 IBLA 182, 91 I.D. 138 (1984)
504(b)(1)(B) -79 IBLA 182, 91 I.D. 138 (1984)
504(b)(1)(C) -79 IBLA 182, 91 I.D. 138 (1984)
551 ----------11 IBIA 285, 90 I.D. 389 (1983)
50 IBLA 209 (Sept. 30, 1980)
64 IBLA 175 (May 26, 1982)
64 IBLA 285 (June 4, 1982)
82 IBLA 14 (July 5, 1984)
3 IBSMA 44, 88 I.D. 394 (1981)
551-559 ------12 IBIA 80, 90 I.D. 521 (1983)
551(4) -------9 IBIA 263, 89 I.D. 200 (1982)
10 IBIA 146, 89 I.D. 508 (1982)
10 IBIA 173 (Oct. 15, 1982)
10 IBIA 189 (Oct. 15, 1982)
10 IBIA 205 (Oct. 15, 1982)
10 IBIA 221 (Oct. 15, 1982)
10 IBIA 237 (Oct. 15, 1982)
10 IBIA 253 (Oct. 15, 1982)
10 IBIA 269 (Oct. 15, 1982)
10 IBIA 285 (Oct. 15, 1982)
10 IBIA 301 (Oct. 15, 1982)
10 IBIA 318 (Oct. 15, 1982)
10 IBIA 334 (Oct. 15, 1982)
10 IBIA 350 (Oct. 15, 1982)
10 IBIA 366 (Oct. 15, 1982)
10 IBIA 382 (Oct. 15, 1982)
10 IBIA 399 (Oct. 15, 1982)
10 IBIA 416 (Oct. 15, 1982)
10 IBIA 432 (Oct. 15, 1982)
10 IBIA 448 (Oct. 15, 1982)
12 IBIA 80, 90 I.D. 521 (1983)
12 IBIA 110, 90 I.D. 536 (1983)
12 IBIA 116 (Dec. 9, 1983)
12 IBIA 119, 90 I.D. 539 (1983)
57 IBLA 53 (Aug. 17, 1981)
74 IBLA 26 (June 24, 1983)
551(5) -------3 IBSMA 44, 88 I.D. 394 (1981)
551(6) -------3 IBSMA 44, 88 I.D. 394 (1981)
551(7) -------3 IBSMA 44, 88 I.D. 394 (1981)
551(9) -------3 IBSMA 44, 88 I.D. 394 (1981)
551(12) ------3 IBSMA 44, 88 I.D. 394 (1981)
551(13) ------3 IBSMA 44, 88 I.D. 394 (1981)
551(14) ------12 IBIA 80, 90 I.D. 521 (1983)
552 ----------11 IBIA 85, 90 I.D. 88 (1983)
12 IBIA 80, 90 I.D. 521 (1983)
12 IBIA 107 (Dec. 9, 1983)
12 IBIA 110, 90 I.D. 536 (1983)
12 IBIA 116 (Dec. 9, 1983)
12 IBIA 119, 90 I.D. 539 (1983)
51 IBLA 89 (Nov. 5, 1980)
55 IBLA 171 (June 11, 1981)
57 IBLA 63 (Aug. 17, 1981)
68 IBLA 231 (Nov. 16, 1982)
70 IBLA 264, 90 I.D. 10 (1983)
79 IBLA 345 (Mar. 22, 1984)
80 IBLA 274 (May 4, 1984)
552(2)(ii) ---12 IBIA 80, 90 I.D. 521 (1983)
552(a) -------54 IBLA 390, 88 I.D. 557 (1981)
57 IBLA 53 (Aug. 17, 1981)
75 IBLA 298 (Aug. 29, 1983)

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sec. 552(a)(1) ----10 IBIA 146, 89 I.D. 508 (1982)
10 IBIA 173 (Oct. 15, 1982)
10 IBIA 189 (Oct. 15, 1982)
10 IBIA 205 (Oct. 15, 1982)
10 IBIA 221 (Oct. 15, 1982)
10 IBIA 237 (Oct. 15, 1982)
10 IBIA 253 (Oct. 15, 1982)
10 IBIA 269 (Oct. 15, 1982)
10 IBIA 285 (Oct. 15, 1982)
10 IBIA 301 (Oct. 15, 1982)
10 IBIA 318 (Oct. 15, 1982)
10 IBIA 334 (Oct. 15, 1982)
10 IBIA 350 (Oct. 15, 1982)
10 IBIA 366 (Oct. 15, 1982)
10 IBIA 382 (Oct. 15, 1982)
10 IBIA 399 (Oct. 15, 1982)
10 IBIA 416 (Oct. 15, 1982)
10 IBIA 432 (Oct. 15, 1982)
10 IBIA 448 (Oct. 15, 1982)
11 IBIA 168, 90 I.D. 169 (1983)
12 IBIA 80, 90 I.D. 521 (1983)
55 IBLA 171 (June 11, 1981)
84 IBLA 140 (Dec. 11, 1984)
552(a)(1)(A) -54 IBLA 390, 88 I.D. 557 (1981)
552(a)(1)(D) -10 IBIA 146, 89 I.D. 508 (1982)
10 IBIA 173 (Oct. 15, 1982)
10 IBIA 189 (Oct. 15, 1982)
10 IBIA 205 (Oct. 15, 1982)
10 IBIA 221 (Oct. 15, 1982)
10 IBIA 237 (Oct. 15, 1982)
10 IBIA 253 (Oct. 15, 1982)
10 IBIA 269 (Oct. 15, 1982)
10 IBIA 285 (Oct. 15, 1982)
10 IBIA 301 (Oct. 15, 1982)
10 IBIA 318 (Oct. 15, 1982)
10 IBIA 334 (Oct. 15, 1982)
10 IBIA 350 (Oct. 15, 1982)
10 IBIA 366 (Oct. 15, 1982)
10 IBIA 382 (Oct. 15, 1982)
10 IBIA 399 (Oct. 15, 1982)
10 IBIA 416 (Oct. 15, 1982)
10 IBIA 432 (Oct. 15, 1982)
10 IBIA 448 (Oct. 15, 1982)
12 IBIA 80, 90 I.D. 521 (1983)
12 IBIA 110, 90 I.D. 536 (1983)
12 IBIA 116 (Dec. 9, 1983)
12 IBIA 119, 90 I.D. 539 (1983)
55 IBLA 96 (June 1, 1981)
55 IBLA 171 (June 11, 1981)
60 IBLA 293 (Dec. 18, 1981)
552(a)(1)(E) -55 IBLA 96 (June 1, 1981)
552(a)(2) ----11 IBIA 214, 90 I.D. 283 (1983)
46 IBLA 277, 87 I.D. 110 (1980)
49 IBLA 200 (Aug. 11, 1980)
53 IBLA 261 (Mar. 23, 1981)
66 IBLA 1, 89 I.D. 386 (1982)
70 IBLA 145 (Jan. 17, 1983)
79 IBLA 129 (Feb. 22, 1984)
552(a)(2)(B) -10 IBIA 146, 89 I.D. 508 (1982)
10 IBIA 173 (Oct. 15, 1982)
10 IBIA 189 (Oct. 15, 1982)
10 IBIA 205 (Oct. 15, 1982)
10 IBIA 221 (Oct. 15, 1982)
10 IBIA 237 (Oct. 15, 1982)
10 IBIA 253 (Oct. 15, 1982)
10 IBIA 269 (Oct. 15, 1982)
10 IBIA 285 (Oct. 15, 1982)
10 IBIA 301 (Oct. 15, 1982)
10 IBIA 318 (Oct. 15, 1982)

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sec. 552(a)(2)(B) -10 IBIA 334 (Oct. 15, 1982)
10 IBIA 350 (Oct. 15, 1982)
10 IBIA 366 (Oct. 15, 1982)
10 IBIA 382 (Oct. 15, 1982)
10 IBIA 399 (Oct. 15, 1982)
10 IBIA 416 (Oct. 15, 1982)
10 IBIA 432 (Oct. 15, 1982)
10 IBIA 448 (Oct. 15, 1982)
12 IBIA 110, 90 I.D. 536 (1983)
552a(a)(5) ---45 IBLA 119 (Jan. 23, 1980)
552(b) -------79 IBLA 153, 91 I.D. 122 (1984)
552(b)(4) ---- M-36925, 88 I.D. 699 (1981)
552(b)(9) ----82 IBLA 294 (Aug. 31, 1984)
M-36925, 88 I.D. 699 (1981)
553 ---------- 5 ANCAB 59, 87 I.D. 422 (1980)
9 IBIA 263, 89 I.D. 200 (1982)
53 IBLA 261 (Mar. 23, 1981)
57 IBLA 53 (Aug. 17, 1981)
60 IBLA 331 (Dec. 22, 1981)
66 IBLA 249 (Aug. 17, 1982)
74 IBLA 26 (June 24, 1983)
74 IBLA 389 (July 29, 1983)
75 IBLA 140 (Aug. 17, 1983)
77 IBLA 96 (Nov. 14, 1983)
553(a) -------66 IBLA 249 (Aug. 17, 1982)
553(b) -------57 IBLA 53 (Aug. 17, 1981)
74 IBLA 26 (June 26, 1983)
75 IBLA 140 (Aug. 17, 1983)
553(b)(A) ----75 IBLA 140 (Aug. 17, 1983)
553(b)(3)(A) -66 IBLA 249 (Aug. 17, 1982)
74 IBLA 26 (June 24, 1983)
554 ---------- 9 IBIA 281, 89 I.D. 241 (1982)
10 IBIA 78, 89 I.D. 424 (1982)
11 IBIA 285, 90 I.D. 389 (1983)
55 IBLA 324 (June 26, 1981)
55 IBLA 390 (June 30, 1981)
60 IBLA 386 (Dec. 23, 1981)
76 IBLA 68 (Sept. 21, 1983)
77 IBLA 395 (Dec. 9, 1983)
79 IBLA 182, 91 I.D. 138 (1984)
3 IBSMA 44, 88 I.D. 394 (1981)
4 IBSMA 4 (Feb. 24, 1982)
554-557 ------10 IBIA 63 (Aug. 16, 1982)
11 IBIA 246 (July 15, 1983)
554(a) -------11 IBIA 285, 90 I.D. 389 (1983)
79 IBLA 182, 91 I.D. 138 (1984)
554(c) -------67 IBLA 225 (Sept. 23, 1982)
555 ----------50 IBLA 290 (Oct. 7, 1980)
555(b) -------45 IBLA 337 (Feb. 7, 1980)
82 IBLA 14 (July 5, 1984)
556 ---------- 4 IBSMA 4 (Feb. 24, 1982)
48 IBLA 267, 87 I.D. 248 (1980)
49 IBLA 73 (July 22, 1980)
49 IBLA 353 (Aug. 28, 1980)
51 IBLA 199 (Dec. 5, 1980)
51 IBLA 255 (Dec. 15, 1980)
556(d) ------- 9 IBIA 52, 88 I.D. 676 (1981)
12 IBIA 67, 90 I.D. 515 (1983)
12 IBIA 181 (Mar. 1, 1984)
45 IBLA 64 (Jan. 17, 1980)
48 IBLA 267, 87 I.D. 248 (1980)
54 IBLA 247 (Apr. 27, 1981)
70 IBLA 244 (Jan. 25, 1983)
556(e) ------- 8 IBIA 53 (Mar. 28, 1980)
9 IBIA 52, 88 I.D. 676 (1981)
4 OHA 25 (July 1, 1980)
557 ----------56 IBLA 61 (July 10, 1981)
4 IBSMA 4 (Feb. 24, 1982)

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sec. 557(b) -------12 IBIA 80, 90 I.D. 521 (1983)
50 IBLA 382 (Oct. 22, 1980)
74 IBLA 48 (June 28, 1983)
77 IBLA 347 (Dec. 5, 1983)
4 OEA 25 (July 1, 1980)
4 OHA 42 (Aug. 13, 1980)
557(c) ------- 8 IBIA 1 (Jan. 31, 1980)
8 IBIA 53 (Mar. 28, 1980)
51 IBLA 301, 87 I.D. 628 (1980)
3 IBSMA 72, 88 I.D. 406 (1981)
558 ---------- M-36943, 89 I.D. 173 (1982)
558(c) -------11 IBIA 249, 90 I.D. 329 (1983)
84 IBLA 236, 92 I.D. 1 (1985)
2 IBSMA 284, 87 I.D. 439 (1980)
M-36943, 89 I.D. 173 (1982)
558(d)(1) ----84 IBLA 236, 92 I.D. 1 (1985)
701 ----------54 IBLA 215 (Apr. 23, 1981)
63 IBLA 330 (Apr. 28, 1982)
701(a)(2) ---- 9 IBIA 203, 89 I.D. 132 (1982)
9 IBIA 254, 89 I.D. 196 (1982)
11 IBIA 21, 89 I.D. 655 (1982)
11 IBIA 184, 90 I.D. 243 (1983)
702 ---------- 6 ANCAB 307, 89 I.D. 14 (1982)
11 IBIA 184, 90 I.D. 243 (1983)
74 IBLA 323 (July 28, 1983)
78 IBLA 124 (Dec. 27, 1983)
704 ----------57 IBLA 288 (Aug. 31, 1981)
73 IBLA 328 (June 8, 1983)
84 IBLA 169 (Dec. 19, 1984)
M-36900 (Supp. I), 90 I.D. 345 (1983)
706 ----------12 IBIA 80, 90 I.D. 521 (1983)
706(1)(E) ----12 IBIA 80, 90 I.D. 521 (1983)
706(2)(A) ----51 IBLA 271 (Dec. 15, 1980)
69 IBLA 219, 89 I.D. 642 (1982)
M-36925, 88 I.D. 699 (1981)
706(2)(E) ----51 IBLA 271 (Dec. 15, 1980)
69 IBLA 219, 89 I.D. 642 (1982)
3105 ----------47 IBLA 92 (Apr. 23, 1980)
51 IBLA 301, 87 I.D. 628 (1980)
59 IBLA 1, 88 I.D. 925 (1981)
5536 ---------- 4 OHA 54 (Sept. 11, 1980)
4 OHA 140 (Apr. 6, 1981)
5 OHA 33 (Oct. 12, 1982)
5 OHA 65 (Dec. 21, 1982)
5 OHA 79 (Jan. 18, 1983)
5 OHA 117 (Mar. 22, 1983)
5 OHA 135 (Apr. 8, 1983)
5 OHA 215 (Oct. 26, 1983)
5911 ---------- 4 OHA 54 (Sept. 11, 1980)
5 OHA 15 (Sept. 30, 1982)
5 OHA 21 (Oct. 12, 1982)
5 OHA 33 (Oct. 12, 1982)
5 OHA 65 (Dec. 21, 1982)
5 OHA 108 (Mar. 15, 1983)
5 OHA 117 (Mar. 22, 1983)
5 OHA 127 (Mar. 31, 1983)
5 OHA 215 (Oct. 26, 1983)
5911(c) ------- 5 OHA 79 (Jan. 18, 1983)
5 OHA 135 (Apr. 8, 1983)
5 OHA 139 (July 6, 1983)

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901-924 ------46 IBLA 35 (Feb. 20, 1980)
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1006b ----------70 IBLA 150 (Jan. 18, 1983)
1011 ----------75 IBLA 44 (Aug. 5, 1983)
1011(a) -------75 IBLA 44 (Aug. 5, 1983)
1011(c) -------54 IBLA 162 (Apr. 21, 1981)
1018 ----------54 IBLA 162 (Apr. 21, 1981)
1363 ----------48 IBLA 145 (June 9, 1980)

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sec. 501(a) -------67 IBLA 193 (Sept. 22, 1982)
1101(a)(22) ---67 IBLA 193 (Sept. 22, 1982)
1401 ----------48 IBLA 199 (June 16, 1980)
48 IBLA 365 (July 11, 1980)
48 IBLA 373 (July 11, 1980)
49 IBLA 251 (Aug. 18, 1980)
51 IBLA 115 (Nov. 20, 1980)
52 IBLA 52 (Jan. 6, 1981)
53 IBLA 23 (Feb. 26, 1981)
53 IBLA 279 (Mar. 24, 1981)
58 IBLA 21 (Sept. 16, 1981)
59 IBLA 170 (Oct. 26, 1981)
67 IBLA 193 (Sept. 22, 1982)
70 IBLA 196 (Jan. 21, 1983)
76 IBLA 205 (Oct. 11, 1983)
1502 ----------67 IBLA 193 (Sept. 22, 1982)
1503(b) -------67 IBLA 193 (Sept. 22, 1982)

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2304 ---------- IBCA-1330-1-80, 88 I.D. 836 (1981)
3062(c) -------54 IBLA 38, 88 I.D. 437 (1981)
3495 ----------54 IBLA 38, 88 I.D. 437 (1981)

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sec. 1-1103 ----- 8 IBIA 170, 87 I.D. 501 (1980)
24 ---------- 8 IBIA 170, 87 I.D. 501 (1980)
35 ---------- 8 IBIA 170, 87 I.D. 501 (1980)
35(c)(3) ---- 8 IBIA 170, 87 I.D. 501 (1980)
93(g) ------- 8 IBIA 170, 87 I.D. 501 (1980)
93(h) ------- 8 IBIA 170, 87 I.D. 501 (1980)
101 ---------- 8 IBIA 170, 87 I.D. 501 (1980)
362(a)(1) ----66 IBLA 200 (Aug. 13, 1982)

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sec. 342 ----------71 IBLA 203 (Mar. 14, 1983)
360 ----------71 IBLA 203 (Mar. 14, 1983)

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sec. 176(a) ------- M-36925, 88 I.D. 699 (1981)
216 ---------- M-36925, 88 I.D. 699 (1981)
631-647 -------66 IBLA 244 (Aug. 17, 1982)
637(a)-------- IBCA 1185-3-78, 87 I.D. 116 (1980)
637(a)(1) ---- IBCA-1198-7-78, 90 I.D. 366 (1983)
644 ----------66 IBLA 244 (Aug. 17, 1982)
717-717w -----12 IBIA 49, 90 I.D. 474 (1983)

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sec. 717f(b) -------51 IBLA 47 (Oct. 31, 1980)
84 IBLA 102 (Dec. 10, 1984)
751 et seq. -- IBCA-1389-9-80, 88 I.D. 431 (1981)
1681-1681f ----53 IBLA 48 (Feb. 27, 1981)
3301-3432 ------52 IBLA 27, 88 I.D. 7 (1981)
3313 ----------67 IBLA 1 (Sept. 1, 1982)
3314 ----------78 IBLA 93 (Dec. 19, 1983)
3315 ----------78 IBLA 93 (Dec. 19, 1983)
3320 ----------52 IBLA 27, 88 I.D. 7 (1981)
3320(a) -------52 IBLA 27, 88 I.D. 7 (1981)
3320(c) -------52 IBLA 27, 88 I.D. 7 (1981)

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sec. 1c ----------60 IBLA 386 (Dec. 23, 1981)
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74 IBLA 34 (June 27, 1983)
81 IBLA 295 (June 12, 1984)
21-355 -------70 IBLA 264, 90 I.D. 10 (1983)
273 ----------48 IBLA 22 (May 27, 1980)
53 IBLA 289 (Mar. 24, 1981)
66 IBLA 168 (Aug. 12, 1982)
72 IBLA 88 (Apr. 13, 1983)
350 ----------52 IBLA 87, 88 I.D. 31 (1981)
350a ---------52 IBLA 87, 88 I.D. 31 (1981)
66 IBLA 316 (Aug. 25, 1982)
410hh --------70 IBLA 171 (Jan. 20, 1983)
410hh(b) -----82 IBLA 329 (Sept. 7, 1984)
431 ----------45 IBLA 264, 87 I.D. 34 (1980)
63 IBLA 325 (Nov. 22, 1982)
73 IBLA 16 (May 5, 1983)
75 IBLA 26, 90 I.D. 352 (1983)
431-433 ------65 IBLA 245 (July 9, 1982)
M-36928, 87 I.D. 593 (1980)
432 ----------45 IBLA 264, 87 I.D. 34 (1980)
447 ----------74 IBLA 56, 90 I.D. 262 (1983)
460 ----------69 IBLA 79 (Nov. 30, 1982)
460l-6a ------63 IBLA 373 (Apr. 30, 1982)
460l-6a(b) ---63 IBLA 373 (Apr. 30, 1982)
460l-6a(c) ---63 IBLA 373 (Apr. 30, 1982)
460l-6a(d) ---63 IBLA 373 (Apr. 30, 1982)
460l-6a(f) ---63 IBLA 373 (Apr. 30, 1982)
460l-12 et seq. ------- M-36931, 88 I.D. 228 (1981)
460m-8-460m-14 ---73 IBLA 19 (May 9, 1983)
74 IBLA 34 (June 27, 1983)
460n ---------69 IBLA 205 (Dec. 16, 1982)
73 IBLA 301 (June 7, 1983)
74 IBLA 92 (June 30, 1983)
74 IBLA 267 (July 25, 1983)
81 IBLA 295 (June 12, 1984)
460n-3 -------67 IBLA 189 (Sept. 22, 1982)
74 IBLA 92 (June 30, 1983)
74 IBLA 267 (July 25, 1983)
81 IBLA 295 (June 12, 1984)
460q-460q-9 --74 IBLA 271 (July 25, 1983)
460q-5 -------51 IBLA 301, 87 I.D. 628 (1980)
460v-460v-8 --77 IBLA 137 (Nov. 15, 1983)
460v-4 -------77 IBLA 137 (Nov. 15, 1983)
460v-5 -------77 IBLA 137 (Nov. 15, 1983)
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460aa-460aa-14 ---65 IBLA 387 (July 23, 1982)
460aa et seq. -------77 IBLA 205 (Nov. 15, 1983)

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65 IBLA 337 (July 23, 1982)
460dd --------60 IBLA 386 (Dec. 23, 1981)
460mm ---------59 IBLA 176 (Oct. 26, 1981)
460mm-2 -------61 IBLA 359 (Feb. 16, 1982)
460mm-4(b) ----61 IBLA 359 (Feb. 16, 1982)
460z ----------68 IBLA 1 (Oct. 12, 1982)
461 ---------- M-36928, 87 I.D. 593 (1980)
466aa ---------77 IBLA 205 (Nov. 22, 1983)
469 ----------67 IBLA 197 (Sept. 22, 1982)
470-470m -----72 IBLA 261, 90 I.D. 189 (1983)
470 et seq. -- M-36928, 87 I.D. 593 (1980)
470-470ll -----84 IBLA 175 (Dec. 19, 1984)
470a(a) ------ M-36928, 87 I.D. 593 (1980)
470f ----------56 IBLA 284 (July 28, 1981)
72 IBLA 261, 90 I.D. 189 (1983)
79 IBLA 240 (Mar. 1, 1984)
M-36928, 87 I.D. 593 (1980)
471 ----------51 IBLA 115 (Nov. 20, 1980)
53 IBLA 23 (Feb. 26, 1981)
53 IBLA 279 (Mar. 24, 1981)
55 IBLA 23 (May 26, 1981)
58 IBLA 260 (Oct. 6, 1981)
471 et seq. --60 IBLA 14 (Nov. 16, 1981)
473-478 ------80 IBLA 64, 91 I.D. 165 (1984)
478 ----------73 IBLA 19 (May 9, 1983)
74 IBLA 34 (June 27, 1983)
77 IBLA 270 (Nov. 30, 1983)
78 IBLA 3 (Dec. 12, 1983)
80 IBLA 251 (May 2, 1984)
479-482 ------80 IBLA 64, 91 I.D. 165 (1984)
482 ----------70 IBLA 264, 90 I.D. 10 (1983)
483 ----------75 IBLA 396 (Sept. 2, 1983)
78 IBLA 255, 91 I.D. 14 (1984)
485 ----------52 IBLA 302 (Feb. 10, 1981)
58 IBLA 329 (Oct. 16, 1981)
61 IBLA 8 (Dec. 29, 1981)
63 IBLA 192 (Apr. 8, 1982)
486 ----------52 IBLA 302 (Feb. 10, 1981)
495 ----------45 IBLA 264, 87 I.D. 34 (1980)
68 IBLA 184 (Nov. 8, 1982)
497 ----------45 IBLA 264, 87 I.D. 34 (1980)
497a ---------62 IBLA 187 (Mar. 9, 1982)
513-519 ------52 IBLA 302 (Feb. 10, 1981)
58 IBLA 312 (Oct. 16, 1981)
513-520 ------52 IBLA 302 (Feb. 10, 1981)
520 ----------52 IBLA 302 (Feb. 10, 1981)
54 IBLA 162 (Apr. 21, 1981)
56 IBLA 86, 88 I.D. 646 (1981)
58 IBLA 312 (Oct. 16, 1981)
72 IBLA 110 (Apr. 14, 1983)
80 IBLA 14 (Mar. 28, 1984)
521 ----------58 IBLA 312 (Oct. 16, 1981)
521a ---------71 IBLA 268 (Mar. 22, 1983)
523 ----------45 IBLA 264, 87 I.D. 34 (1980)
524 ----------77 IBLA 395 (Dec. 9, 1983)
528 ----------58 IBLA 294 (Oct. 14, 1981)
551 ---------- 4 ANCAB 116, 87 I.D. 1 (1980)
78 IBLA 3 (Dec. 12, 1983)
80 IBLA 64, 91 I.D. 165 (1984)
552a ---------62 IBLA 206 (Mar. 10, 1982)
555 ----------84 IBLA 306 (Jan. 7, 1985)
569 ----------61 IBLA 8 (Dec. 29, 1981)
84 IBLA 306 (Jan. 7, 1985)
580d ---------45 IBLA 264, 87 I.D. 34 (1980)
661 ----------47 IBLA 71 (Apr. 21, 1980)
70 IBLA 240 (Jan. 25, 1983)
73 IBLA 353 (June 14, 1983)
82 IBLA 389 (Sept. 13, 1984)

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668 ----------73 IBLA 39 (May 11, 1983)
82 IBLA 216 (Aug. 22, 1984)
668-668c -----68 IBLA 288 (Nov. 19, 1982)
668-668d ------ M-36934, 88 I.D. 338 (1981)
4 OHA 91 (Oct. 31, 1980)
668 et seq. -- M-36936, 88 I.D. 586 (1981)
668(a)-(b) --- M-36936, 88 I.D. 586 (1981)
668(b) ------- 4 OHA 25 (July 1, 1980)
4 OHA 91 (Oct. 31, 1980)
M-36936, 88 I.D. 586 (1981)
668a ---------- M-36934, 88 I.D. 338 (1981)
668dd --------45 IBLA 4 (Jan. 8, 1980)
46 IBLA 123, (Feb. 29, 1980)
46 IBLA 385 (Apr. 10, 1980)
61 IBLA 43 (Dec. 31, 1981)
73 IBLA 353 (June 14, 1983)
80 IBLA 4 (Mar. 27, 1984)
82 IBLA 80 (July 17, 1984)
668dd(a) -----70 IBLA 240 (Jan. 25, 1983)
668dd(a)(1) --61 IBLA 43 (Dec. 31, 1981)
668dd(b)(3) --82 IBLA 80 (July 17, 1984)
668dd(c) -----45 IBLA 4 (Jan. 8, 1980)
45 IBLA 225 (Jan. 31, 1980)
46 IBLA 123 (Feb. 29, 1980)
49 IBLA 176 (July 30, 1980)
57 IBLA 319 (Sept. 1, 1981)
61 IBLA 43 (Dec. 31, 1981)
668dd(d) -----61 IBLA 43 (Dec. 31, 1981)
668dd(d)(2) --45 IBLA 225 (Jan. 31, 1980)
49 IBLA 176 (July 30, 1980)
670g ---------58 IBLA 294 (Oct. 14, 1981)
62 IBLA 73 (Feb. 25, 1982)
670h(a)(1) ---58 IBLA 294 (Oct. 14, 1981)
62 IBLA 73 (Feb. 25, 1982)
670h(c)(1) ---58 IBLA 294 (Oct. 14, 1981)
670h(c)(1)(A)-58 IBLA 294 (Oct. 14, 1981)
62 IBLA 73 (Feb. 25, 1982)
670h(c)(3)(D)-58 IBLA 294 (Oct. 14, 1981)
62 IBLA 73 (Feb. 25, 1982)
671 ----------80 IBLA 4 (Mar. 27, 1984)
678a ---------70 IBLA 264, 90 I.D. 10 (1983)
701 ----------57 IBLA 319 (Sept. 1, 1981)
703 ---------- M-36936, 88 I.D. 586 (1981)
703 et seq. -- M-36936, 88 I.D. 586 (1981)
704 ---------- M-36936, 88 I.D. 586 (1981)
712 ---------- M-36936, 88 I.D. 586 (1981)
715-715(r) ---82 IBLA 257 (Aug. 29, 1984)
715d ---------57 IBLA 319 (Sept. 1, 1981)
715e ---------54 IBLA 326 (Apr. 30, 1981)
57 IBLA 319 (Sept. 1, 1981)
82 IBLA 257 (Aug. 29, 1984)
718 ----------57 IBLA 319 (Sept. 1, 1981)
791-828 ------79 IBLA 286 (Mar. 20, 1984)
791a ---------55 IBLA 42 (May 28, 1981)
791a-823 -----45 IBLA 232 (Feb. 4, 1980)
64 IBLA 97 (May 17, 1982)
797 ----------67 IBLA 287 (Sept. 28, 1982)
798 ----------67 IBLA 287 (Sept. 28, 1982)
803 ----------79 IBLA 286 (Mar. 20, 1984)
808 ----------79 IBLA 286 (Mar. 20, 1984)
817 ----------79 IBLA 286 (Mar. 20, 1984)
818 ----------48 IBLA 206 (June 16, 1980)
56 IBLA 73 (July 15, 1981)
61 IBLA 376 (Feb. 17, 1982)
64 IBLA 97 (May 17, 1982)
64 IBLA 159 (May 25, 1982)
64 IBLA 379 (June 15, 1982)
66 IBLA 390 (Aug. 31, 1982)

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sec. 818 ----------67 IBLA 317 (Oct. 1, 1982)
68 IBLA 184 (Nov. 8, 1982)
69 IBLA 148 (Dec. 13, 1982)
72 IBLA 48 (Apr. 12, 1983)
76 IBLA 340 (Oct. 20, 1983)
77 IBLA 51 (Nov. 7, 1983)
77 IBLA 380 (Dec. 7, 1983)
78 IBLA 349 (Jan. 25, 1984)
79 IBLA 286 (Mar. 20, 1984)
79 IBLA 394 (Mar. 27, 1984)
822 ----------79 IBLA 286 (Mar. 20, 1984)
831-831dd ----54 IBLA 162 (Apr. 21, 1981)
1131 ----------49 IBLA 169 (July 30, 1980)
53 IBLA 159 (Mar. 12, 1981)
54 IBLA 242, 88 I.D. 490 (1981)
54 IBLA 300 (Apr. 29, 1981)
58 IBLA 213 (Sept. 29, 1981)
59 IBLA 291 (Oct. 30, 1981)
59 IBLA 301 (Nov. 3, 1981)
60 IBLA 240 (Dec. 4, 1981)
60 IBLA 305 (Dec. 18, 1981)
61 IBLA 99 (Jan. 4, 1982)
61 IBLA 124 (Jan. 15, 1982)
61 IBLA 139 (Jan. 18, 1982)
61 IBLA 300 (Feb. 3, 1982)
61 IBLA 370 (Feb. 17, 1982)
62 IBLA 45 (Feb. 24, 1982)
62 IBLA 263 (Mar. 15, 1982)
62 IBLA 319 (Mar. 22, 1982)
63 IBLA 23 (Mar. 26, 1982)
63 IBLA 85 (Mar. 31, 1982)
63 IBLA 321 (Apr. 27, 1982)
65 IBLA 84 (June 23, 1982)
65 IBLA 126 (June 25, 1982)
66 IBLA 282 (Aug. 19, 1982)
67 IBLA 124 (Sept. 16, 1982)
68 IBLA 219 (Nov. 12, 1982)
71 IBLA 112 (Feb. 28, 1983)
72 IBLA 100 (Apr. 14, 1983)
72 IBLA 125 (Apr. 18, 1983)
74 IBLA 106 (June 30, 1983)
75 IBLA 163 (Aug. 18, 1983)
75 IBLA 256 (Aug. 26, 1983)
76 IBLA 23 (Sept. 8, 1983)
76 IBLA 116 (Sept. 21, 1983)
77 IBLA 330 (Dec. 5, 1983)
78 IBLA 133 (Dec. 29, 1983)
80 IBLA 14 (Mar. 28, 1984)
1131-1136 ----47 IBLA 284 (May 15, 1980)
55 IBLA 232, 88 I.D. 601 (1981)
67 IBLA 197 (Sept. 22, 1982)
80 IBLA 64, 91 I.D. 165 (1984)
84 IBLA 127 (Dec. 10, 1984)
1131 et seq. --45 IBLA 347 (Feb. 7, 1980)
59 IBLA 291 (Oct. 30, 1981)
64 IBLA 27 (May 6, 1982)
72 IBLA 62 (Apr. 12, 1983)
1131(a) --------64 IBLA 27 (May 6, 1982)
1131(c) --------45 IBLA 347 (Feb. 7, 1980)
53 IBLA 159 (Mar. 12, 1981)
54 IBLA 31 (Apr. 6, 1981)
56 IBLA 206 (July 22, 1981)
58 IBLA 166 (Sept. 28, 1981)
58 IBLA 213 (Sept. 29, 1981)
59 IBLA 291 (Oct. 30, 1981)
59 IBLA 301 (Nov. 3, 1981)
60 IBLA 54 (Nov. 17, 1981)
60 IBLA 278 (Dec. 17, 1981)

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sec. 1131(c) --------60 IBLA 305 (Dec. 18, 1981)
60 IBLA 341 (Dec. 22, 1981)
60 IBLA 349, 88 I.D. 1115 (1981)
61 IBLA 23 (Dec. 29, 1981)
61 IBLA 99 (Jan 4, 1982)
61 IBLA 124 (Jan. 15, 1982)
61 IBLA 139 (Jan. 18, 1982)
61 IBLA 193 (Jan. 26, 1982)
61 IBLA 222 (Jan. 28, 1982)
61 IBLA 279 (Feb. 2, 1982)
61 IBLA 300 (Feb. 3, 1982)
61 IBLA 329 (Feb. 10, 1982)
61 IBLA 370 (Feb. 17, 1982)
61 IBLA 387 (Feb. 18, 1982)
62 IBLA 45 (Feb. 24, 1982)
62 IBLA 99 (Mar. 1, 1982)
62 IBLA 153 (Mar. 5, 1982)
62 IBLA 263 (Mar. 15, 1982)
62 IBLA 274 (Mar. 15, 1982)
62 IBLA 319 (Mar. 22, 1982)
62 IBLA 367 (Mar. 24, 1982)
63 IBLA 30 (Mar. 26, 1982)
63 IBLA 85 (Mar. 31, 1982)
63 IBLA 172 (Apr. 8, 1982)
63 IBLA 208 (Apr. 12, 1982)
63 IBLA 321 (Apr. 27, 1982)
63 IBLA 330 (Apr. 28, 1982)
64 IBLA 7 (May 4, 1982)
64 IBLA 50 (May 6, 1982)
64 IBLA 307 (June 8, 1982)
65 IBLA 84 (June 23, 1982)
65 IBLA 126 (June 25, 1982)
65 IBLA 153 (June 29, 1982)
65 IBLA 223 (July 9, 1982)
65 IBLA 271 (July 12, 1982)
66 IBLA 14 (July 23, 1982)
66 IBLA 249 (Aug. 17, 1982)
66 IBLA 282 (Aug. 19, 1982)
66 IBLA 287 (Aug. 19, 1982)
66 IBLA 300 (Aug. 20, 1982)
66 IBLA 340 (Aug. 26, 1982)
67 IBLA 25 (Sept. 7, 1982)
67 IBLA 124 (Sept. 16, 1982)
67 IBLA 201 (Sept. 22, 1982)
67 IBLA 207 (Sept. 22, 1982)
67 IBLA 287 (Sept. 28, 1982)
68 IBLA 219 (Nov. 12, 1982)
68 IBLA 262 (Nov. 17, 1982)
71 IBLA 4 (Feb. 10, 1983)
71 IBLA 67 (Feb. 22, 1983)
71 IBLA 100 (Feb. 24, 1983)
71 IBLA 112 (Feb. 28, 1983)
71 IBLA 165 (Mar. 10, 1983)
75 IBLA 140 (Aug. 17, 1983)
75 IBLA 163 (Aug. 18, 1983)
75 IBLA 220 (Aug. 23, 1983)
75 IBLA 256 (Aug. 26, 1983)
76 IBLA 31 (Sept. 8, 1983)
76 IBLA 116 (Sept. 21, 1983)
77 IBLA 330 (Dec. 5, 1983)
78 IBLA 133 (Dec. 29, 1983)
81 IBLA 181 (June 1, 1984)
84 IBLA 127 (Dec. 10, 1984)
M-36910 (Supp.), 88 I.D. 909 (1981)
1132 ----------59 IBLA 291 (Oct. 30, 1981)
59 IBLA 301 (Nov. 3, 1981)
61 IBLA 23 (Dec. 29, 1981)

TITLE 16: Continued

sec. 1132 ----------63 IBLA 208 (Apr. 12, 1982)
64 IBLA 7 (May 4, 1982)
64 IBLA 50 (May 6, 1982)
65 IBLA 126 (June 25, 1982)
65 IBLA 223 (July 9, 1982)
66 IBLA 14 (July 23, 1982)
67 IBLA 25 (Sept. 7, 1982)
67 IBLA 201 (Sept. 22, 1982)
67 IBLA 207 (Sept. 22, 1982)
71 IBLA 402 (Mar. 31, 1983)
75 IBLA 220 (Aug. 23, 1983)
77 IBLA 330 (Dec. 5, 1983)
1132(a) -------60 IBLA 305 (Dec. 18, 1981)
61 IBLA 300 (Feb. 3, 1982)
1132(b) -------59 IBLA 291 (Oct. 30, 1981)
1132(c) -------59 IBLA 291 (Oct. 30, 1981)
60 IBLA 305 (Dec. 18, 1981)
63 IBLA 321 (Apr. 27, 1982)
1132(d)(1) ----60 IBLA 305 (Dec. 18, 1981)
1133 ----------71 IBLA 402 (Mar. 31, 1983)
1133(d)(2) ----64 IBLA 27 (May 6, 1982)
1133(d)(3) ----53 IBLA 179 (Mar. 16, 1981)
55 IBLA 232, 88 I.D. 601 (1981)
64 IBLA 27 (May 6, 1982)
73 IBLA 19 (May 9, 1983)
74 IBLA 34 (June 27, 1983)
76 IBLA 4 (Sept. 6, 1983)
M-36937, 88 I.D. 813 (1981)
1271 ----------55 IBLA 283 (June 25, 1981)
62 IBLA 16 (Feb. 23, 1982)
63 IBLA 91 (Mar. 31, 1982)
66 IBLA 390 (Aug. 31, 1982)
78 IBLA 379 (Jan. 31, 1984)
82 IBLA 216 (Aug. 22, 1984)
1271-1287 -----55 IBLA 31 (May 28, 1981)
63 IBLA 373 (Apr. 30, 1982)
64 IBLA 44 (May 6, 1982)
71 IBLA 183 (Mar. 10, 1983)
78 IBLA 349 (Jan. 25, 1984)
1273 ----------55 IBLA 283 (June 25, 1981)
1274 ----------63 IBLA 373 (Apr. 30, 1982)
72 IBLA 75 (Apr. 12, 1983)
79 IBLA 394 (Mar. 27, 1984)
1274(a)(21) ---55 IBLA 31 (May 28, 1981)
1274(a)(23) ---63 IBLA 235 (Apr. 19, 1982)
1274(a)(24) ---71 IBLA 183 (Mar. 10, 1983)
71 IBLA 380 (Mar. 29, 1983)
78 IBLA 349 (Jan. 25, 1984)
1274(a)(24)(D)-71 IBLA 183 (Mar. 10, 1983)
1276 ----------49 IBLA 162 (July 30, 1980)
55 IBLA 31 (May 28, 1981)
1276(a)(23) ---71 IBLA 183 (Mar. 10, 1983)
78 IBLA 349 (Jan. 25, 1984)
1278(b) -------71 IBLA 183 (Mar. 10, 1983)
78 IBLA 349 (Jan. 25, 1984)
1279 ----------79 IBLA 394 (Mar. 27, 1984)
1280 ----------66 IBLA 390 (Aug. 31, 1982)
1280(a) -------55 IBLA 31 (May 28, 1981)
71 IBLA 183 (Mar. 10, 1983)
75 IBLA 171 (Aug. 19, 1983)
1280(b) -------55 IBLA 31 (May 28, 1981)
71 IBLA 183 (Mar. 10, 1983)
78 IBLA 349 (Jan. 25, 1984)
1281 ----------55 IBLA 283 (June 25, 1981)
82 IBLA 216 (Aug. 22, 1984)
1281(a) -------63 IBLA 373 (Apr. 30, 1982)
1283(b) -------55 IBLA 283 (June 25, 1981)
1284 ----------82 IBLA 216 (Aug. 22, 1984)

TITLE 16: Continued

sec. 1284(d) -------55 IBLA 283 (June 25, 1981)
1331 ----------56 IBLA 258, 88 I.D. 665 (1981)
60 IBLA 205 (Nov. 27, 1981)
1331-1340 -----64 IBLA 76 (May 10, 1982)
66 IBLA 63 (July 29, 1982)
82 IBLA 26 (July 5, 1984)
1333 ----------56 IBLA 258, 88 I.D. 665 (1981)
66 IBLA 63 (July 29, 1982)
1333(b)(2) ----56 IBLA 258, 88 I.D. 665 (1981)
1333(b)(2)(B) -64 IBLA 76 (May 10, 1982)
66 IBLA 63 (July 29, 1982)
1333(c) -------60 IBLA 205 (Nov. 27, 1981)
64 IBLA 76 (May 10, 1982)
66 IBLA 63 (July 29, 1982)
82 IBLA 26 (July 5, 1984)
1338(a)(3) ----60 IBLA 205 (Nov. 27, 1981)
1531 ----------56 IBLA 284 (July 28, 1981)
58 IBLA 294 (Oct. 14, 1981)
68 IBLA 288 (Nov. 19, 1982)
70 IBLA 214 (Jan. 24, 1983)
80 IBLA 324 (May 8, 1894)
1531-1543 -----84 IBLA 127 (Dec. 10, 1984)
4 OHA 42 (Aug. 13, 1980)
4 OHA 214 (Dec. 22, 1981)
1533(d) ------- M-36926, 87 I.D. 525 (1980)
1536 ----------62 IBLA 73 (Feb. 25, 1982)
71 IBLA 72 (Feb. 22, 1983)
72 IBLA 261, 90 I.D. 189 (1983)
73 IBLA 39 (May 11, 1983)
84 IBLA 311, 92 I.D. 37 (1985)
1536(a) ------- M-36938, 88 I.D. 903 (1981)
1536(a)(2) ----73 IBLA 39 (May 11, 1983)
80 IBLA 324 (May 8, 1984)
82 IBLA 216 (Aug. 22, 1984)
M-36938, 88 I.D. 903 (1981)
1536(a)(3) ----73 IBLA 39 (May 11, 1983)
1536(b) -------62 IBLA 73 (Feb. 25, 1982)
M-36938, 88 I.D. 903 (1981)
1538(a)(1)(A) - 4 OHA 214 (Dec. 22, 1981)
1538(c)(1) ---- 4 OHA 42 (Aug. 13, 1980)
1539(e) ------- M-36926, 87 I.D. 525 (1980)
1605 ----------81 IBLA 252 (June 8, 1984)
1607 ----------62 IBLA 241 (Mar. 11, 1982)
1683(a) -------55 IBLA 283 (June 25, 1981)
1901 ----------49 IBLA 320 (Aug. 20, 1980)
56 IBLA 43 (July 8, 1981)
59 IBLA 268 (Oct. 29, 1981)
59 IBLA 326 (Nov. 5, 1981)
67 IBLA 274 (Sept. 28, 1982)
74 IBLA 56, 90 I.D. 262 (1983)
81 IBLA 295 (June 12, 1984)
1901-1912 -----47 IBLA 92 (Apr. 23, 1980)
49 IBLA 1 (July 15, 1980)
51 IBLA 255 (Dec. 15, 1980)
53 IBLA 333 (Mar. 26, 1981)
54 IBLA 124 (Apr. 17, 1981)
60 IBLA 386 (Dec. 23, 1981)
63 IBLA 388 (Apr. 30, 1982)
64 IBLA 241 (May 28, 1982)
1901 et seq. --56 IBLA 36 (July 8, 1981)
59 IBLA 393 (Nov. 10, 1981)
1903 ----------47 IBLA 92 (Apr. 23, 1980)
54 IBLA 124 (Apr. 17, 1981)
63 IBLA 35 (Mar. 30, 1982)
64 IBLA 241 (May 28, 1982)
66 IBLA 316 (Aug. 25, 1982)
1904 ----------63 IBLA 266 (Apr. 19, 1982)
1905 ----------47 IBLA 92 (Apr. 23, 1980)

TITLE 16: Continued

sec. 1905 ----------49 IBLA 1 (July 15, 1980)
49 IBLA 344 (Aug. 25, 1980)
63 IBLA 35 (Mar. 30, 1982)
64 IBLA 241 (May 28, 1982)
66 IBLA 316 (Aug. 25, 1982)
1907 ----------46 IBLA 62 (Feb. 22, 1980)
49 IBLA 320 (Aug. 20, 1980)
51 IBLA 191 (Dec. 5, 1980)
57 IBLA 68 (Aug. 18, 1981)
58 IBLA 121 (Sept. 24, 1981)
58 IBLA 139 (Sept. 25, 1981)
58 IBLA 251 (Oct. 6, 1981)
59 IBLA 1, 88 I.D. 925 (1981)
60 IBLA 386 (Dec. 23, 1981)
62 IBLA 124 (Mar. 4, 1982)
62 IBLA 249 (Mar. 15, 1982)
62 IBLA 252 (Mar. 15, 1982)
63 IBLA 235 (Apr. 19, 1982)
63 IBLA 266 (Apr. 19, 1982)
66 IBLA 168 (Aug. 12, 1982)
74 IBLA 56, 90 I.D. 262 (1983)
3101 ----------55 IBLA 232, 88 I.D. 601 (1981)
57 IBLA 310 (Aug. 31, 1981)
64 IBLA 357 (June 15, 1982)
66 IBLA 367 (Aug. 27, 1982)
68 IBLA 325 (Nov. 22, 1982)
72 IBLA 13 (Apr. 4, 1983)
3101-3233 ----- 7 ANCAB 132, 89 I.D. 303 (1982)
69 IBLA 1 (Nov. 24, 1982)
3101 et seq. -- M-36940, 91 I.D. 1 (1984)
3102(3) -------80 IBLA 64, 91 I.D. 165 (1984)
3143 ----------55 IBLA 232, 88 I.D. 601 (1981)
57 IBLA 310 (Aug. 31, 1981)
64 IBLA 357 (June 15, 1982)
3148 ----------77 IBLA 181 (Nov. 18, 1983)
78 IBLA 323 (Jan. 24, 1984)
3148(c) -------77 IBLA 181 (Nov. 18, 1983)
3148(e) -------77 IBLA 181 (Nov. 18, 1983)
3170(b) -------82 IBLA 329 (Sept. 7, 1984)
3209 ----------84 IBLA 124 (Dec. 10, 1984)
3209(a) -------84 IBLA 124 (Dec. 10, 1984)
3210(b) -------80 IBLA 64, 91 I.D. 165 (1984)
3215 ----------57 IBLA 95 (Aug. 25, 1981)
78 IBLA 300 (Jan. 10, 1984)
82 IBLA 247 (Aug. 28, 1984)
3215(a) -------70 IBLA 171 (Jan. 20, 1983)
77 IBLA 20 (Oct. 31, 1983)
84 IBLA 192 (Dec. 21, 1984)
3215(a)(1) ----70 IBLA 171 (Jan. 20, 1983)

TITLE 18:

sec. 43 ---------- 5 OHA 141 (Aug. 10, 1983)
43(a)(2) ---- 4 OHA 42 (Aug. 13, 1980)
216 ---------- M-36925, 88 I.D. 699 (1981)
641 ----------59 IBLA 155 (Oct. 26, 1981)
1001 ---------- IBCA-1536-3-82, 90 I.D. 297 (1983)
46 IBLA 373 (Apr. 8, 1980)
53 IBLA 57 (Feb. 27, 1981)
55 IBLA 196 (June 16, 1981)
56 IBLA 327 (July 30, 1981)
63 IBLA 335 (Apr. 28, 1982)
73 IBLA 111 (May 23, 1983)
73 IBLA 220 (May 27, 1983)
73 IBLA 372 (June 15, 1983)
80 IBLA 393 (May 14, 1984)
1151 ----------11 IBIA 237 (July 6, 1983)

TITLE 18: Continued

sec. 1151(a) ------- M-36933, 88 I.D. 333 (1981)
1151(b) ------- M-36933, 88 I.D. 333 (1981)
1162 ----------11 IBIA 237 (July 6, 1983)
1301 ----------50 IBLA 90 (Sept. 17, 1980)
1302 ----------50 IBLA 90 (Sept. 17, 1980)
1856 ----------77 IBLA 245 (Nov. 30, 1983)
1860 ----------62 IBLA 119 (Mar. 4, 1982)
1905 ----------82 IBLA 294 (Aug. 31, 1984)
M-36925, 88 I.D. 699 (1981)
3692 ---------- M-36925, 88 I.D. 699 (1981)

TITLE 19:

sec. 1335 ---------- M-36925, 88 I.D. 699 (1981)

TITLE 20:

sec. 631-647 ------12 IBIA 80, 90 I.D. 521 (1983)

TITLE 22:

sec. 212 ----------67 IBLA 193 (Sept. 22, 1982)

TITLE 23:

sec. 18 ----------45 IBLA 264, 87 I.D. 34 (1980)
61 IBLA 116 (Jan. 6, 1982)
62 IBLA 187 (Mar. 9, 1982)
107 ----------64 IBLA 346 (June 15, 1982)
108 ----------61 IBLA 116 (Jan. 6, 1982)
108(a) -------61 IBLA 116 (Jan. 6, 1982)
131 ----------64 IBLA 318 (June 10, 1982)
317 ---------- 5 ANCAB 147, 88 I.D. 14 (1981)
45 IBLA 264, 87 I.D. 34 (1980)
46 IBLA 12 (Feb. 20, 1980)
50 IBLA 414 (Oct. 24, 1980)
55 IBLA 360 (June 26, 1981)
61 IBLA 116 (Jan. 6, 1982)
62 IBLA 176 (Mar. 8, 1982)
62 IBLA 187 (Mar. 9, 1982)
64 IBLA 346 (June 15, 1982)
81 IBLA 303 (June 15, 1984)
317(a) -------61 IBLA 116 (Jan. 6, 1982)
317(b) -------61 IBLA 116 (Jan. 6, 1982)
317(c) -------61 IBLA 116 (Jan. 6, 1982)

TITLE 25:

sec. 1a ---------- 8 IBIA 283 (May 15, 1981)
2 ---------- 8 IBIA 254, 88 I.D. 410 (1981)
9 IBIA 284, 89 I.D. 252 (1982)
11 IBIA 184, 90 I.D. 243 (1983)
9 ---------- 8 IBIA 254, 88 I.D. 410 (1981)
13 ---------- 9 IBIA 294, 89 I.D. 257 (1982)
10 IBIA 78, 89 I.D. 424 (1982)
81 ---------- 9 IBIA 141 (Dec. 22, 1981)
155 ----------10 IBIA 40, 89 I.D. 392 (1982)
177 ---------- 9 IBIA 36, (July 10, 1981)
190 ----------58 IBLA 21 (Sept. 16, 1981)
59 IBLA 170 (Oct. 26, 1981)
194 ----------53 IBLA 208, 88 I.D. 373 (1981)
311 ----------55 IBLA 360 (June 26, 1981)
312 ----------12 IBIA 49, 90 I.D. 474 (1983)
312-318 ------12 IBIA 49, 90 I.D. 474 (1983)
321 ----------12 IBIA 49, 90 I.D. 474 (1983)
323 ---------- 9 IBIA 126, 88 I.D. 1020 (1981)
12 IBIA 49, 90 I.D. 474 (1983)
323-324 ------ 8 IBIA 76, 87 I.D. 189 (1980)

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sec. 323-328 ------12 IBLA 49, 90 I.D. 474 (1983)
324 ---------- 9 IBLA 126, 88 I.D. 1020 (1981)
12 IBLA 49, 90 I.D. 474 (1983)
331 ---------- 8 IBLA 30, 87 I.D. 98 (1980)
80 IBLA 383 (May 14, 1984)
331-349 ------11 IBLA 21, 89 I.D. 655 (1982)
53 IBLA 208, 88 I.D. 373 (1981)
331-354 ------10 IBLA 110, 89 I.D. 488 (1982)
331-358 ------ 8 IBLA 30, 87 I.D. 98 (1980)
332 ----------48 IBLA 199 (June 16, 1980)
48 IBLA 373 (July 11, 1980)
53 IBLA 279 (Mar. 24, 1981)
58 IBLA 21 (Sept. 16, 1981)
59 IBLA 170 (Oct. 26, 1981)
66 IBLA 150 (Aug. 10, 1982)
67 IBLA 140 (Sept. 16, 1982)
70 IBLA 126 (Jan. 13, 1983)
70 IBLA 196 (Jan. 21, 1983)
74 IBLA 20 (June 24, 1983)
334 ----------45 IBLA 24 (Jan. 14, 1980)
46 IBLA 303 (Mar. 31, 1980)
48 IBLA 199 (June 16, 1980)
48 IBLA 365 (July 11, 1980)
48 IBLA 373 (July 11, 1980)
49 IBLA 251 (Aug. 18, 1980)
49 IBLA 317 (Aug. 20, 1980)
49 IBLA 325 (Aug. 22, 1980)
51 IBLA 115 (Nov. 20, 1980)
51 IBLA 176 (Nov. 26, 1980)
51 IBLA 285 (Dec. 15, 1980)
52 IBLA 52 (Jan. 6, 1981)
52 IBLA 216, 88 I.D. 24[illegible] (1981)
53 IBLA 23 (Feb. 26, 1981)
53 IBLA 279 (Mar. 24, 1981)
55 IBLA 23 (May 26, 1981)
55 IBLA 131 (June 3, 1981)
55 IBLA 143 (June 4, 1981)
55 IBLA 332 (June 26, 1981)
58 IBLA 21 (Sept. 16, 1981)
58 IBLA 94 (Sept. 24, 1981)
58 IBLA 98 (Sept. 24, 1981)
58 IBLA 102 (Sept. 24, 1981)
58 IBLA 108 (Sept. 24, 1981)
58 IBLA 199 (Sept. 29, 1981)
58 IBLA 202 (Sept. 29, 1981)
58 IBLA 260 (Oct. 6, 1981)
59 IBLA 170 (Oct. 26, 1891)
59 IBLA 182 (Oct. 27, 1981)
64 IBLA 361 (June 16, 1982)
66 IBLA 150 (Aug. 10, 1982)
67 IBLA 8 (Sept. 1, 1982)
67 IBLA 97 (Sept. 13, 1982)
67 IBLA 140 (Sept. 16, 1982)
67 IBLA 168 (Sept. 21, 1982)
67 IBLA 184 (Sept. 22, 1982)
68 IBLA 179 (Nov. 8, 1982)
70 IBLA 126 (Jan. 13, 1983)
70 IBLA 165 (Jan. 19, 1983)
70 IBLA 196 (Jan. 21, 1983)
71 IBLA 1 (Feb. 9, 1983)
74 IBLA 20 (June 24, 1983)
75 IBLA 192 (Aug. 22, 1983)
76 IBLA 17 (Sept. 6, 1983)
76 IBLA 192 (Oct. 6, 1983)
76 IBLA 205 (Oct. 11, 1983)
76 IBLA 264 (Oct. 18, 1983)
77 IBLA 51 (Nov. 7, 1983)
79 IBLA 394 (Mar. 27, 1984)
80 IBLA 383 (May 14, 1984)

TITLE 25: Continued

sec. 336 ----------51 IBLA 285 (Dec. 15, 1980)
53 IBLA 208, 88 I.D. 373 (1981)
64 IBLA 361 (June 16, 1982)
66 IBLA 150 (Aug. 10, 1982)
67 IBLA 140 (Sept. 16, 1982)
67 IBLA 168 (Sept. 21, 1982)
67 IBLA 184 (Sept. 22, 1982)
70 IBLA 165 (Jan. 19, 1983)
71 IBLA 1 (Feb. 9, 1983)
75 IBLA 192 (Aug. 22, 1983)
76 IBLA 17 (Sept. 6, 1983)
337 ----------46 IBLA 303 (Mar. 31, 1980)
58 IBLA 21 (Sept. 16, 1981)
59 IBLA 170 (Oct. 26, 1981)
77 IBLA 51 (Nov. 7, 1983)
79 IBLA 394 (Mar. 27, 1984)
343 ----------80 IBLA 383 (May 14, 1984)
345 ----------53 IBLA 279 (Mar. 24, 1981)
58 IBLA 21 (Sept. 16, 1981)
59 IBLA 170 (Oct. 26, 1981)
346 ----------53 IBLA 279 (Mar. 24, 1981)
58 IBLA 21 (Sept. 16, 1981)
59 IBLA 170 (Oct. 26, 1981)
348 ---------- 8 IBIA 30, 87 I.D. 98 (1980)
8 IBIA 102 (June 20, 1980)
8 IBIA 115 (July 10, 1980)
8 IBIA 150 (Aug. 18, 1980)
9 IBIA 25, 88 I.D. 619 (1981)
9 IBIA 67, (Sept. 3, 1981)
9 IBIA 75 (Sept. 25, 1981)
9 IBIA 94, 88 I.D. 993 (1981)
9 IBIA 190 (Mar. 9, 1982)
10 IBIA 141 (Oct. 14, 1982)
11 IBIA 16 (Dec. 28, 1982)
11 IBIA 21, 89 I.D. 655 (1982)
11 IBIA 77 (Mar. 15, 1983)
12 IBIA 44 (Oct. 28, 1983)
12 IBIA 203 (Mar. 21, 1984)
80 IBLA 383 (May 14, 1984)
349 ---------- 8 IBIA 30, 87 I.D. 98 (1980)
354 ---------- 8 IBIA 30, 87 I.D. 98 (1980)
9 IBIA 151, 89 I.D. 49 (1982)
12 IBIA 281 (June 25, 1984)
357 ---------- 9 IBIA 126, 88 I.D. 1020 (1981)
55 IBLA 51 (May 29, 1981)
371 ---------- 9 IBIA 43 (July 27, 1981)
9 IBIA 52, 88 I.D. 676 (1981)
9 IBIA 67 (Sept. 3, 1981)
9 IBIA 94, 88 I.D. 993 (1981)
9 IBIA 249, 89 I.D. 193 (1982)
11 IBIA 77 (Mar. 15, 1983)
12 IBIA 209 (Mar. 22, 1984)
372 ---------- 9 IBIA 75 (Sept. 25, 1981)
10 IBIA 141 (Oct. 14, 1982)
11 IBIA 16 (Dec. 28, 1982)
11 IBIA 267 (Aug. 8, 1983)
12 IBIA 203 (Mar. 21, 1984)
80 IBLA 383 (May 14, 1984)
372-373 ------11 IBIA 179 (May 10, 1983)
8 IBIA 30, 87 I.D. 98 (1980)
8 IBIA 130, 87 I.D. 311 (1980)
8 IBIA 254, 88 I.D. 410 (1981)
9 IBIA 25, 88 I.D. 619 (1981)
9 IBIA 190 (Mar. 9, 1982)
12 IBIA 209 (Mar. 22, 1984)
12 IBIA 281 (June 25, 1984)
372a ---------- 8 IBIA 130, 87 I.D. 311 (1980)
8 IBIA 254, 88 I.D. 410 (1981)
9 IBIA 196 (Mar. 15, 1982)

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sec. 372a ---------11 IBIA 179 (May 10, 1983)
11 IBIA 237 (July 6, 1983)
12 IBIA 203 (Mar. 21, 1984)
372a-
372a(1)(c) -- 8 IBIA 254, 88 I.D. 410 (1981)
372a(1) ------ 8 IBIA 254, 88 I.D. 410 (1981)
372a(1)(a) --- 8 IBIA 130, 87 I.D. 311 (1980)
12 IBIA 209 (Mar. 22, 1984)
372a(1)(a)-
372a(1)(d) -- 8 IBIA 254, 88 I.D. 410 (1981)
372a(1)(c) --- 8 IBIA 130, 87 I.D. 311 (1980)
8 IBIA 254, 88 I.D. 410 (1981)
373 ---------- 8 IBIA 8, 87 I.D. 64 (1980)
8 IBIA 30, 87 I.D. 98 (1980)
8 IBIA 53 (Mar. 28, 1980)
8 IBIA 117 (July 15, 1980)
9 IBIA 75 (Sept. 25, 1981)
9 IBIA 94, 88 I.D. 993 (1981)
9 IBIA 136 (Dec. 1, 1981)
10 IBIA 17, 89 I.D. 361 (1982)
10 IBIA 128 (Oct. 5, 1982)
11 IBIA 16 (Dec. 28, 1982)
11 IBIA 77 (Mar. 15, 1983)
12 IBIA 258 (May 31, 1984)
12 IBIA 281 (June 25, 1984)
80 IBLA 383 (May 14, 1984)
373a ---------- 8 IBIA 30, 87 I.D. 98 (1980)
12 IBIA 203 (Mar. 21, 1984)
373b ---------- 8 IBIA 30, 87 I.D. 98 (1980)
8 IBIA 205, 87 I.D. 601 (1980)
380 ----------11 IBIA 203 (May 27, 1983)
391 ----------80 IBLA 383 (May 14, 1984)
392 ----------11 IBIA 29, 89 I.D. 655 (1982)
393 ---------- 8 IBIA 90, 87 I.D. 201 (1980)
12 IBIA 190 (Mar. 2, 1984)
396 ----------47 IBLA 66 (Apr. 18, 1980)
396a-396f ----11 IBIA 54, 90 I.D. 61 (1983)
47 IBLA 66 (Apr. 18, 1980)
396b ----------10 IBIA 72, 89 I.D. 412 (1982)
47 IBLA 66 (Apr. 18, 1980)
396d ----------11 IBIA 54, 90 I.D. 61 (1983)
397 ---------- 8 IBIA 90, 87 I.D. 201 (1980)
399 ----------72 IBLA 337 (Apr. 29, 1983)
403 ---------- 8 IBIA 90, 87 I.D. 201 (1980)
407 ----------11 IBIA 85, 90 I.D. 88 (1983)
409a ----------11 IBIA 124 (Mar. 22, 1983)
410 ---------- 8 IBIA 30, 87 I.D. 98 (1980)
8 IBIA 106 (July 8, 1980)
9 IBIA 151, 89 I.D. 49 (1982)
12 IBIA 281 (June 25, 1984)
415 ---------- 8 IBIA 76, 87 I.D. 189 (1980)
11 IBIA 184, 90 I.D. 243 (1983)
66 IBLA 150 (Aug. 10, 1982)
67 IBLA 140 (Sept. 16, 1982)
70 IBLA 126 (Jan. 13, 1983)
70 IBLA 196 (Jan. 21, 1983)
74 IBLA 20 (June 24, 1983)
450 ----------10 IBIA 72, 89 I.D. 412 (1982)
77 IBLA 228 (Nov. 28, 1983)
450-450n -----10 IBIA 146, 89 I.D. 508 (1982)
10 IBIA 173 (Oct. 15, 1982)
10 IBIA 189 (Oct. 15, 1982)
10 IBIA 205 (Oct. 15, 1982)
10 IBIA 221 (Oct. 15, 1982)
10 IBIA 237 (Oct. 15, 1982)
10 IBIA 253 (Oct. 15, 1982)
10 IBIA 269 (Oct. 15, 1982)
10 IBIA 285 (Oct. 15, 1982)

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sec. 450-450n -----10 IBIA 301 (Oct. 15, 1982)
10 IBIA 318 (Oct. 15, 1982)
10 IBIA 334 (Oct. 15, 1982)
10 IBIA 350 (Oct. 15, 1982)
10 IBIA 366 (Oct. 15, 1982)
10 IBIA 382 (Oct. 15, 1982)
10 IBIA 399 (Oct. 15, 1982)
10 IBIA 416 (Oct. 15, 1982)
10 IBIA 432 (Oct. 15, 1982)
10 IBIA 448 (Oct. 15, 1982)
11 IBIA 285, 90 I.D. 389 (1983)
450-458e ------ 9 IBIA 203, 89 I.D. 132 (1982)
450n ---------- M-36933, 88 I.D. 333 (1981)
461 ---------- 8 IBIA 150 (Aug. 18, 1980)
8 IBIA 183, 87 I.D. 507 (1980)
461-479 ------- 8 IBIA 130, 87 I.D. 311 (1980)
8 IBIA 254, 88 I.D. 410 (1981)
8 IBIA 283 (May 15, 1981)
8 IBIA 295, 88 I.D. 561 (1981)
9 IBIA 141 (Dec. 22, 1981)
9 IBIA 284, 89 I.D. 252 (1982)
12 IBIA 49, 90 I.D. 474 (1983)
461-486 ------- 8 IBIA 183, 87 I.D. 507 (1980)
9 IBIA 36 (July 10, 1981)
9 IBIA 90 (Oct. 23, 1981)
9 IBIA 203, 89 I.D. 132 (1982)
461 et seq. -- M-36933, 88 I.D. 333 (1981)
462 ---------- 8 IBIA 30, 87 I.D. 98 (1980)
463 ----------10 IBIA 40, 89 I.D. 392 (1982)
45 IBLA 64 (Jan. 17, 1980)
50 IBLA 95 (Sept. 17, 1980)
52 IBLA 164 (Jan. 21, 1981)
57 IBLA 104 (Aug. 25, 1981)
63 IBLA 12 (Mar. 25, 1982)
463(a) --------10 IBIA 90, 89 I.D. 441 (1982)
464 ---------- 8 IBIA 164 (Oct. 22, 1980)
8 IBIA 183, 87 I.D. 507 (1980)
8 IBIA 201 (Dec. 3, 1980)
8 IBIA 295, 88 I.D. 561 (1981)
9 IBIA 36 (July 10, 1981)
9 IBIA 43 (July 27, 1981)
11 IBIA 16 (Dec. 28, 1982)
11 IBIA 179 (May 10, 1983)
464-479 ------10 IBIA 72, 89 I.D. 412 (1982)
465 ---------- 8 IBIA 183, 87 I.D. 507 (1980)
9 IBIA 62, 88 I.D. 987 (1981)
10 IBIA 40, 89 I.D. 392 (1982)
11 IBIA 124 (Mar. 22, 1983)
466 ---------- 8 IBIA 90, 87 I.D. 201 (1980)
467 ----------10 IBIA 40, 89 I.D. 392 (1982)
63 IBLA 12 (Mar. 25, 1982)
472 ---------- 9 IBIA 203, 89 I.D. 132 (1982)
476 ---------- 8 IBIA 295, 88 I.D. 561 (1981)
9 IBIA 63 (Aug. 5, 1981)
9 IBIA 141 (Dec. 22, 1981)
9 IBIA 186 (Mar. 3, 1982)
9 IBIA 203, 89 I.D. 132 (1982)
77 IBLA 228 (Nov. 28, 1983)
477 ---------- 9 IBIA 141 (Dec. 22, 1981)
478 ---------- 8 IBIA 183, 87 I.D. 507 (1980)
9 IBIA 141 (Dec. 22, 1981)
479 ---------- 8 IBIA 183, 87 I.D. 507 (1980)
53 IBLA 208, 88 I.D. 373 (1981)
483 ---------- 8 IBIA 150 (Aug. 18, 1980)
8 IBIA 183, 87 I.D. 507 (1980)
483a ---------- 8 IBIA 30, 87 I.D. 98 (1980)
8 IBIA 170, 87 I.D. 501 (1980)
501 et seq. -- 4 OHA 244 (Mar. 8, 1982)

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564-564x	9 IBIA 25, 88 I.D. 619 (1981)
	9 IBIA 76 (Sept. 29, 1981)
	11 IBIA 267 (Aug. 8, 1983)
564h	9 IBIA 25, 88 I.D. 619 (1981)
	11 IBIA 267 (Aug. 8, 1983)
565	9 IBIA 76 (Sept. 29, 1981)
565-565g	9 IBIA 25, 88 I.D. 619 (1981)
	9 IBIA 76 (Sept. 29, 1981)
	11 IBIA 267 (Aug. 8, 1983)
565a	9 IBIA 76 (Sept. 29, 1981)
	9 IBIA 147 (Jan 7, 1982)
	9 IBIA 192 (Mar. 9, 1982)
	11 IBIA 267 (Aug. 8, 1983)
565a(b)	9 IBIA 25, 88 I.D. 619 (1981)
	9 IBIA 76 (Sept. 29, 1981)
	9 IBIA 147 (Jan. 7, 1982)
	9 IBIA 277 (Apr. 22, 1982)
	11 IBIA 267 (Aug. 8, 1983)
565g	9 IBIA 76 (Sept. 29, 1981)
607	12 IBIA 39 (Oct. 18, 1983)
607(c)	8 IBIA 312 (May 29, 1981)
613	9 IBIA 263, 89 I.D. 200 (1982)
761 et seq.	M-36944, 89 I.D. 403 (1982)
891-902	9 IBIA 141 (Dec. 22, 1981)
903-903f	9 IBIA 141 (Dec. 22, 1981)
903a(a)	9 IBIA 141 (Dec. 22, 1981)
1301-1341	8 IBIA 170, 87 I.D. 501 (1980)
	9 IBIA 284, 89 I.D. 252 (1982)
	10 IBIA 72, 89 I.D. 412 (1982)
1301 et seq.	9 IBIA 294, 89 I.D. 257 (1982)
1302	8 IBIA 170, 87 I.D. 501 (1980)
1302(6)	9 IBIA 294, 89 I.D. 257 (1982)
1321	11 IBIA 237 (July 6, 1983)
1901-1952	11 IBIA 142 (Apr. 1, 1983)
	11 IBIA 146 (Apr. 4, 1983)
	12 IBIA 163 (Feb. 2, 1984)
	13 IBIA 53 (Dec. 7, 1984)
1901-1963	8 IBIA 130, 87 I.D. 311 (1980)
	9 IBIA 254, 89 I.D. 196 (1982)
	9 IBIA 281, 89 I.D. 241 (1982)
	10 IBIA 23 (July 6, 1982)
1901 et seq.	11 IBIA 39 (Jan. 7, 1983)
1902	9 IBIA 294, 89 I.D. 257 (1982)
1903(1)	9 IBIA 294, 89 I.D. 257 (1982)
1903(4)	9 IBIA 294, 89 I.D. 257 (1982)
1911(a)	8 IBIA 254, 88 I.D. 410 (1981)
	9 IBIA 294, 89 I.D. 257 (1982)
1912(b)	9 IBIA 294, 89 I.D. 257 (1982)
1922	9 IBIA 294, 89 I.D. 257 (1982)
1931-1934	9 IBIA 281, 89 I.D. 241 (1982)
	10 IBIA 78, 89 I.D. 424 (1982)
	11 IBIA 9 (Dec. 10, 1982)
	11 IBIA 214, 90 I.D. 283 (1983)
	11 IBIA 226 (July 5, 1983)
	11 IBIA 276, 90 I.D. 376 (1983)
	11 IBIA 308 (Sept. 19, 1983)
	12 IBIA 67, 90 I.D. 515 (1983)
	12 IBIA 213 (Mar. 26, 1984)
1931(a)(8)	9 IBIA 294, 89 I.D. 257 (1982)
1932	11 IBIA 226 (July 5, 1983)
	11 IBIA 276, 90 I.D. 376 (1983)
	12 IBIA 67, 90 I.D. 515 (1983)
2005(c)	12 IBIA 80, 90 I.D. 521 (1983)
2010	M-36933, 88 I.D. 333 (1981)
2201-2210	12 IBIA 258 (May 31, 1984)
2415	78 IBLA 139 (Jan. 23, 1984)

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613(b)	M-36937, 88 I.D. 813 (1981)
3401	IBCA-1550-2-82, 89 I.D. 365 (1982)
4121	72 IBLA 337 (Apr. 29, 1983)
6402	M-36942, 88 I.D. 1090 (1981)
6402(a)	M-36942, 88 I.D. 1090 (1981)
6403	M-36942, 88 I.D. 1090 (1981)
6405	M-36942, 88 I.D. 1090 (1981)
6405(a)	M-36942, 88 I.D. 1090 (1981)

TITLE 28:

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378	11 IBIA 37 (Jan. 4, 1983)
1291	13 IBIA 58 (Dec. 27, 1984)
	52 IBLA 74 (Jan. 9, 1981)
1292	13 IBIA 58 (Dec. 27, 1984)
1292(b)	59 IBLA 1, 88 I.D. 925 (1981)
1360	9 IBIA 25, 88 I.D. 619 (1981)
	11 IBIA 237 (July 6, 1983)
1491	IBCA-1429-2-81, 91 I.D. 149 (1984)
	45 IBLA 64 (Jan. 17, 1980)
1920	3 IBSMA 44, 88 I.D. 394 (1981)
2412	IBCA-1556-2-82 (June 27, 1983)
	IBCA-1536-3-82, 90 I.D. 297 (1983)
2415	IBCA-1600-7-82 (Mar. 31, 1983)
2516(a)	IBCA-1506-8-81, 89 I.D. 233 (1982)
2571 et seq.	IBCA-1429-2-81, 91 I.D. 149 (1984)

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11	75 IBLA 388 (Sept. 2, 1983)
20	49 IBLA 325 (Aug. 22, 1980)
	51 IBLA 115 (Nov. 20, 1980)
	55 IBLA 23 (May 26, 1981)
	58 IBLA 103 (Sept. 24, 1981)
	58 IBLA 108 (Sept. 24, 1981)
	58 IBLA 202 (Sept. 29, 1981)
21	69 IBLA 194 (Dec. 15, 1982)
	82 IBLA 67 (July 12, 1984)
	84 IBLA 306 (Jan. 7, 1985)
21-47	59 IBLA 1, 88 I.D. 925 (1981)
21-54	58 IBLA 390, 88 I.D. 918 (1981)
	70 IBLA 1 (Jan. 6, 1983)
21a	63 IBLA 19 (Mar. 26, 1982)
	82 IBLA 14 (July 5, 1984)
22	45 IBLA 64 (Jan. 17, 1980)
	46 IBLA 1 (Feb. 13, 1980)
	47 IBLA 92 (Apr. 23, 1980)
	49 IBLA 1 (July 15, 1980)
	49 IBLA 360, 87 I.D. 386 (1980)
	50 IBLA 95 (Sept. 17, 1980)
	50 IBLA 110 (Sept. 24, 1980)
	51 IBLA 73 (Oct. 31, 1980)
	51 IBLA 250 (Dec. 15, 1980)
	51 IBLA 255 (Dec. 15, 1980)
	51 IBLA 301, 87 I.D. 628 (1980)
	53 IBLA 182 (Mar. 17, 1981)
	53 IBLA 289 (Mar. 24, 1981)
	53 IBLA 353 (Mar. 30, 1981)
	54 IBLA 281 (Apr. 28, 1981)
	56 IBLA 247 (July 24, 1981)
	57 IBLA 167, 88 I.D. 772 (1981)
	58 IBLA 282 (Oct. 8, 1981)

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sec. 22 ----------59 IBLA 207 (Oct. 27, 1981)
59 IBLA 326 (Nov. 5, 1981)
60 IBLA 29 (Nov. 16, 1981)
60 IBLA 341 (Dec. 22, 1981)
60 IBLA 349, 88 I.D. 1115 (1981)
61 IBLA 8 (Dec. 29, 1981)
61 IBLA 251 (Jan. 29, 1982)
62 IBLA 243 (Mar. 15, 1982)
63 IBLA 388 (Apr. 30, 1982)
65 IBLA 357 (July 20, 1982)
65 IBLA 387 (July 23, 1982)
66 IBLA 316 (Aug. 25, 1982)
66 IBLA 357 (Aug. 27, 1982)
67 IBLA 48 (Sept. 9, 1982)
68 IBLA 1 (Oct. 12, 1982)
68 IBLA 11 (Oct. 18, 1982)
68 IBLA 37, 89 I.D. 538 (1982)
69 IBLA 19 (Nov. 24, 1982)
70 IBLA 244 (Jan. 25, 1983)
70 IBLA 264, 90 I.D. 10 (1983)
71 IBLA 334 (Mar. 28, 1983)
72 IBLA 75 (Apr. 12, 1983)
73 IBLA 19 (May 9, 1983)
74 IBLA 34 (June 27, 1983)
74 IBLA 37 (June 27, 1983)
74 IBLA 117 (June 30, 1983)
75 IBLA 16, 90 I.D. 352 (1983)
75 IBLA 358 (Aug. 31, 1983)
76 IBLA 111 (Sept. 21, 1983)
76 IBLA 192 (Oct. 6, 1983)
76 IBLA 212 (Oct. 17, 1983)
76 IBLA 301, 90 I.D. 464 (1983)
77 IBLA 261 (Nov. 30, 1983)
79 IBLA 20 (Feb. 3, 1984)
79 IBLA 237 (Mar. 1, 1984)
81 IBLA 103 (May 30, 1984)
81 IBLA 109 (May 30, 1984)
81 IBLA 271 (June 8, 1984)
84 IBLA 306 (Jan. 7, 1985)
84 IBLA 377 (Jan. 28, 1985)
M-36910 (Supp.), 88 I.D. 909 (1981)
22-24 --------60 IBLA 29 (Nov. 16, 1981)
60 IBLA 341 (Dec. 22, 1981)
60 IBLA 349, 88 I.D. 1115 (1981)
61 IBLA 109 (Jan. 4, 1982)
63 IBLA 77 (Mar. 30, 1982)
68 IBLA 301 (Nov. 19, 1982)
22-47 --------67 IBLA 162 (Sept. 21, 1982)
22-54 --------59 IBLA 207 (Oct. 27, 1981)
22 et seq. -- 5 ANCAB 147, 88 I.D. 14 (1981)
6 ANCAB 65, 88 I.D. 760 (1981)
7 ANCAB 106, 89 I.D. 293 (1982)
48 IBLA 267, 87 I.D. 248 (1980)
49 IBLA 73 (July 22, 1980)
49 IBLA 353 (Aug. 29, 1980)
52 IBLA 164 (Jan. 21, 1981)
53 IBLA 5 (Feb. 26, 1981)
56 IBLA 36 (July 8, 1981)
57 IBLA 104 (Aug. 25, 1981)
57 IBLA 225 (Aug. 27, 1981)
57 IBLA 373 (Sept. 8, 1981)
59 IBLA 393 (Nov. 10, 1981)
68 IBLA 367 (Nov. 22, 1982)
70 IBLA 328 (Feb. 1, 1983)
71 IBLA 268 (Mar. 22, 1983)
72 IBLA 254 (Apr. 27, 1983)
77 IBLA 205 (Nov. 22, 1983)
79 IBLA 20 (Feb. 3, 1984)

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sec. 23 ----------46 IBLA 1 (Feb. 13, 1980)
47 IBLA 92 (Apr. 23, 1980)
49 IBLA 1 (July 15, 1980)
49 IBLA 353 (Aug. 29, 1980)
50 IBLA 95 (Sept. 17, 1980)
50 IBLA 110 (Sept. 24, 1980)
50 IBLA 176 (Sept. 30, 1980)
51 IBLA 199 (Dec. 5, 1980)
51 IBLA 255 (Dec. 15, 1980)
51 IBLA 301, 87 I.D. 628 (1980)
53 IBLA 289 (Mar. 24, 1981)
53 IBLA 333 (Mar. 26, 1981)
54 IBLA 321 (Apr. 30, 1981)
54 IBLA 355 (May 12, 1981)
56 IBLA 300 (July 29, 1981)
59 IBLA 1, 88 I.D. 925 (1981)
59 IBLA 134 (Oct. 26, 1981)
59 IBLA 207 (Oct. 27, 1981)
61 IBLA 113 (Jan. 6, 1982)
61 IBLA 251 (Jan. 29, 1982)
63 IBLA 388 (Apr. 30, 1982)
64 IBLA 241 (May 28, 1982)
65 IBLA 164 (June 29, 1982)
65 IBLA 239 (July 9, 1982)
66 IBLA 357 (Aug. 27, 1982)
70 IBLA 228 (Jan. 24, 1983)
71 IBLA 268 (Mar. 22, 1983)
72 IBLA 88 (Apr. 13, 1983)
75 IBLA 179 (Aug. 22, 1983)
75 IBLA 358 (Aug. 31, 1983)
77 IBLA 205 (Nov. 22, 1983)
75 IBLA 16, 90 I.D. 352 (1983)
78 IBLA 112 (Dec. 22, 1983)
79 IBLA 214 (Feb. 28, 1984)
79 IBLA 267 (Mar. 7, 1984)
79 IBLA 330 (Mar. 21, 1984)
81 IBLA 23 (May 15, 1984)
81 IBLA 239 (June 6, 1984)
26 ---------- 6 ANCAB 65, 88 I.D. 760 (1981)
48 IBLA 267, 87 I.D. 248 (1980)
53 IBLA 289 (Mar. 24, 1981)
59 IBLA 1, 88 I.D. 925 (1981)
26-28 --------60 IBLA 29 (Nov. 16, 1981)
60 IBLA 341 (Dec. 22, 1981)
61 IBLA 109 (Jan. 4, 1982)
63 IBLA 77 (Mar. 30, 1982)
68 IBLA 301 (Nov. 19, 1982)
27 ----------59 IBLA 1, 88 I.D. 925 (1981)
76 IBLA 349 (Oct. 24, 1983)
81 IBLA 279 (June 12, 1984)
28 ---------- 6 ANCAB 65, 88 I.D. 760 (1981)
47 IBLA 389 (May 22, 1980)
48 IBLA 267, 87 I.D. 248 (1980)
49 IBLA 43 (July 21, 1980)
49 IBLA 49A (May 29, 1981)
49 IBLA 56 (July 21, 1980)
50 IBLA 394 (Oct. 24, 1980)
51 IBLA 97, 87 I.D. 535 (1980)
51 IBLA 301, 87 I.D. 628 (1980)
52 IBLA 9 (Jan. 5, 1981)
53 IBLA 106 (Mar. 4, 1981)
55 IBLA 185 (June 16, 1981)
56 IBLA 43 (July 8, 1981)
56 IBLA 78, 88 I.D. 643 (1981)
56 IBLA 327 (July 30, 1981)
56 IBLA 337, 88 I.D. 682 (1981)
58 IBLA 75 (Sept. 22, 1981)
59 IBLA 1, 88 I.D. 925 (1981)

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sec. 28 ----------60 IBLA 173 (Nov. 24, 1981)
61 IBLA 109 (Jan. 4, 1982)
61 IBLA 347 (Feb. 11, 1982)
63 IBLA 60 (Mar. 30, 1982)
63 IBLA 70 (Mar. 30, 1982)
63 IBLA 129 (Apr. 5, 1982)
63 IBLA 266 (Apr. 19, 1982)
65 IBLA 314 (July 14, 1982)
65 IBLA 369 (July 20, 1982)
66 IBLA 46 (July 27, 1982)
66 IBLA 147 (Aug. 10, 1982)
66 IBLA 204 (Aug. 13, 1982)
67 IBLA 48 (Sept. 9, 1982)
67 IBLA 64 (Sept. 9, 1982)
68 IBLA 37, 89 I.D. 538 (1982)
69 IBLA 137 (Dec. 9, 1982)
70 IBLA 231 (Jan. 25, 1983)
71 IBLA 195 (Mar. 14, 1983)
71 IBLA 402 (Mar. 31, 1983)
72 IBLA 235 (Apr. 26, 1983)
72 IBLA 324 (Apr. 28, 1983)
73 IBLA 1 (May 5, 1983)
73 IBLA 52 (May 12, 1983)
73 IBLA 78 (May 17, 1983)
73 IBLA 117 (May 23, 1983)
74 IBLA 117 (June 30, 1983)
75 IBLA 62 (Aug. 5, 1983)
75 IBLA 100 (Aug. 11, 1983)
75 IBLA 332 (Aug. 30, 1983)
75 IBLA 346 (Aug. 31, 1983)
76 IBLA 90 (Sept. 21, 1983)
76 IBLA 93 (Sept. 21, 1983)
76 IBLA 96 (Sept. 21, 1983)
76 IBLA 212 (Oct. 17, 1983)
76 IBLA 215 (Oct. 17, 1983)
78 IBLA 215 (Jan. 6, 1984)
79 IBLA 380 (Mar. 27, 1984)
28-1 --------45 IBLA 215 (Jan. 30, 1980)
45 IBLA 389 (Feb. 13, 1980)
48 IBLA 59 (May 29, 1980)
49 IBLA 49A (May 29, 1981)
52 IBLA 1 (Jan. 5, 1981)
52 IBLA 137 (Jan. 16, 1981)
53 IBLA 377 (Mar. 31, 1981)
54 IBLA 343 (May 7, 1981)
56 IBLA 112 (July 16, 1981)
57 IBLA 76 (Aug. 21, 1981)
60 IBLA 29 (Nov. 16, 1981)
62 IBLA 224 (Mar. 10, 1982)
62 IBLA 260 (Mar. 15, 1982)
62 IBLA 378 (Mar. 24, 1982)
64 IBLA 114 (May 19, 1982)
64 IBLA 141 (May 24, 1982)
65 IBLA 72 (June 23, 1982)
65 IBLA 175 (June 29, 1982)
65 IBLA 369 (July 20, 1982)
67 IBLA 130 (Sept. 16, 1982)
67 IBLA 220 (Sept. 23, 1982)
67 IBLA 388 (Oct. 8, 1982)
68 IBLA 206 (Nov. 10, 1982)
68 IBLA 301 (Nov. 19, 1982)
69 IBLA 124 (Dec. 8, 1982)
70 IBLA 42 (Jan. 10, 1983)
72 IBLA 232 (Apr. 26, 1983)
73 IBLA 374 (June 15, 1983)
73 IBLA 383 (June 15, 1983)

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sec. 28b ----------50 IBLA 26, 87 I.D. 395 (1980)
56 IBLA 78, 88 I.D. 643 (1981)
62 IBLA 232 (Mar. 11, 1982)
71 IBLA 402 (Mar. 31, 1983)
28b-c --------61 IBLA 39 (Dec. 31, 1981)
73 IBLA 323 (June 7, 1983)
28c ----------50 IBLA 26, 87 I.D. 395 (1980)
73 IBLA 323 (June 7, 1983)
29 ----------48 IBLA 267, 87 I.D. 248 (1980)
53 IBLA 247 (Mar. 19, 1981)
59 IBLA 1, 88 I.D. 925 (1981)
60 IBLA 29 (Nov. 16, 1981)
60 IBLA 341 (Dec. 22, 1981)
60 IBLA 349, 88 I.D. 1115 (1981)
61 IBLA 109 (Jan. 4, 1982)
63 IBLA 77 (Mar. 30, 1982)
66 IBLA 71 (July 29, 1982)
68 IBLA 301 (Nov. 19, 1982)
68 IBLA 325 (Nov. 22, 1982)
71 IBLA 169 (Mar. 10, 1983)
74 IBLA 117 (June 30, 1983)
75 IBLA 16, 90 I.D. 352 (1983)
75 IBLA 89 (Aug. 11, 1983)
79 IBLA 330 (Mar. 21, 1984)
81 IBLA 41 (May 17, 1984)
30 ----------53 IBLA 247 (Mar. 19, 1981)
58 IBLA 46 (Sept. 21, 1981)
59 IBLA 316 (Nov. 4, 1981)
60 IBLA 29 (Nov. 16, 1981)
60 IBLA 341 (Dec. 22, 1981)
60 IBLA 349, 88 I.D. 1115 (1981)
61 IBLA 109 (Jan. 4, 1982)
63 IBLA 77 (Mar. 30, 1982)
68 IBLA 301 (Nov. 19, 1982)
68 IBLA 325 (Nov. 22, 1982)
69 IBLA 194 (Dec. 15, 1982)
79 IBLA 330 (Mar. 21, 1984)
80 IBLA 96 (Apr. 3, 1984)
33-35 --------60 IBLA 29 (Nov. 16, 1981)
60 IBLA 341 (Dec. 22, 1981)
60 IBLA 349, 88 I.D. 1115 (1981)
61 IBLA 109 (Jan. 4, 1982)
63 IBLA 77 (Mar. 30, 1982)
68 IBLA 301 (Nov. 19, 1982)
34 ----------79 IBLA 330 (Mar. 21, 1984)
35 ----------46 IBLA 98 (Feb. 28, 1980)
47 IBLA 183 (May 7, 1980)
49 IBLA 317 (Aug. 20, 1980)
49 IBLA 353 (Aug. 29, 1980)
51 IBLA 199 (Dec. 5, 1980)
51 IBLA 255 (Dec. 15, 1980)
53 IBLA 333 (Mar. 26, 1981)
54 IBLA 355 (May 12, 1981)
59 IBLA 1, 88 I.D. 925 (1981)
59 IBLA 134 (Oct. 26, 1981)
62 IBLA 35 (Feb. 24, 1982)
63 IBLA 388 (Apr. 30, 1982)
65 IBLA 167 (June 29, 1982)
72 IBLA 235 (Apr. 26, 1983)
77 IBLA 366 (Dec. 7, 1983)
79 IBLA 330 (Mar. 21, 1984)
80 IBLA 215 (Apr. 30, 1984)
84 IBLA 338 (Jan. 15, 1985)
35-36 --------50 IBLA 303 (Oct. 7, 1980)
35-38 --------58 IBLA 390, 88 I.D. 918 (1981)

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sec. 36 ——— 46 IBLA 98 (Feb. 28, 1980)
47 IBLA 183 (May 7, 1980)
59 IBLA 1, 88 I.D. 925 (1981)
62 IBLA 35 (Feb. 24, 1982)
65 IBLA 22 (June 21, 1982)
68 IBLA 367 (Nov. 22, 1982)
72 IBLA 235 (Apr. 26, 1983)
75 IBLA 168 (Aug. 19, 1983)
75 IBLA 388 (Sept. 2, 1983)
77 IBLA 366 (Dec. 7, 1983)
36-38 ——— 60 IBLA 349, 88 I.D. 1115 (1981)
37 ——— 59 IBLA 1, 88 I.D. 925 (1981)
60 IBLA 29 (Nov. 16, 1981)
60 IBLA 341 (Dec. 22, 1981)
60 IBLA 349, 88 I.D. 1115 (1981)
61 IBLA 109 (Jan. 4, 1982)
63 IBLA 77 (Mar. 30, 1982)
68 IBLA 301 (Nov. 19, 1982)
38 ——— 45 IBLA 232 (Feb. 4, 1980)
46 IBLA 221 (Mar. 27, 1980)
50 IBLA 363 (Oct. 16, 1980)
50 IBLA 374 (Oct. 21, 1980)
52 IBLA 44 (Jan. 6, 1981)
56 IBLA 78, 88 I.D. 643 (1981)
58 IBLA 377 (Oct. 21, 1981)
59 IBLA 1, 88 I.D. 925 (1981)
60 IBLA 267 (Dec. 17, 1981)
62 IBLA 146 (Mar. 5, 1982)
64 IBLA 132 (May 20, 1982)
66 IBLA 310 (Aug. 24, 1982)
69 IBLA 194 (Dec. 15, 1982)
71 IBLA 178 (Mar. 10, 1983)
72 IBLA 235 (Apr. 26, 1983)
77 IBLA 174 (Nov. 17, 1983)
79 IBLA 380 (Mar. 27, 1984)
39-42 ——— 60 IBLA 29 (Nov. 16, 1981)
60 IBLA 341 (Dec. 22, 1981)
60 IBLA 349, 88 I.D. 1115 (1981)
61 IBLA 109 (Jan. 4, 1982)
63 IBLA 77 (Mar. 30, 1982)
68 IBLA 301 (Nov. 19, 1982)
42 ——— 7 ANCAB 106, 89 I.D. 293 (1982)
45 IBLA 73 (Jan. 17, 1980)
51 IBLA 73 (Oct. 31, 1980)
53 IBLA 182 (Mar. 17, 1981)
54 IBLA 124 (Apr. 17, 1981)
56 IBLA 78, 88 I.D. 643 (1981)
57 IBLA 167, 88 I.D. 772 (1981)
59 IBLA 1, 88 I.D. 925 (1981)
76 IBLA 59 (Sept. 21, 1983)
79 IBLA 389 (Mar. 27, 1984)
81 IBLA 252 (June 8, 1984)
42(a) ——— 45 IBLA 73 (Jan. 17, 1980)
42(b) ——— 7 ANCAB 106, 89 I.D. 293 (1982)
49e ——— 49 IBLA 49A (May 29, 1981)
53 ——— 59 IBLA 316 (Nov. 4, 1981)
69 IBLA 194 (Dec. 15, 1982)
54 ——— 45 IBLA 127 (Jan. 23, 1980)
71 ——— M-36893 (Supp. II), 88 I.D. 247 (1981)
71-76 ——— M-36893 (Supp. II), 88 I.D. 247 (1981)
72 ——— M-36893 (Supp. II), 88 I.D. 247 (1981)
73 ——— M-36893 (Supp. II), 88 I.D. 247 (1981)
77 ——— M-36935, 88 I.D. 538 (1981)

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sec. 81 ——— 48 IBLA 329 (July 3, 1980)
66 IBLA 100 (Aug. 4, 1982)
84 IBLA 306 (Jan. 7, 1985)
M-36935, 88 I.D. 538 (1981)
81-85 ——— 69 IBLA 194 (Dec. 15, 1982)
83 ——— 48 IBLA 329 (July 3, 1980)
83-85 ——— 66 IBLA 100 (Aug. 4, 1982)
M-36935, 88 I.D. 538 (1981)
85 ——— M-36935, 88 I.D. 538 (1981)
121 ——— 48 IBLA 329 (July 3, 1980)
M-36935, 88 I.D. 538 (1981)
121-123 ——— 55 IBLA 305 (June 25, 1981)
66 IBLA 100 (Aug. 4, 1982)
M-36935, 88 I.D. 538 (1981)
121-124 ——— 69 IBLA 194 (Dec. 15, 1982)
123 ——— 66 IBLA 100 (Aug. 4, 1982)
124 ——— 48 IBLA 329 (July 3, 1980)
M-36935, 88 I.D. 538 (1981)
161 ——— 46 IBLA 221 (Mar. 27, 1980)
59 IBLA 1, 88 I.D. 925 (1981)
66 IBLA 182 (Aug. 13, 1982)
71 IBLA 178 (Mar. 10, 1983)
78 IBLA 155 (Dec. 29, 1983)
181 ——— 45 IBLA 119 (Jan. 23, 1980)
45 IBLA 355 (Feb. 7, 1980)
45 IBLA 398 (Feb. 13, 1980)
46 IBLA 295 (Mar. 31, 1980)
46 IBLA 301 (Mar. 31, 1980)
46 IBLA 389 (Apr. 10, 1980)
47 IBLA 109 (Apr. 28, 1980)
48 IBLA 106 (May 30, 1980)
50 IBLA 154 (Sept. 30, 1980)
50 IBLA 361 (Oct. 16, 1980)
51 IBLA 19 (Oct. 28, 1980)
51 IBLA 97, 87 I.D. 535 (1980)
52 IBLA 83 (Jan. 9, 1981)
52 IBLA 116 (Jan. 13, 1981)
52 IBLA 278 (Feb. 6, 1981)
54 IBLA 38, 88 I.D. 437 (1981)
55 IBLA 257 (June 22, 1981)
57 IBLA 146 (Aug. 25, 1981)
57 IBLA 319 (Sept. 1, 1981)
58 IBLA 294 (Oct. 14, 1981)
59 IBLA 348 (Nov. 5, 1981)
60 IBLA 191 (Nov. 27, 1981)
60 IBLA 397 (Dec. 28, 1981)
61 IBLA 8 (Dec. 29, 1981)
61 IBLA 65 (Dec. 31, 1981)
61 IBLA 202 (Jan. 26, 1982)
62 IBLA 93, 89 I.D. 82 (1982)
62 IBLA 184 (Mar. 9, 1982)
62 IBLA 206 (Mar. 10, 1982)
62 IBLA 384 (Mar. 24, 1982)
63 IBLA 284 (Apr. 22, 1982)
63 IBLA 313 (Apr. 27, 1982)
66 IBLA 1, 89 I.D. 386 (1982)
66 IBLA 313 (Aug. 24, 1982)
68 IBLA 37, 89 I.D. 538 (1982)
68 IBLA 128 (Oct. 28, 1982)
68 IBLA 142, 89 I.D. 561 (1982)
68 IBLA 167 (Oct. 29, 1982)
69 IBLA 279 (Dec. 21, 1982)
71 IBLA 19 (Feb. 15, 1983)
71 IBLA 96 (Feb. 24, 1983)
71 IBLA 360 (Mar. 28, 1983)
71 IBLA 374 (Mar. 29, 1983)
73 IBLA 203 (May 27, 1983)
73 IBLA 295 (June 7, 1983)

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sec. 181 ----------74 IBLA 96 (June 30, 1983)
74 IBLA 242 (July 19, 1983)
75 IBLA 171 (Aug. 19, 1983)
75 IBLA 328 (Aug. 30, 1983)
76 IBLA 208 (Oct. 11, 1983)
76 IBLA 327 (Oct. 19, 1983)
76 IBLA 395 (Oct. 27, 1983)
77 IBLA 144 (Nov. 15, 1983)
80 IBLA 4 (Mar. 27, 1984)
81 IBLA 171 (May 31, 1984)
81 IBLA 300 (June 13, 1984)
81 IBLA 337 (June 21, 1984)
84 IBLA 85 (Dec. 6, 1984)
84 IBLA 331 (Jan. 11, 1985)
M-36935, 88 I.D. 538 (1981)
M-36940, 91 I.D. 1 (1984)
181-237 -------72 IBLA 387 (May 5, 1983)
181-263 -------49 IBLA 134 (July 28, 1980)
54 IBLA 326, (Apr. 30, 1981)
54 IBLA 340 (May 7, 1981)
68 IBLA 237 (Nov. 16, 1982)
76 IBLA 340 (Oct. 20, 1983)
77 IBLA 181 (Nov. 18, 1983)
181-287 -------45 IBLA 159, 87 I.D. 14 (1980)
45 IBLA 367 (Feb. 7, 1980)
50 IBLA 252 (Sept. 30, 1980)
53 IBLA 153 (Mar. 12, 1981)
54 IBLA 162 (Apr. 21, 1981)
58 IBLA 115 (Sept. 24, 1981)
58 IBLA 390, 88 I.D. 918 (1981)
60 IBLA 181 (Nov. 25, 1981)
60 IBLA 267 (Dec. 17, 1981)
64 IBLA 336 (June 10, 1982)
66 IBLA 134 (Aug. 10, 1982)
66 IBLA 174 (Aug. 12, 1982)
70 IBLA 1 (Jan. 6, 1983)
71 IBLA 32 (Mar. 22, 1983)
76 IBLA 103 (Sept. 21, 1983)
77 IBLA 181 (Nov. 18, 1983)
78 IBLA 115 (Dec. 22, 1983)
81 IBLA 300 (June 13, 1984)
181 et seq. ---45 IBLA 4 (Jan. 8, 1980)
45 IBLA 225 (Jan. 31, 1980)
46 IBLA 123 (Feb. 29, 1980)
46 IBLA 385 (Apr. 10, 1980)
48 IBLA 267, 87 I.D. 248 (1980)
49 IBLA 176 (July 30, 1980)
55 IBLA 257 (June 22, 1981)
63 IBLA 119 (Apr. 2, 1982)
65 IBLA 22 (June 21, 1982)
76 IBLA 37 (Sept. 14, 1983)
77 IBLA 137 (Nov. 15, 1983)
M-36921, 87 I.D. 291 (1980)
M-36927, 87 I.D. 616 (1980)
M-36929, 87 I.D. 661 (1980)
M-36935, 88 I.D. 538 (1981)
M-36939, 88 I.D. 1003 (1981)
M-36940, 91 I.D. 1 (1984)
182 ----------73 IBLA 295 (June 7, 1983)
183 ----------52 IBLA 60, 88 I.D. 24 (1981)
184 ----------45 IBLA 16 (Jan. 8, 1980)
47 IBLA 396 (May 22, 1980)
48 IBLA 166 (June 9, 1980)
56 IBLA 231 (July 22, 1981)
58 IBLA 25 (Sept. 16, 1981)
62 IBLA 336 (Mar. 24, 1982)
73 IBLA 295 (June 7, 1983)
74 IBLA 345 (July 28, 1983)
78 IBLA 162 (Dec. 30, 1983)

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sec. 184(a) -------62 IBLA 220 (Mar. 10, 1982)
M-36945, 89 I.D. 610 (1982)
184(a)(1) ----78 IBLA 251 (Jan. 10, 1984)
184(d) -------62 IBLA 336 (Mar. 24, 1982)
70 IBLA 154 (Jan. 18, 1983)
70 IBLA 183, 90 I.D. 3 (1983)
77 IBLA 35 (Oct. 31, 1983)
80 IBLA 339 (May 10, 1984)
184(e) -------62 IBLA 336 (Mar. 24, 1982)
184(h) -------48 IBLA 166 (June 9, 1980)
54 IBLA 61 (Apr. 10, 1981)
54 IBLA 194, 88 I.D. 479 (1981)
54 IBLA 260 (Apr. 28, 1981)
54 IBLA 271 (Apr. 28, 1981)
55 IBLA 200 (June 16, 1981)
55 IBLA 348 (June 26, 1981)
56 IBLA 193 (July 22, 1981)
61 IBLA 235 (Jan. 28, 1982)
62 IBLA 278 (Mar. 16, 1982)
64 IBLA 247 (May 28, 1982)
70 IBLA 373 (Feb. 4, 1983)
74 IBLA 18 (June 24, 1983)
74 IBLA 345 (July 28, 1983)
184(h)(1) ----48 IBLA 166 (June 9, 1980)
62 IBLA 119 (Mar. 4, 1982)
71 IBLA 72 (Feb. 22, 1983)
184(h)(2) ----46 IBLA 156 (Mar. 19, 1980)
47 IBLA 39 (Apr. 11, 1980)
48 IBLA 166 (June 9, 1980)
48 IBLA 190 (June 9, 1980)
48 IBLA 333 (July 3, 1980)
49 IBLA 19 (July 15, 1980)
50 IBLA 347 (Oct. 14, 1980)
54 IBLA 61 (Apr. 10, 1981)
54 IBLA 194, 88 I.D. 479 (1981)
54 IBLA 260 (Apr. 28, 1981)
54 IBLA 271 (Apr. 28, 1981)
55 IBLA 200 (June 16, 1981)
55 IBLA 348 (June 26, 1981)
56 IBLA 193 (July 22, 1981)
56 IBLA 225 (July 22, 1981)
61 IBLA 235 (Jan. 28, 1982)
62 IBLA 1 (Feb. 22, 1982)
62 IBLA 119 (Mar. 4, 1982)
62 IBLA 278 (Mar. 16, 1982)
64 IBLA 247 (May 28, 1982)
64 IBLA 279 (June 4, 1982)
65 IBLA 12 (June 21, 1982)
65 IBLA 76 (June 23, 1982)
65 IBLA 104 (June 24, 1982)
65 IBLA 147 (June 29, 1982)
68 IBLA 37, 89 I.D. 538 (1982)
68 IBLA 90 (Oct. 22, 1982)
69 IBLA 13 (Nov. 24, 1982)
71 IBLA 23 (Feb. 15, 1983)
71 IBLA 32 (Mar. 22, 1983)
77 IBLA 35 (Oct. 31, 1983)
78 IBLA 162 (Dec. 30, 1983)
78 IBLA 251 (Jan. 10, 1984)
79 IBLA 129 (Feb. 22, 1984)
81 IBLA 53 (May 22, 1984)
184(1) -------47 IBLA 39 (Apr. 11, 1980)
54 IBLA 61 (Apr. 10, 1981)
62 IBLA 1 (Feb. 22, 1982)
184(j) -------64 IBLA 247 (May 28, 1982)
74 IBLA 180 (July 18, 1983)
184(1)(2) ----84 IBLA 131 (Dec. 11, 1984)
184a ---------54 IBLA 61 (Apr. 10, 1981)

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sec. 185 ----------59 IBLA 378 (Nov. 9, 1981)
61 IBLA 57 (Dec. 31, 1981)
65 IBLA 245 (July 9, 1982)
77 IBLA 46 (Nov. 1, 1983)
78 IBLA 128 (Dec. 29, 1983)
M-36921, 87 I.D. 291 (1980)
M-36900 (Supp. I), 90 I.D. 345 (1983)
185(a) --------59 IBLA 378 (Nov. 9, 1981)
84 IBLA 85 (Dec. 6, 1984)
M-36921, 87 I.D. 291 (1980)
185(d) --------78 IBLA 128 (Dec. 29, 1983)
M-36921, 87 I.D. 291 (1980)
185(g) --------78 IBLA 128 (Dec. 29, 1983)
185(l) --------61 IBLA 57 (Dec. 31, 1981)
65 IBLA 245 (July 9, 1982)
77 IBLA 46 (Nov. 1, 1983)
185(r)(4) ---- M-36921, 87 I.D. 291 (1980)
186 ----------81 IBLA 171 (May 31, 1984)
M-36921, 87 I.D. 291 (1980)
187 ----------55 IBLA 315 (June 26, 1981)
62 IBLA 119 (Mar. 4, 1982)
65 IBLA 147 (June 29, 1982)
68 IBLA 96 (Oct. 26, 1982)
70 IBLA 313 (Jan. 28, 1983)
70 IBLA 386 (Feb. 9, 1983)
71 IBLA 53 (Feb. 22, 1983)
71 IBLA 312 (Mar. 22, 1983)
73 IBLA 328 (June 8, 1983)
81 IBLA 171 (May 31, 1984)
84 IBLA 131 (Dec. 11, 1984)
M-36921, 87 I.D. 291 (1980)
M-36939, 88 I.D. 1003 (1981)
M-36943, 89 I.D. 173 (1982)
187a ---------52 IBLA 316 (Feb. 19, 1981)
54 IBLA 4 (Apr. 1, 1981)
54 IBLA 359 (May 18, 1981)
62 IBLA 38 (Feb. 24, 1982)
62 IBLA 180 (Mar. 8, 1982)
65 IBLA 104 (June 24, 1982)
65 IBLA 373 (July 20, 1982)
66 IBLA 20 (July 23, 1982)
67 IBLA 357 (Oct. 6, 1982)
70 IBLA 313 (Jan. 28, 1983)
71 IBLA 53 (Feb. 22, 1983)
72 IBLA 34 (Apr. 6, 1983)
73 IBLA 162 (May 24, 1983)
75 IBLA 195 (Aug. 22, 1983)
82 IBLA 48 (July 11, 1984)
187b ---------52 IBLA 60, 88 I.D. 24 (1981)
62 IBLA 119 (Mar. 4, 1982)
65 IBLA 104 (June 24, 1982)
188 ----------45 IBLA 146 (Jan. 23, 1980)
45 IBLA 305 (Feb. 6, 1980)
48 IBLA 258 (June 26, 1980)
50 IBLA 249 (Sept. 30, 1980)
51 IBLA 271 (Dec. 15, 1980)
52 IBLA 316 (Feb. 19, 1981)
56 IBLA 49 (July 8, 1981)
56 IBLA 58 (July 10, 1981)
57 IBLA 90 (Aug. 24, 1981)
58 IBLA 175, 88 I.D. 879 (1981)
59 IBLA 370, 88 I.D. 1012 (1981)
60 IBLA 181 (Nov. 25, 1981)
62 IBLA 391 (Mar. 24, 1982)
63 IBLA 296 (Apr. 23, 1982)
64 IBLA 146 (May 24, 1982)
64 IBLA 383 (June 17, 1982)

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sec. 188 ----------65 IBLA 99 (June 24, 1982)
66 IBLA 338 (Aug. 26, 1982)
67 IBLA 17 (Sept. 3, 1982)
70 IBLA 128 (Jan. 14, 1983)
71 IBLA 42 (Feb. 17, 1983)
71 IBLA 53 (Feb. 22, 1983)
71 IBLA 105 (Feb. 25, 1983)
71 IBLA 216 (Mar. 16, 1983)
71 IBLA 224 (Mar. 17, 1983)
71 IBLA 331 (Mar. 24, 1983)
71 IBLA 336 (Mar. 28, 1983)
71 IBLA 339 (Mar. 28, 1983)
71 IBLA 390 (Mar. 29, 1983)
72 IBLA 5 (Apr. 4, 1983)
72 IBLA 18 (Apr. 4, 1983)
72 IBLA 34 (Apr. 6, 1983)
72 IBLA 39 (Apr. 6, 1983)
72 IBLA 83 (Apr. 13, 1983)
72 IBLA 120 (Apr. 14, 1983)
72 IBLA 211 (Apr. 21, 1983)
72 IBLA 333 (Apr. 29, 1983)
72 IBLA 367 (May 3, 1983)
72 IBLA 370 (May 4, 1983)
73 IBLA 67 (May 16, 1983)
73 IBLA 111 (May 23, 1983)
75 IBLA 195 (Aug. 22, 1983)
76 IBLA 1 (Sept. 6, 1983)
76 IBLA 322 (Oct. 19, 1983)
76 IBLA 376 (Oct. 25, 1983)
77 IBLA 32 (Oct. 31, 1983)
77 IBLA 63 (Nov. 7, 1983)
77 IBLA 214 (Nov. 22, 1983)
79 IBLA 218 (Feb. 29, 1984)
79 IBLA 228 (Feb. 29, 1984)
79 IBLA 320 (Mar. 21, 1984)
80 IBLA 123 (Apr. 3, 1984)
82 IBLA 48 (July 11, 1984)
188(a) --------48 IBLA 166 (June 9, 1980)
52 IBLA 60, 88 I.D. 24 (1981)
71 IBLA 72 (Feb. 22, 1983)
78 IBLA 251 (Jan. 10, 1984)
M-36939, 88 I.D. 1003 (1981)
M-36943, 89 I.D. 173 (1982)
188(b) --------45 IBLA 60 (Jan. 14, 1980)
45 IBLA 146 (Jan. 23, 1980)
45 IBLA 393 (Feb. 13, 1980)
46 IBLA 33 (Feb. 20, 1980)
46 IBLA 87 (Feb. 28, 1980)
46 IBLA 116 (Feb. 29, 1980)
46 IBLA 217 (Mar. 27, 1980)
46 IBLA 254 (Mar. 27, 1980)
46 IBLA 295 (Mar. 31, 1980)
46 IBLA 312 (Apr. 4, 1980)
47 IBLA 53 (Apr. 14, 1980)
48 IBLA 7 (May 27, 1980)
48 IBLA 166 (June 9, 1980)
48 IBLA 197 (June 9, 1980)
48 IBLA 258 (June 26, 1980)
49 IBLA 14 (July 15, 1980)
49 IBLA 106 (July 28, 1980)
49 IBLA 153 (July 30, 1980)
49 IBLA 234 (Aug. 12, 1980)
50 IBLA 50 (Sept. 15, 1980)
50 IBLA 259 (Sept. 30, 1980)
51 IBLA 53 (Oct. 31, 1980)
51 IBLA 125 (Nov. 20, 1980)
51 IBLA 217 (Dec. 10, 1980)
51 IBLA 356 (Dec. 29, 1980)

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sec. 188(b) ------52 IBLA 60, 88 I.D. 24 (1981)
52 IBLA 113 (Jan. 13, 1981)
52 IBLA 119, 88 I.D. 38 (1981)
52 IBLA 146 (Jan. 16, 1981)
52 IBLA 236 (Feb. 3, 1981)
52 IBLA 250 (Feb. 6, 1981)
52 IBLA 316 (Feb. 19, 1981)
53 IBLA 165 (Mar. 12, 1981)
53 IBLA 323, 88 I.D. 420 (1981)
53 IBLA 328 (Mar. 26, 1981)
53 IBLA 369 (Mar. 30, 1981)
54 IBLA 113 (Apr. 16, 1981)
55 IBLA 113 (June 3, 1981)
55 IBLA 386 (June 30, 1981)
56 IBLA 345 (Aug. 3, 1981)
57 IBLA 46 (Aug. 17, 1981)
57 IBLA 63 (Aug. 17, 1981)
58 IBLA 175, 88 I.D. 879 (1981)
59 IBLA 370, 88 I.D. 1012 (1981)
59 IBLA 387 (Nov. 10, 1981)
60 IBLA 142 (Nov. 24, 1981)
60 IBLA 181 (Nov. 25, 1981)
60 IBLA 224 (Nov. 30, 1981)
60 IBLA 328 (Dec. 18, 1981)
60 IBLA 366 (Dec. 22, 1981)
60 IBLA 375 (Dec. 22, 1981)
61 IBLA 71 (Dec. 31, 1981)
61 IBLA 226, 89 I.D. 26 (1982)
61 IBLA 287 (Feb. 2, 1982)
62 IBLA 13 (Feb. 23, 1982)
62 IBLA 87 (Feb. 25, 1982)
62 IBLA 180 (Mar. 8, 1982)
62 IBLA 278 (Mar. 16, 1982)
63 IBLA 26 (Mar. 26, 1982)
63 IBLA 296 (Apr. 23, 1982)
64 IBLA 121 (May 19, 1982)
64 IBLA 123 (May 19, 1982)
64 IBLA 274 (June 2, 1982)
64 IBLA 277 (June 3, 1982)
64 IBLA 383 (June 17, 1982)
65 IBLA 99 (June 24, 1982)
65 IBLA 204 (June 29, 1982)
65 IBLA 373 (July 20, 1982)
66 IBLA 304 (Aug. 24, 1982)
67 IBLA 43 (Sept. 8, 1982)
67 IBLA 59 (Sept. 9, 1982)
67 IBLA 242 (Sept. 24, 1982)
67 IBLA 357 (Oct. 6, 1982)
68 IBLA 21 (Oct. 19, 1982)
68 IBLA 80 (Oct. 21, 1982)
68 IBLA 92 (Oct. 22, 1982)
68 IBLA 170 (Nov. 4, 1982)
69 IBLA 62 (Nov. 29, 1982)
69 IBLA 263 (Dec. 21, 1982)
69 IBLA 327 (Dec. 28, 1982)
70 IBLA 97 (Jan. 11, 1983)
70 IBLA 313 (Jan. 28, 1983)
71 IBLA 72 (Feb. 22, 1983)
71 IBLA 224 (Mar. 17, 1983)
71 IBLA 336 (Mar. 28, 1983)
71 IBLA 339 (Mar. 28, 1983)
71 IBLA 390 (Mar. 29, 1983)
72 IBLA 5 (Apr. 4, 1983)
72 IBLA 18 (Apr. 4, 1983)
72 IBLA 34 (Apr. 6, 1983)
72 IBLA 39 (Apr. 6, 1983)
72 IBLA 83 (Apr. 13, 1983)
72 IBLA 211 (Apr. 21, 1983)

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sec. 188(b) ------72 IBLA 333 (Apr. 29, 1983)
72 IBLA 370 (May 4, 1983)
73 IBLA 67 (May 16, 1983)
73 IBLA 111 (May 23, 1983)
75 IBLA 195 (Aug. 22, 1983)
76 IBLA 1 (Sept. 6, 1983)
76 IBLA 177 (Sept. 30, 1983)
76 IBLA 322 (Oct. 19, 1983)
76 IBLA 376 (Oct. 25, 1983)
77 IBLA 63 (Nov. 7, 1983)
77 IBLA 214 (Nov. 22, 1983)
78 IBLA 251 (Jan. 10, 1984)
79 IBLA 70 (Feb. 13, 1984)
79 IBLA 148 (Feb. 23, 1984)
79 IBLA 218 (Feb. 29, 1984)
79 IBLA 228 (Feb. 29, 1984)
80 IBLA 123 (Apr. 3, 1984)
81 IBLA 167 (May 31, 1984)
81 IBLA 235 (June 6, 1984)
81 IBLA 381 (June 28, 1894)
82 IBLA 48 (July 11, 1984)
82 IBLA 126 (July 24, 1984)
82 IBLA 205 (Aug. 20, 1984)
82 IBLA 237 (Aug. 23, 1984)
84 IBLA 158 (Dec. 13, 1984)
84 IBLA 205 (Dec. 27, 1984)
188(c) ------45 IBLA 146 (Jan. 23, 1980)
46 IBLA 33 (Feb. 20, 1980)
46 IBLA 87 (Feb. 28, 1980)
46 IBLA 116 (Feb. 29, 1980)
46 IBLA 217 (Mar. 27, 1980)
46 IBLA 254 (Mar. 27, 1980)
46 IBLA 295 (Mar. 31, 1980)
46 IBLA 312 (Apr. 4, 1980)
47 IBLA 53 (Apr. 14, 1980)
47 IBLA 83 (Apr. 21, 1980)
47 IBLA 180 (May 7, 1980)
48 IBLA 7 (May 27, 1980)
48 IBLA 197 (June 9, 1980)
48 IBLA 258 (June 26, 1980)
49 IBLA 14 (July 15, 1980)
49 IBLA 106 (July 28, 1980)
49 IBLA 153 (July 30, 1990)
49 IBLA 234 (Aug. 12, 1980)
50 IBLA 50 (Sept. 15, 1980)
50 IBLA 249 (Sept. 30, 1980)
50 IBLA 256 (Sept. 30, 1980)
50 IBLA 259 (Sept. 30, 1980)
51 IBLA 53 (Oct. 31, 1980)
51 IBLA 125 (Nov. 20, 1980)
51 IBLA 217 (Dec. 10, 1980)
51 IBLA 271 (Dec. 15, 1980)
51 IBLA 356 (Dec. 29, 1980)
52 IBLA 101 (Jan. 12, 1981)
52 IBLA 113 (Jan. 13, 1981)
52 IBLA 119, 88 I.D. 38 (1981)
52 IBLA 146 (Jan. 16, 1981)
52 IBLA 236 (Feb. 3, 1981)
52 IBLA 250 (Feb. 6, 1981)
53 IBLA 149 (Mar. 11, 1981)
53 IBLA 165 (Mar. 12, 1981)
53 IBLA 323, 88 I.D. 420 (1981)
53 IBLA 328 (Mar. 26, 1981)
54 IBLA 113 (Apr. 16, 1981)
55 IBLA 113 (June 3, 1981)
55 IBLA 386 (June 30, 1981)
56 IBLA 345 (Aug. 3, 1981)
57 IBLA 46 (Aug. 17, 1981)

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sec. 188(c) --------57 IBLA 63 (Aug. 17, 1981)
57 IBLA 131 (Aug. 25, 1981)
58 IBLA 220 (Sept. 30, 1981)
59 IBLA 370, 88 I.D. 1012 (1981)
59 IBLA 387 (Nov. 10, 1981)
60 IBLA 21 (Nov. 16, 1981)
60 IBLA 181 (Nov. 25, 1981)
60 IBLA 224 (Nov. 30, 1981)
60 IBLA 328 (Dec. 18, 1981)
60 IBLA 375 (Dec. 22, 1981)
61 IBLA 71 (Dec. 31, 1981)
61 IBLA 226, 89 I.D. 26 (1982)
61 IBLA 287 (Feb. 2, 1982)
62 IBLA 13 (Feb. 23, 1982)
62 IBLA 87 (Feb. 25, 1982)
63 IBLA 26 (Mar. 26, 1982)
63 IBLA 287 (Apr. 22, 1982)
63 IBLA 2[illegible] (Apr. 23, 1982)
64 IBLA 119 (May 19, 1982)
64 IBLA 121 (May 19, 1982)
64 IBLA 123 (May 19, 1982)
64 IBLA 274 (June 2, 1982)
64 IBLA 277 (June 3, 1982)
64 IBLA 354 (June 15, 1982)
64 IBLA 383 (June 17, 1982)
65 IBLA 204 (June 29, 1982)
65 IBLA 373 (July 20, 1982)
66 IBLA 304 (Aug. 24, 1982)
67 IBLA 43 (Sept. 8, 1982)
67 IBLA 59 (Sept. 9, 1982)
67 IBLA 242 (Sept. 24, 1982)
67 IBLA 357 (Oct. 6, 1982)
68 IBLA 21 (Oct. 19, 1982)
68 IBLA 92 (Oct. 22, 1982)
68 IBLA 170 (Nov. 4, 1982)
69 IBLA 62 (Nov. 29, 1982)
69 IBLA 263 (Dec. 21, 1982)
69 IBLA 327 (Dec. 28, 1982)
70 IBLA 97 (Jan. 11, 1983)
70 IBLA 313 (Jan. 28, 1983)
71 IBLA 105 (Feb. 25, 1983)
71 IBLA 216 (Mar. 16, 1983)
71 IBLA 224 (Mar. 17, 1983)
71 IBLA 299 (Mar. 22, 1983)
71 IBLA 331 (Mar. 24, 1983)
71 IBLA 336 (Mar. 28, 1983)
71 IBLA 339 (Mar. 28, 1983)
71 IBLA 390 (Mar. 29, 1983)
72 IBLA 5 (Apr. 4, 1983)
72 IBLA 18 (Apr. 4, 1983)
72 IBLA 34 (Apr. 6, 1983)
72 IBLA 39 (Apr. 6, 1983)
72 IBLA 83 (Apr. 13, 1983)
72 IBLA 120 (Apr. 14, 1983)
72 IBLA 211 (Apr. 21, 1983)
72 IBLA 333 (Apr. 29, 1983)
72 IBLA 367 (May 3, 1983)
72 IBLA 370 (May 4, 1983)
73 IBLA 67 (May 16, 1983)
73 IBLA 101 (May 23, 1983)
73 IBLA 111 (May 23, 1983)
75 IBLA 195 (Aug. 22, 1983)
76 IBLA 1 (Sept. 6, 1983)
76 IBLA 177 (Sept. 30, 1983)
76 IBLA 376 (Oct. 25, 1983)
77 IBLA 63 (Nov. 7, 1983)
77 IBLA 214 (Nov. 22, 1983)

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sec. 188(c) --------79 IBLA 70 (Feb. 13, 1984)
79 IBLA 148 (Feb. 23, 1984)
79 IBLA 218 (Feb. 29, 1984)
79 IBLA 228 (Feb. 29, 1984)
81 IBLA 167 (May 31, 1984)
81 IBLA 235 (June 6, 1984)
81 IBLA 381 (June 28, 1984)
82 IBLA 48 (July 11, 1984)
82 IBLA 71 (July 16, 1984)
82 IBLA 126 (July 24, 1984)
82 IBLA 205 (Aug. 20, 1984)
82 IBLA 237 (Aug. 23, 1984)
84 IBLA 158 (Dec. 13, 1984)
84 IBLA 205 (Dec. 27, 1984)
188(d) --------47 IBLA 53 (Apr. 14, 1980)
63 IBLA 296 (Apr. 23, 1982)
72 IBLA 39 (Apr. 6, 1983)
79 IBLA 70 (Feb. 13, 1984)
79 IBLA 228 (Feb. 29, 1984)
81 IBLA 167 (May 31, 1984)
82 IBLA 71 (July 16, 1984)
82 IBLA 126 (July 24, 1984)
82 IBLA 205 (Aug. 20, 1984)
82 IBLA 237 (Aug. 23, 1984)
82 IBLA 262 (Aug. 29, 1984)
84 IBLA 158 (Dec. 13, 1984)
84 IBLA 205 (Dec. 27, 1984)
188(d)-(i) ---79 IBLA 148 (Feb. 23, 1984)
81 IBLA 381 (June 28, 1984)
188(d)-(j) ---81 IBLA 167 (May 31, 1984)
84 IBLA 205 (Dec. 27, 1984)
188(d)(1) ----81 IBLA 167 (May 31, 1984)
82 IBLA 71 (July 16, 1984)
84 IBLA 205 (Dec. 27, 1984)
188(d)(2) ----81 IBLA 167 (May 31, 1984)
84 IBLA 205 (Dec. 27, 1984)
188(d)(2)
(A)(1) -----82 IBLA 48 (July 11, 1984)
188(d)(2)(B)--82 IBLA 71 (July 16, 1984)
188(e) --------79 IBLA 228 (Feb. 29, 1984)
81 IBLA 167 (May 31, 1984)
82 IBLA 71 (July 16, 1984)
82 IBLA 205 (Aug. 20, 1984)
82 IBLA 237 (Aug. 23, 1984)
82 IBLA 262 (Aug. 29, 1984)
84 IBLA 158 (Dec. 13, 1984)
84 IBLA 205 (Dec. 27, 1984)
188(e)(2) ----81 IBLA 381 (June 28, 1984)
82 IBLA 71 (July 16, 1984)
188a ---------52 IBLA 60, 88 I.D. 24 (1981)
189 ----------45 IBLA 16 (Jan. 8, 1980)
45 IBLA 335 (Feb. 6, 1980)
47 IBLA 177 (May 7, 1980)
52 IBLA 27, 88 I.D. 7 (1981)
52 IBLA 60, 88 I.D. 24 (1981)
54 IBLA 190 (Apr. 22, 1981)
59 IBLA 192 (Oct. 27, 1981)
65 IBLA 99 (June 24, 1982)
66 IBLA 174 (Aug. 12, 1982)
71 IBLA 42 (Feb. 17, 1983)
78 IBLA 93 (Dec. 19, 1983)
79 IBLA 14 (Feb. 3, 1984)
M-36921, 87 I.D. 291 (1980)
M-36910 (Supp.), 88 I.D. 909 (1981)
M-36943, 89 I.D. 173 (1982)
191 ---------- M-36929, 87 I.D. 661 (1980)
M-36940, 91 I.D. 1 (1984)

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sec. 193 ----------48 IBLA 267, 87 I.D. 248 (1980)
51 IBLA 97, 87 I.D. 535 (1980)
58 IBLA 390, 88 I.D. 918 (1981)
68 IBLA 37, 89 I.D. 538 (1982)
M-36940, 91 I.D. 1 (1984)
201 ----------11 IBLA 249, 90 I.D. 329 (1983)
71 IBLA 96 (Feb. 24, 1983)
72 IBLA 110 (Apr. 14, 1983)
76 IBLA 124 (Sept. 26, 1983)
79 IBLA 58 (Feb. 9, 1984)
M-36935, 88 I.D. 538 (1981)
M-36945, 89 I.D. 610 (1982)
201-209 -------70 IBLA 386 (Feb. 9, 1983)
73 IBLA 328 (June 8, 1983)
76 IBLA 312 (Oct. 19, 1983)
78 IBLA 178 (Jan. 4, 1984)
81 IBLA 171 (May 31, 1984)
84 IBLA 131 (Dec. 11, 1984)
201(a) --------47 IBLA 193 (May 7, 1980)
60 IBLA 81 (Nov. 19, 1981)
M-36935, 88 I.D. 538 (1981)
201(a)(2)(A) - M-36939, 88 I.D. 1003 (1981)
201(a)(3)(A) -68 IBLA 96 (Oct. 26, 1982)
201(a)(3)(C) -68 IBLA 96 (Oct. 26, 1982)
201(a)(3)(E) -68 IBLA 96 (Oct. 26, 1982)
201(b) --------45 IBLA 159, 87 I.D. 14 (1980)
47 IBLA 193 (May 7, 1980)
53 IBLA 300 (Mar. 24, 1981)
55 IBLA 324 (June 26, 1981)
65 IBLA 359 (July 20, 1982)
68 IBLA 96 (Oct. 26, 1982)
72 IBLA 110 (Apr. 14, 1983)
76 IBLA 103 (Sept. 21, 1983)
79 IBLA 58 (Feb. 9, 1984)
M-36893 (Supp. II), 88 I.D. 247 (1981)
M-36910 (Supp.), 88 I.D. 909 (1981)
M-36943, 89 I.D. 173 (1982)
201(b)(1) -----69 IBLA 1 (Nov. 24, 1982)
72 IBLA 110 (Apr. 14, 1983)
201(b)(3) -----69 IBLA 1 (Nov. 24, 1982)
202 ---------- M-36945, 89 I.D. 610 (1982)
202(c) -------- M-36945, 89 I.D 610 (1982)
203 ----------84 IBLA 77 (Dec. 5, 1984)
M-36939, 88 I.D. 1003 (1981)
207 ---------- 8 IBIA 90, 87 I.D. 201 (1980)
50 IBLA 252 (Sept. 30, 1980)
63 IBLA 363 (Apr. 29, 1982)
65 IBLA 147 (June 29, 1982)
65 IBLA 323 (July 15, 1982)
68 IBLA 96 (Oct. 26, 1982)
69 IBLA 114 (Nov. 30, 1982)
70 IBLA 386 (Feb. 9, 1983)
71 IBLA 13 (Feb. 10, 1983)
71 IBLA 92 (Feb. 24, 1983)
71 IBLA 129 (Mar. 7, 1983)
73 IBLA 328 (June 8, 1983)
74 IBLA 389 (July 29, 1983)
76 IBLA 124 (Sept. 26, 1983)
76 IBLA 312 (Oct. 19, 1983)
76 IBLA 387, 90 I.D. 470 (1983)
78 IBLA 178 (Jan. 4, 1984)
80 IBLA 180 (Apr. 16, 1984)
81 IBLA 81 (May 24, 1984)
81 IBLA 171 (May 31, 1984)
84 IBLA 131 (Dec. 11, 1984)
M-36939, 88 I.D. 1003 (1981)

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sec. 207(a) --------65 IBLA 147 (June 29, 1982)
68 IBLA 96 (Oct. 26, 1982)
70 IBLA 386 (Feb. 9, 1983)
73 IBLA 328 (June 8, 1983)
74 IBLA 389 (July 29, 1983)
76 IBLA 312 (Oct. 19, 1983)
76 IBLA 387, 90 I.D. 470 (1983)
78 IBLA 178 (Jan. 4, 1984)
80 IBLA 180 (Apr. 16, 1984)
81 IBLA 81 (May 24, 1984)
81 IBLA 171 (May 31, 1984)
84 IBLA 131 (Dec. 11, 1984)
M-36939, 88 I.D. 1003 (1981)
M-36943, 89 I.D. 173 (1982)
207(b) --------68 IBLA 96 (Oct. 26, 1982)
74 IBLA 339 (July 29, 1983)
207(c) --------68 IBLA 96 (Oct. 26, 1982)
76 IBLA 312 (Oct. 19, 1983)
78 IBLA 178 (Jan. 4, 1984)
208-1 -------- M-36935, 88 I.D. 538 (1981)
208-1(a) ------ M-36935, 88 I.D. 538 (1981)
208-2 -------- M-36945, 89 I.D. 610 (1982)
209 ----------61 IBLA 47 (Dec. 31, 1981)
67 IBLA 260 (Sept. 27, 1982)
68 IBLA 96 (Oct. 26, 1982)
69 IBLA 39 (Nov. 29, 1982)
70 IBLA 13 (Jan. 28, 1983)
70 IBLA 386 (Feb. 9, 1983)
73 IBLA 295 (June 7, 1983)
74 IBLA 389 (July 29, 1983)
76 IBLA 124 (Sept. 26, 1983)
76 IBLA 312 (Oct. 19, 1983)
80 IBLA 180 (Apr. 16, 1984)
80 IBLA 251 (May 2, 1984)
84 IBLA 131 (Dec. 11, 1984)
M-36939, 88 I.D. 1003 (1981)
M-36943, 89 I.D. 173 (1982)
211 ----------58 IBLA 305 (Oct. 14, 1981)
68 IBLA 96 (Oct. 26, 1982)
74 IBLA 323 (July 28, 1983)
82 IBLA 14 (July 5, 1984)
M-36935, 88 I.D. 538 (1981)
211(a) --------57 IBLA 333 (Sept. 1, 1981)
58 IBLA 305 (Oct. 14, 1981)
67 IBLA 297 (Sept. 29, 1982)
75 IBLA 128 (Aug. 15, 1983)
80 IBLA 28 (Mar. 28, 1984)
82 IBLA 14 (July 5, 1984)
211(b) --------58 IBLA 305 (Oct. 14, 1981)
67 IBLA 297 (Sept. 29, 1982)
75 IBLA 128 (Aug. 15, 1983)
75 IBLA 232 (Aug. 23, 1983)
80 IBLA 28 (Mar. 28, 1984)
82 IBLA 14 (July 5, 1984)
M-36893 (Supp. II), 88 I.D. 247 (1981)
M-36943, 89 I.D. 173 (1982)
211(c) --------81 IBLA 78 (May 23, 1984)
M-36893 (Supp. II), 88 I.D. 247 (1981)
212 ---------- M-36939, 88 I.D. 1003 (1981)
219(a) --------47 IBLA 121 (Apr. 28, 1980)
221-223 ------ M-36943, 89 I.D. 173 (1982)
221(b) -------- M-36893 (Supp. II), 88 I.D. 247 (1981)
223 ----------50 IBLA 249 (Sept. 30, 1980)
M-36943, 89 I.D. 173 (1982)
226 ----------45 IBLA 16 (Jan. 8, 1980)
45 IBLA 225 (Jan. 31, 1980)

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sec. 226 ——————47 IBLA 1 (Apr. 10, 1980)
48 IBLA 64 (May 29, 1980)
48 IBLA 166 (June 9, 1980)
49 IBLA 176 (July 30, 1980)
50 IBLA 38 (Sept. 9, 1980)
51 IBLA 19 (Oct. 28, 1980)
51 IBLA 149 (Nov. 26, 1980)
52 IBLA 60, 88 I.D. 24 (1981)
53 IBLA 98 (Mar. 4, 1981)
54 IBLA 36, 88 I.D. 437 (1981)
55 IBLA 232, 88 I.D. 601 (1981)
56 IBLA 289 (July 28, 1981)
57 IBLA 310 (Aug. 31, 1981)
58 IBLA 329 (Oct. 16, 1981)
59 IBLA 130 (Oct. 26, 1981)
59 IBLA 179 (Oct. 27, 1981)
59 IBLA 226 (Oct. 28, 1981)
59 IBLA 348 (Nov. 5, 1981)
61 IBLA 43 (Dec. 31, 1981)
61 IBLA 47 (Dec. 31, 1981)
61 IBLA 65 (Dec. 31, 1981)
61 IBLA 178 (Jan. 26, 1982)
61 IBLA 226, 89 I.D. 26 (1982)
63 IBLA 300 (Apr. 26, 1982)
63 IBLA 369 (Apr. 30, 1982)
64 IBLA 83 (May 10, 1982)
64 IBLA 175 (May 26, 1982)
64 IBLA 234 (May 27, 1982)
64 IBLA 357 (June 15, 1982)
65 IBLA 104 (June 24, 1982)
65 IBLA 268 (July 9, 1982)
66 IBLA 372 (Aug. 27, 1982)
67 IBLA 67 (Sept. 10, 1982)
67 IBLA 103 (Sept. 15, 1982)
67 IBLA 112 (Sept. 15, 1982)
67 IBLA 193 (Sept. 22, 1982)
68 IBLA 16 (Oct. 19, 1982)
68 IBLA 87 (Oct. 22, 1982)
68 IBLA 90 (Oct. 22, 1982)
68 IBLA 240 (Nov. 16, 1982)
69 IBLA 39 (Nov. 29, 1982)
69 IBLA 135 (Dec. 8, 1982)
69 IBLA 255 (Dec. 21, 1982)
69 IBLA 313 (Dec. 27, 1982)
70 IBLA 18 (Jan. 6, 1983)
70 IBLA 52 (Jan. 10, 1983)
70 IBLA 254 (Jan. 25, 1983)
70 IBLA 259 (Jan. 26, 1983)
70 IBLA 319 (Jan. 31, 1983)
71 IBLA 19 (Feb. 15, 1983)
71 IBLA 23 (Feb. 15, 1983)
71 IBLA 224 (Mar. 17, 1983)
72 IBLA 34 (Apr. 6, 1983)
73 IBLA 73 (May 17, 1983)
73 IBLA 86 (May 18, 1983)
73 IBLA 268 (June 7, 1983)
73 IBLA 295 (June 7, 1983)
73 IBLA 308 (June 7, 1983)
73 IBLA 353 (June 14, 1983)
74 IBLA 159 (July 12, 1983)
75 IBLA 4 (Aug. 2, 1983)
75 IBLA 171 (Aug. 19, 1983)
75 IBLA 186 (Aug. 22, 1983)
75 IBLA 195 (Aug. 22, 1983)
75 IBLA 209 (Aug. 22, 1983)
76 IBLA 1 (Sept. 6, 1983)
76 IBLA 146 (Sept. 26, 1983)
76 IBLA 151, 90 I.D. 432 (1983)
76 IBLA 262 (Oct. 17, 1983)

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sec. 226 ——————77 IBLA 35 (Oct. 31, 1983)
77 IBLA 63 (Nov. 7, 1983)
77 IBLA 147 (Nov. 15, 1983)
77 IBLA 164 (Nov. 17, 1983)
77 IBLA 181 (Nov. 18, 1983)
78 IBLA 78 (Dec. 16, 1983)
78 IBLA 139 (Dec. 29, 1983)
78 IBLA 172 (Dec. 30, 1983)
79 IBLA 1 (Feb. 2, 1984)
80 IBLA 4 (Mar. 27, 1984)
80 IBLA 140 (Apr. 6, 1984)
80 IBLA 324 (May 8, 1984)
81 IBLA 160 (May 31, 1984)
81 IBLA 162 (May 31, 1984)
81 IBLA 167 (May 31, 1984)
81 IBLA 235 (June 6, 1984)
82 IBLA 48 (July 11, 1984)
82 IBLA 71 (July 16, 1984)
82 IBLA 86 (July 17, 1984)
82 IBLA 205 (Aug. 20, 1984)
82 IBLA 216 (Aug. 22, 1984)
82 IBLA 336 (Sept. 12, 1984)
82 IBLA 389 (Sept. 13, 1984)
84 IBLA 89 (Dec. 6, 1984)
M-36921, 87 I.D. 291 (1980)
M-36935, 88 I.D. 538 (1981)
M-36939, 88 I.D. 1003 (1981)
M-36940, 91 I.D. 1 (1984)
226(a) ——————45 IBLA 4 (Jan. 8, 1980)
45 IBLA 225 (Jan. 31, 1980)
46 IBLA 123 (Feb. 29, 1980)
46 IBLA 385 (Apr. 10, 1980)
49 IBLA 134 (July 28, 1980)
49 IBLA 176 (July 30, 1980)
54 IBLA 326 (Apr. 30, 1981)
57 IBLA 319 (Sept. 1, 1981)
58 IBLA 294 (Oct. 14, 1981)
62 IBLA 93, 89 I.D. 82 (1982)
62 IBLA 206 (Mar. 10, 1982)
65 IBLA 210 (June 30, 1982)
65 IBLA 271 (July 12, 1982)
66 IBLA 23 (July 23, 1982)
66 IBLA 141 (Aug. 10, 1982)
67 IBLA 38 (Sept. 8, 1982)
68 IBLA 128 (Oct. 28, 1982)
68 IBLA 167 (Oct. 29, 1982)
70 IBLA 324 (Jan. 31, 1983)
71 IBLA 116 (Mar. 2, 1983)
71 IBLA 328 (Mar. 23, 1983)
71 IBLA 360 (Mar. 28, 1983)
71 IBLA 374 (Mar. 28, 1983)
73 IBLA 203 (May 27, 1983)
76 IBLA 395 (Oct. 27, 1983)
79 IBLA 81 (Feb. 16, 1984)
226(b) ——————45 IBLA 16 (Jan. 8, 1980)
45 IBLA 84 (Jan. 17, 1980)
45 IBLA 99 (Jan. 17, 1980)
46 IBLA 53 (Feb. 20, 1980)
46 IBLA 389 (Apr. 10, 1980)
48 IBLA 64 (May 29, 1980)
48 IBLA 246 (June 17, 1980)
49 IBLA 33 (July 21, 1980)
50 IBLA 361 (Oct. 16, 1980)
51 IBLA 66 (Oct. 31, 1980)
51 IBLA 149 (Nov. 26, 1980)
51 IBLA 181 (Dec. 2, 1980)
51 IBLA 217 (Dec. 10, 1980)
53 IBLA 130 (Mar. 5, 1981)

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sec. 226(b) ------54 IBLA 111 (Apr. 15, 1981)
54 IBLA 375, 88 I.D. 550 (1981)
59 IBLA 359 (Nov. 9, 1981)
60 IBLA 246 (Dec. 4, 1981)
60 IBLA 383 (Dec. 23, 1981)
60 IBLA 391 (Dec. 23, 1981)
62 IBLA 93, 89 I.D. 82 (1982)
63 IBLA 111 (Apr. 2, 1982)
63 IBLA 369 (Apr. 30, 1982)
66 IBLA 23 (July 23, 1982)
66 IBLA 84 (July 29, 1982)
66 IBLA 141 (Aug. 10, 1982)
67 IBLA 1 (Sept. 1, 1982)
67 IBLA 38 (Sept. 8, 1982)
67 IBLA 103 (Sept. 15, 1982)
67 IBLA 348 (Oct. 5, 1982)
67 IBLA 351 (Oct. 5, 1982)
68 IBLA 231 (Nov. 16, 1982)
69 IBLA 259 (Dec. 21, 1982)
70 IBLA 155 (Jan. 13, 1983)
70 IBLA 294 (Jan. 27, 1983)
70 IBLA 324 (Jan. 31, 1983)
70 IBLA 377 (Feb. 8, 1983)
71 IBLA 39 (Feb. 16, 1983)
71 IBLA 122 (Mar. 7, 1983)
71 IBLA 134 (Mar. 9, 1983)
71 IBLA 149 (Mar. 9, 1983)
71 IBLA 241 (Mar. 21, 1983)
71 IBLA 250 (Mar. 21, 1983)
71 IBLA 253 (Mar. 21, 1983)
71 IBLA 302 (Mar. 22, 1983)
71 IBLA 328 (Mar. 23, 1983)
72 IBLA 242 (Apr. 27, 1983)
72 IBLA 329 (Apr. 29, 1983)
72 IBLA 390 (May 5, 1983)
73 IBLA 22 (May 9, 1983)
73 IBLA 176 (May 26, 1983)
73 IBLA 203 (May 27, 1983)
73 IBLA 253 (June 2, 1983)
73 IBLA 258 (June 7, 1983)
73 IBLA 340 (June 10, 1983)
73 IBLA 377 (June 15, 1983)
74 IBLA 180 (July 18, 1983)
74 IBLA 256 (July 22, 1983)
75 IBLA 11 (Aug. 2, 1983)
75 IBLA 121 (Aug. 15, 1983)
75 IBLA 133 (Aug. 15, 1983)
75 IBLA 216 (Aug. 23, 1983)
75 IBLA 247 (Aug. 24, 1983)
75 IBLA 349 (Aug. 31, 1983)
76 IBLA 195 (Oct. 6, 1983)
78 IBLA 24 (Dec. 12, 1983)
78 IBLA 323 (Jan. 24, 1984)
79 IBLA 90 (Feb. 16, 1984)
79 IBLA 252 (Mar. 5, 1984)
80 IBLA 145 (Apr. 6, 1984)
80 IBLA 245 (Apr. 30, 1984)
81 IBLA 19 (May 15, 1984)
81 IBLA 194 (June 1, 1984)
81 IBLA 349 (June 25, 1984)
82 IBLA 31 (July 6, 1984)
82 IBLA 64 (July 12, 1984)
82 IBLA 129 (July 25, 1984)
82 IBLA 132 (July 27, 1984)
82 IBLA 182 (Aug. 13, 1984)
82 IBLA 294 (Aug. 31, 1984)
84 IBLA 92 (Dec. 6, 1984)
84 IBLA 368 (Jan. 24, 1985)

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sec. 226(c) ------45 IBLA 208 (Jan. 30, 1980)
47 IBLA 396 (May 22, 1980)
48 IBLA 338 (July 3, 1980)
50 IBLA 173 (Sept. 30, 1980)
52 IBLA 27, 88 I.D. 7 (1981)
52 IBLA 360 (Feb. 19, 1981)
53 IBLA 112, 88 I.D. 347 (1981)
54 IBLA 190 (Apr. 22, 1981)
55 IBLA 215 (June 18, 1981)
56 IBLA 211 (July 22, 1981)
56 IBLA 231 (July 22, 1981)
56 IBLA 295 (July 28, 1981)
56 IBLA 378 (Aug. 3, 1981)
57 IBLA 32 (Aug. 6, 1981)
58 IBLA 25 (Sept. 16, 1981)
58 IBLA 38 (Sept. 17, 1981)
59 IBLA 226 (Oct. 28, 1981)
60 IBLA 25 (Nov. 16, 1981)
60 IBLA 107 (Nov. 20, 1981)
61 IBLA 90 (Dec. 31, 1981)
61 IBLA 199 (Jan. 26, 1982)
61 IBLA 213 (Jan. 28, 1982)
61 IBLA 270 (Jan. 29, 1982)
62 IBLA 93, 89 I.D. 82 (1982)
62 IBLA 220 (Mar. 10, 1982)
62 IBLA 228 (Mar. 10, 1982)
62 IBLA 296 (Mar. 16, 1982)
62 IBLA 336 (Mar. 24, 1982)
62 IBLA 384 (Mar. 24, 1982)
63 IBLA 192 (Apr. 8, 1982)
63 IBLA 300 (Apr. 26, 1982)
63 IBLA 313 (Apr. 27, 1982)
64 IBLA 92 (May 12, 1982)
65 IBLA 38 (June 22, 1982)
65 IBLA 340 (July 16, 1982)
66 IBLA 23 (July 23, 1982)
66 IBLA 49 (July 27, 1982)
66 IBLA 219 (Aug. 16, 1982)
66 IBLA 260 (Aug. 17, 1982)
66 IBLA 276 (Aug. 18, 1982)
66 IBLA 313 (Aug. 24, 1982)
67 IBLA 36 (Sept. 8, 1982)
67 IBLA 364 (Oct. 7, 1982)
68 IBLA 215 (Nov. 10, 1982)
68 IBLA 243 (Nov. 16, 1982)
68 IBLA 308 (Nov. 19, 1982)
68 IBLA 311 (Nov. 19, 1982)
68 IBLA 313 (Nov. 19, 1982)
68 IBLA 364 (Nov. 22, 1982)
68 IBLA 381 (Nov. 23, 1982)
69 IBLA 54 (Nov. 29, 1982)
69 IBLA 154 (Dec. 13, 1982)
69 IBLA 169 (Dec. 13, 1982)
69 IBLA 175 (Dec. 14, 1982)
69 IBLA 199 (Dec. 15, 1982)
69 IBLA 285 (Dec. 21, 1982)
69 IBLA 296 (Dec. 23, 1982)
69 IBLA 357 (Jan. 3, 1983)
69 IBLA 371 (Jan. 3, 1983)
70 IBLA 21 (Jan. 6, 1983)
70 IBLA 25 (Jan. 6, 1983)
70 IBLA 183, 90 I.D. 3 (1983)
70 IBLA 361 (Feb. 3, 1983)
70 IBLA 373 (Feb. 4, 1983)
71 IBLA 23 (Feb. 15, 1983)
71 IBLA 29 (Feb. 16, 1983)
71 IBLA 42 (Feb. 17, 1983)
71 IBLA 349 (Mar. 28, 1983)
71 IBLA 374 (Mar. 29, 1983)

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sec. 226(c) ——— 72 IBLA 45 (Apr. 7, 1983)
73 IBLA 36 (May 9, 1983)
73 IBLA 120 (May 23, 1983)
73 IBLA 234 (May 31, 1983)
73 IBLA 241 (June 1, 1983)
73 IBLA 244 (June 2, 1983)
73 IBLA 291 (June 7, 1983)
73 IBLA 350 (June 14, 1983)
74 IBLA 31 (June 24, 1983)
74 IBLA 185 (July 18, 1983)
74 IBLA 192 (July 18, 1983)
74 IBLA 260 (July 22, 1983)
74 IBLA 345 (July 28, 1983)
74 IBLA 357 (July 28, 1983)
74 IBLA 383 (July 29, 1983)
75 IBLA 113 (Aug. 12, 1983)
75 IBLA 133 (Aug. 15, 1983)
76 IBLA 186 (Oct. 3, 1983)
76 IBLA 200 (Oct. 6, 1983)
76 IBLA 262 (Oct. 17, 1983)
76 IBLA 287 (Oct. 18, 1983)
76 IBLA 344 (Oct. 24, 1983)
77 IBLA 12 (Oct. 31, 1983)
77 IBLA 15 (Oct. 31, 1983)
77 IBLA 150 (Nov. 15, 1983)
77 IBLA 199 (Nov. 18, 1983)
77 IBLA 232 (Nov. 29, 1983)
78 IBLA 24 (Dec. 12, 1983)
78 IBLA 239 (Jan. 10, 1984)
79 IBLA 259 (Mar. 6, 1984)
79 IBLA 271 (Mar. 12, 1984)
80 IBLA 135 (Apr. 6, 1984)
80 IBLA 174 (Apr. 13, 1984)
81 IBLA 49 (May 18, 1984)
81 IBLA 290 (June 12, 1984)
81 IBLA 347 (June 25, 1984)
81 IBLA 370 (June 28, 1984)
82 IBLA 48 (July 11, 1984)
82 IBLA 59 (July 11, 1984)
82 IBLA 75 (July 17, 1984)
84 IBLA 197 (Dec. 24, 1984)
226(d) ——— 47 IBLA 53 (Apr. 14, 1980)
49 IBLA 106 (July 28, 1980)
51 IBLA 125 (Nov. 20, 1980)
52 IBLA 316 (Feb. 19, 1981)
63 IBLA 296 (Apr. 23, 1982)
226(e) ——— 45 IBLA 183 (Jan. 30, 1980)
46 IBLA 285 (Mar. 27, 1980)
46 IBLA 295 (Mar. 31, 1980)
47 IBLA 125 (Apr. 29, 1980)
50 IBLA 9 (Sept. 5, 1980)
52 IBLA 308 (Feb. 10, 1981)
53 IBLA 204 (Mar. 18, 1981)
55 IBLA 167 (June 9, 1981)
57 IBLA 131 (Aug. 25, 1981)
58 IBLA 234 (Oct. 6, 1981)
61 IBLA 47 (Dec. 31, 1981)
62 IBLA 93, 89 I.D. 82 (1982)
63 IBLA 296 (Apr. 23, 1982)
63 IBLA 339 (Apr. 28, 1982)
64 IBLA 153 (May 24, 1982)
67 IBLA 246, 89 I.D. 480 (1982)
68 IBLA 191 (Nov. 9, 1982)
69 IBLA 39 (Nov. 29, 1982)
70 IBLA 313 (Jan. 28, 1983)
72 IBLA 39 (Apr. 6, 1983)
74 IBLA 228 (July 19, 1983)
76 IBLA 380 (Oct. 25, 1983)

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sec. 226(e) ——— 77 IBLA 32 (Oct. 31, 1983)
77 IBLA 164 (Nov. 17, 1983)
80 IBLA 161, 91 I.D. 181 (1984)
80 IBLA 286, 91 I.D. 203 (1984)
M-36943, 89 I.D. 173 (1982)
226(f) ——— 45 IBLA 105 (Jan. 17, 1980)
47 IBLA 125 (Apr. 29, 1980)
50 IBLA 9 (Sept. 5, 1980)
50 IBLA 150 (Sept. 26, 1980)
51 IBLA 239 (Dec. 15, 1980)
52 IBLA 379 (Feb. 19, 1981)
58 IBLA 234 (Oct. 6, 1981)
61 IBLA 47 (Dec. 31, 1981)
66 IBLA 200 (Aug. 13, 1982)
69 IBLA 39 (Nov. 29, 1982)
70 IBLA 313 (Jan. 28, 1983)
70 IBLA 354 (Feb. 3, 1983)
71 IBLA 220 (Mar. 17, 1983)
71 IBLA 237 (Mar. 18, 1983)
74 IBLA 180 (July 18, 1983)
74 IBLA 292 (July 27, 1983)
226(g) ——— 80 IBLA 286, 91 I.D. 203 (1984)
226(j) ——— 45 IBLA 183 (Jan. 30, 1980)
46 IBLA 295 (Mar. 31, 1980)
47 IBLA 53 (Apr. 14, 1980)
47 IBLA 125 (Apr. 29, 1980)
49 IBLA 230 (Aug. 12, 1980)
50 IBLA 9 (Sept. 5, 1980)
53 IBLA 204 (Mar. 18, 1981)
59 IBLA 92 (Oct. 27, 1981)
60 IBLA 181 (Nov. 25, 1981)
64 IBLA 153 (May 24, 1982)
66 IBLA 200 (Aug. 13, 1982)
67 IBLA 80 (Sept. 10, 1982)
67 IBLA 246, 89 I.D. 480 (1982)
68 IBLA 80 (Oct. 21, 1982)
68 IBLA 191 (Nov. 9, 1982)
71 IBLA 220 (Mar. 17, 1983)
71 IBLA 224 (Mar. 17, 1983)
77 IBLA 32 (Oct. 31, 1983)
78 IBLA 102 (Dec. 20, 1983)
80 IBLA 161, 91 I.D. 181 (1984)
80 IBLA 286, 91 I.D. 203 (1984)
82 IBLA 108 (July 24, 1984)
M-36921, 87 I.D. 291 (1980)
M-36927, 87 I.D. 616 (1980)
226(k) ——— A-26604, 90 I.D. 223 (1983)
226-1 ——— 63 IBLA 296 (Apr. 23, 1982)
226-1(d) ——— 72 IBLA 39 (Apr. 6, 1983)
226-2 ——— 57 IBLA 90 (Aug. 24, 1981)
78 IBLA 360 (Jan. 27, 1984)
229a ——— 50 IBLA 154 (Sept. 30, 1980)
241 ——— 63 IBLA 369 (Apr. 30, 1982)
73 IBLA 295 (June 7, 1983)
78 IBLA 68 (Dec. 16, 1983)
M-36939, 88 I.D. 1003 (1981)
241(a) ——— M-36935, 88 I.D. 538 (1981)
241(b) ——— A-26604, 90 I.D. 223 (1983)
241(c) ——— 66 IBLA 23 (July 23, 1982)
261 ——— 45 IBLA 367 (Feb. 7, 1980)
73 IBLA 210 (May 27, 1983)
76 IBLA 111 (Sept. 21, 1983)
261-262 ——— 64 IBLA 183, 89 I.D. 262 (1982)
M-36935, 88 I.D. 538 (1981)
261-263 ——— 76 IBLA 111 (Sept. 21, 1983)
262 ——— 45 IBLA 367 (Feb. 7, 1980)
48 IBLA 106 (May 30, 1980)

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sec. 262 ----------54 IBLA 77 (Apr. 14, 1981)
54 IBLA 85 (Apr. 14, 1981)
73 IBLA 210 (May 27, 1983)
76 IBLA 68 (Sept. 21, 1983)
76 IBLA 111 (Sept. 21, 1983)
84 IBLA 353 (Jan. 22, 1985)
M-36935, 88 I.D. 538 (1981)
M-36939, 88 I.D. 1003 (1981)
M-36943, 89 I.D. 173 (1982)
266 ----------64 IBLA 285 (June 4, 1982)
266-2 ---------64 IBLA 279 (June 4, 1982)
271 ---------- M-36943, 89 I.D. 173 (1982)
271-276 ------60 IBLA 191 (Nov. 27, 1981)
M-36893 (Supp. II), 88 I.D. 247 (1981)
274 ---------- M-36893 (Supp. II), 88 I.D. 247 (1981)
281 ----------45 IBLA 335 (Feb. 6, 1980)
281-282 ------ M-36935, 88 I.D. 538 (1981)
281-287 ------48 IBLA 329 (July 3, 1980)
69 IBLA 317 (Dec. 27, 1982)
71 IBLA 9 (Feb. 10, 1983)
M-36893 (Supp. II), 88 I.D. 247 (1981)
282 ----------54 IBLA 77 (Apr. 14, 1981)
M-36943, 89 I.D. 173 (1982)
283 ----------69 IBLA 114 (Nov. 30, 1982)
69 IBLA 317 (Dec. 27, 1982)
71 IBLA 9 (Feb. 10, 1983)
M-36935, 88 I.D. 538 (1981)
M-36943, 89 I.D. 173 (1982)
284 ---------- M-36893 (Supp. II), 88 I.D. 247 (1981)
301 ----------62 IBLA 384 (Mar. 24, 1982)
68 IBLA 142, 89 I.D. 561 (1982)
301-306 ------50 IBLA 173 (Sept. 30, 1980)
57 IBLA 163 (Aug. 27, 1981)
62 IBLA 384 (Mar. 24, 1982)
65 IBLA 22 (June 21, 1982)
68 IBLA 142, 89 I.D. 561 (1982)
303 ----------68 IBLA 142, 89 I.D. 561 (1982)
309 ----------78 IBLA 178 (Jan. 4, 1984)
351 ----------57 IBLA 319 (Sept. 1, 1981)
61 IBLA 8 (Dec. 29, 1981)
67 IBLA 112 (Sept. 15, 1982)
68 IBLA 92 (Oct. 22, 1982)
69 IBLA 279 (Dec. 21, 1982)
73 IBLA 61 (May 12, 1983)
73 IBLA 295 (June 7, 1983)
74 IBLA 242 (July 19, 1983)
74 IBLA 256 (July 22, 1983)
81 IBLA 337 (June 21, 1984)
84 IBLA 331 (Jan. 11, 1985)
351-358 ------52 IBLA 308 (Feb. 10, 1981)
351-359 ------45 IBLA 40 (Jan. 14, 1980)
46 IBLA 27 (Feb. 20, 1980)
46 IBLA 331 (Apr. 4, 1980)
52 IBLA 296 (Feb. 9, 1981)
53 IBLA 79 (Mar. 2, 1981)
54 IBLA 162 (Apr. 21, 1981)
55 IBLA 280 (June 25, 1981)
61 IBLA 8 (Dec. 29, 1981)
61 IBLA 175 (Jan. 26, 1982)
64 IBLA 4 (May 3, 1982)
64 IBLA 170 (May 26, 1982)
66 IBLA 307 (Aug. 24, 1982)
68 IBLA 130 (Oct. 28, 1982)
68 IBLA 181 (Nov. 8, 1982)

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70 IBLA 154 (Jan. 18, 1983)
70 IBLA 183, 90 I.D. 3 (1983)
71 IBLA 187 (Mar. 10, 1983)
71 IBLA 315 (Mar. 22, 1983)
72 IBLA 248 (Apr. 27, 1983)
72 IBLA 355 (Apr. 29, 1983)
73 IBLA 73 (May 17, 1983)
73 IBLA 250 (June 2, 1983)
74 IBLA 12 (June 24, 1983)
74 IBLA 242 (July 19, 1983)
75 IBLA 290 (Aug. 26, 1983)
77 IBLA 137 (Nov. 15, 1983)
77 IBLA 144 (Nov. 15, 1983)
78 IBLA 345 (Jan. 25, 1984)
78 IBLA 387 (Jan. 31, 1984)
79 IBLA 86 (Feb. 16, 1984)
79 IBLA 198 (Feb. 28, 1984)
81 IBLA 148 (May 31, 1984)
82 IBLA 389 (Sept. 13, 1984)
351 et seq. --55 IBLA 280 (June 25, 1981)
63 IBLA 119 (Apr. 2, 1982)
70 IBLA 150 (Jan. 18, 1983)
77 IBLA 137 (Nov. 15, 1983)
352 ----------45 IBLA 40 (Jan. 14, 1980)
45 IBLA 398 (Feb. 13, 1980)
46 IBLA 27 (Feb. 20, 1980)
46 IBLA 290 (Mar. 31, 1980)
46 IBLA 331 (Apr. 4, 1980)
46 IBLA 389 (Apr. 10, 1980)
53 IBLA 79 (Mar. 2, 1981)
54 IBLA 38, 88 I.D. 437 (1981)
54 IBLA 162 (Apr. 21, 1981)
55 IBLA 280 (June 25, 1981)
57 IBLA 146 (Aug. 25, 1981)
57 IBLA 293 (Aug. 31, 1981)
57 IBLA 319 (Sept. 1, 1981)
64 IBLA 4 (May 3, 1982)
66 IBLA 307 (Aug. 24, 1982)
68 IBLA 132 (Oct. 28, 1982)
68 IBLA 237 (Nov. 16, 1982)
69 IBLA 279 (Dec. 21, 1982)
71 IBLA 19 (Feb. 15, 1983)
71 IBLA 187 (Mar. 10, 1983)
72 IBLA 248 (Apr. 27, 1983)
72 IBLA 355 (Apr. 29, 1983)
73 IBLA 73 (May 17, 1983)
73 IBLA 250 (June 2, 1983)
73 IBLA 295 (June 7, 1983)
73 IBLA 353 (June 14, 1983)
74 IBLA 12 (June 24, 1983)
74 IBLA 242 (July 19, 1983)
75 IBLA 133 (Aug. 15, 1983)
75 IBLA 183 (Aug. 22, 1983)
75 IBLA 234 (Aug. 23, 1983)
75 IBLA 290 (Aug. 26, 1983)
76 IBLA 327 (Oct. 19, 1983)
77 IBLA 126 (Nov. 15, 1983)
77 IBLA 144 (Nov. 15, 1983)
77 IBLA 376 (Dec. 7, 1983)
78 IBLA 232 (Jan. 9, 1984)
78 IBLA 345 (Jan. 25, 1984)
79 IBLA 86 (Feb. 16, 1984)
79 IBLA 198 (Feb. 28, 1984)
81 IBLA 347 (June 25, 1984)
82 IBLA 172 (Aug. 7, 1984)
82 IBLA 334 (Sept. 12, 1984)
84 IBLA 331 (Jan. 11, 1985)
84 IBLA 394 (Jan. 28, 1985)

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sec. 354 ----------49 IBLA 153 (July 30, 1980)
62 IBLA 162 (Mar. 8, 1982)
68 IBLA 132 (Oct. 28, 1982)
74 IBLA 256 (July 22, 1983)
359 ----------61 IBLA 175 (Jan. 26, 1982)
68 IBLA 130 (Oct. 28, 1982)
74 IBLA 15 (June 24, 1983)
79 IBLA 14 (Feb. 3, 1984)
404 ----------65 IBLA 391 (July 23, 1982)
501 ----------52 IBLA 83 (Jan. 9, 1981)
60 IBLA 267 (Dec. 17, 1981)
501-505 -------60 IBLA 267 (Dec. 17, 1981)
501(a) --------59 IBLA 1, 88 I.D. 925 (1981)
69 IBLA 137 (Dec. 9, 1982)
502 ---------- M-36893 (Supp. II), 88 I.D. 247 (1981)
521 ----------52 IBLA 83 (Jan. 9, 1981)
60 IBLA 267 (Dec. 17, 1981)
521-531 -------45 IBLA 367 (Feb. 7, 1980)
52 IBLA 83 (Jan. 9, 1981)
60 IBLA 267 (Dec. 17, 1981)
A-26604, 90 I.D. 223 (1983)
M-36893 (Supp. II), 88 I.D. 247 (1981)
521 et seq. -- M-36935, 88 I.D. 538 (1981)
M-36937, 88 I.D. 813 (1981)
521(a) --------59 IBLA 1, 88 I.D. 925 (1981)
69 IBLA 137 (Dec. 9, 1982)
524-541 -------45 IBLA 367 (Feb. 7, 1980)
525 ----------60 IBLA 267 (Dec. 17, 1981)
530 ---------- M-36937, 88 I.D. 813 (1981)
541 ---------- M-36935, 88 I.D. 538 (1981)
541a ----------59 IBLA 1, 88 I.D. 925 (1981)
541c ---------- M-36935, 88 I.D. 538 (1981)
601 ----------45 IBLA 127 (Jan. 23, 1980)
46 IBLA 12 (Feb. 20, 1980)
54 IBLA 309 (Apr. 30, 1981)
59 IBLA 155 (Oct. 26, 1981)
62 IBLA 187 (Mar. 9, 1982)
64 IBLA 183, 89 I.D. 262 (1982)
66 IBLA 182 (Aug. 13, 1982)
68 IBLA 359 (Nov. 22, 1982)
73 IBLA 128 (May 23, 1983)
73 IBLA 165 (May 24, 1983)
601-603 -------45 IBLA 127 (Jan. 23, 1980)
601-604 ------- 4 ANCAB 173, 87 I.D. 123 (1980)
79 IBLA 76 (Feb. 16, 1984)
601-615 -------47 IBLA 183 (May 7, 1980)
601 et seq. --64 IBLA 183, 89 I.D. 262 (1982)
M-36937, 88 I.D. 813 (1981)
602 ----------64 IBLA 183, 89 I.D. 262 (1982)
73 IBLA 165 (May 24, 1983)
602(a) --------79 IBLA 76 (Feb. 16, 1984)
611 ----------45 IBLA 127 (Jan. 23, 1980)
46 IBLA 221 (Mar. 27, 1980)
47 IBLA 183 (May 7, 1980)
49 IBLA 73 (July 22, 1980)
49 IBLA 360, 87 I.D. 386 (1980)
51 IBLA 250 (Dec. 15, 1980)
52 IBLA 256 (Feb. 6, 1981)
54 IBLA 95 (Apr. 15, 1981)
54 IBLA 281 (Apr. 28, 1981)
56 IBLA 61 (July 10, 1981)
56 IBLA 247 (July 24, 1981)
57 IBLA 167, 88 I.D. 772 (1981)
58 IBLA 188 (Sept. 28, 1981)
59 IBLA 1, 88 I.D. 925 (1981)
64 IBLA 183, 89 I.D. 262 (1982)

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sec. 611 ----------66 IBLA 182 (Aug. 13, 1982)
66 IBLA 316 (Aug. 25, 1982)
71 IBLA 178 (Mar. 10, 1983)
78 IBLA 155 (Dec. 29, 1983)
79 IBLA 20 (Feb. 3, 1984)
81 IBLA 271 (June 8, 1984)
611-615 -------55 IBLA 340 (June 26, 1981)
612 ----------53 IBLA 75 (Mar. 2, 1981)
55 IBLA 324 (June 26, 1981)
55 IBLA 340 (June 26, 1981)
59 IBLA 252 (Oct. 29, 1981)
64 IBLA 27 (May 6, 1982)
71 IBLA 268 (Mar. 22, 1983)
78 IBLA 46, 90 I.D. 550 (1983)
81 IBLA 41 (May 17, 1984)
82 IBLA 155 (July 31, 1984)
612(b) --------75 IBLA 153, 90 I.D. 382 (1983)
613 ----------53 IBLA 75 (Mar. 2, 1981)
59 IBLA 1, 88 I.D. 925 (1981)
59 IBLA 252 (Oct. 29, 1981)
67 IBLA 64 (Sept. 9, 1982)
74 IBLA 56, 90 I.D. 262 (1983)
76 IBLA 143 (Sept. 26, 1983)
78 IBLA 46, 90 I.D. 550 (1983)
78 IBLA 112 (Dec. 22, 1983)
615 ----------78 IBLA 46, 90 I.D. 550 (1983)
621 ----------45 IBLA 14 (Jan. 8, 1980)
45 IBLA 232 (Feb. 4, 1980)
51 IBLA 30 (Oct. 30, 1980)
51 IBLA 283 (Dec. 15, 1980)
52 IBLA 56 (Jan. 6, 1981)
54 IBLA 257 (Apr. 28, 1981)
55 IBLA 42 (May 28, 1981)
61 IBLA 376 (Feb. 17, 1982)
66 IBLA 310 (Aug. 24, 1982)
66 IBLA 390 (Aug. 31, 1982)
69 IBLA 145 (Dec. 9, 1982)
69 IBLA 143 (Dec. 13, 1982)
72 IBLA 48 (Apr. 12, 1983)
75 IBLA 168 (Aug. 19, 1983)
78 IBLA 81 (Dec. 16, 1983)
78 IBLA 349 (Jan. 25, 1984)
79 IBLA 279 (Mar. 16, 1984)
621-625 -------45 IBLA 232 (Feb. 4, 1980)
48 IBLA 206 (June 16, 1980)
54 IBLA 67 (Apr. 10, 1981)
54 IBLA 149, 88 I.D. 453 (1981)
64 IBLA 23 (May 6, 1982)
66 IBLA 310 (Aug. 24, 1982)
69 IBLA 290 (Dec. 23, 1982)
74 IBLA 205 (July 18, 1983)
78 IBLA 81 (Dec. 16, 1983)
82 IBLA 155 (July 31, 1984)
621(a) --------48 IBLA 206 (June 16, 1980)
54 IBLA 67 (Apr. 10, 1981)
54 IBLA 257 (Apr. 28, 1981)
56 IBLA 73 (July 15, 1981)
61 IBLA 376 (Feb. 17, 1982)
75 IBLA 168 (Aug. 19, 1983)
77 IBLA 380 (Dec. 7, 1983)
78 IBLA 349 (Jan. 25, 1984)
621(b) --------54 IBLA 67 (Apr. 10, 1981)
54 IBLA 149, 88 I.D. 453 (1981)
56 IBLA 73 (July 15, 1981)
59 IBLA 1, 88 I.D. 925 (1981)
61 IBLA 376 (Feb. 17, 1982)
69 IBLA 290 (Dec. 23, 1982)
74 IBLA 205 (July 18, 1983)

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sec. 621(b) ——— 78 IBLA 81 (Dec. 16, 1983)
82 IBLA 155 (July 31, 1984)
623 ——— 46 IBLA 62 (Feb. 22, 1980)
54 IBLA 67 (Apr. 10, 1981)
54 IBLA 149, 88 I.D. 453 (1981)
57 IBLA 5 (Aug. 5, 1981)
64 IBLA 23 (May 6, 1982)
66 IBLA 310 (Aug. 24, 1982)
69 IBLA 290 (Dec. 23, 1982)
78 IBLA 81 (Dec. 16, 1983)
82 IBLA 155 (July 31, 1984)
624 ——— 56 IBLA 73 (July 15, 1981)
701 ——— 53 IBLA 125 (Mar. 5, 1981)
58 IBLA 224 (Sept. 30, 1981)
63 IBLA 279 (Apr. 20, 1982)
63 IBLA 306 (Apr. 26, 1982)
77 IBLA 266 (Nov. 30, 1983)
701-709 ——— 46 IBLA 335 (Apr. 4, 1980)
51 IBLA 291 (Dec. 17, 1980)
63 IBLA 279 (Apr. 20, 1982)
702 ——— 63 IBLA 279 (Apr. 20, 1982)
63 IBLA 306 (Apr. 26, 1982)
77 IBLA 266 (Nov. 30, 1983)
703 ——— 63 IBLA 306 (Apr. 26, 1982)
707 ——— 53 IBLA 125 (Mar. 5, 1981)
801 ——— 71 IBLA 96 (Feb. 24, 1983)
818 ——— 75 IBLA 168 (Aug. 19, 1983)
863 ——— M-36935, 88 I.D. 538 (1981)
877(h) ——— M-36935, 88 I.D. 538 (1981)
982-984 ——— 51 IBLA 3 (Oct. 28, 1980)
987 ——— 51 IBLA 3 (Oct. 28, 1980)
1001 ——— 48 IBLA 400 (July 11, 1980)
50 IBLA 4 (Sept. 5, 1980)
70 IBLA 1 (Jan. 6, 1983)
78 IBLA 128 (Dec. 29, 1983)
78 IBLA 139 (Dec. 29, 1983)
1001-1025 ——— 45 IBLA 127 (Jan. 23, 1980)
55 IBLA 249, 88 I.D. 609 (1981)
67 IBLA 304, 89 I.D. 496 (1982)
70 IBLA 65 (Jan. 10, 1983)
82 IBLA 188 (Aug. 16, 1984)
1001 et seq. — M-36935, 88 I.D. 538 (1981)
M-36937, 88 I.D. 813 (1981)
1001(c) ——— M-36937, 88 I.D. 813 (1981)
1001(e) ——— 47 IBLA 1 (Apr. 10, 1980)
50 IBLA 4 (Sept. 5, 1980)
82 IBLA 188 (Aug. 16, 1984)
1002 ——— 63 IBLA 263 (Apr. 19, 1982)
71 IBLA 371 (Mar. 28, 1983)
81 IBLA 153, 91 I.D. 238 (1984)
82 IBLA 188 (Aug. 16, 1984)
1002-1003 ——— 63 IBLA 159 (Apr. 6, 1982)
66 IBLA 57 (July 29, 1982)
70 IBLA 5 (Jan. 6, 1983)
81 IBLA 231 (June 6, 1984)
1003 ——— 47 IBLA 1 (Apr. 10, 1980)
50 IBLA 4 (Sept. 5, 1980)
67 IBLA 304, 89 I.D. 496 (1982)
70 IBLA 1 (Jan. 6, 1983)
70 IBLA 221 (Jan. 24, 1983)
81 IBLA 360 (June 27, 1984)
82 IBLA 188 (Aug. 16, 1984)
M-36937, 88 I.D. 813 (1981)
1003(a) ——— 67 IBLA 304, 89 I.D. 496 (1982)
1003(f) ——— 67 IBLA 304, 89 I.D. 496 (1982)
1004 ——— 53 IBLA 149 (Mar. 11, 1981)
1004(c) ——— 53 IBLA 149 (Mar. 11, 1981)
54 IBLA 329 (May 5, 1981)
61 IBLA 265 (Jan. 29, 1982)

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sec. 1011 ——— 81 IBLA 153, 91 I.D. 238 (1984)
1014(b) ——— 67 IBLA 187 (Sept. 22, 1982)
75 IBLA 125 (Aug. 15, 1983)
82 IBLA 188 (Aug. 16, 1984)
1015 ——— 70 IBLA 221 (Jan. 24, 1983)
1016 ——— 55 IBLA 249, 88 I.D. 609 (1981)
1020(b) ——— 67 IBLA 304, 89 I.D. 496 (1982)
M-36937, 88 I.D. 813 (1981)
1025 ——— M-36935, 88 I.D. 538 (1981)
1201 ——— 78 IBLA 27 (Dec. 13, 1983)
2 IBSMA 45, 87 I.D. 138 (1980)
1201-1328 ——— 49 IBLA 307 (Aug. 20, 1980)
73 IBLA 328 (June 8, 1983)
74 IBLA 48 (June 28, 1983)
74 IBLA 100 (June 30, 1983)
74 IBLA 170 (July 13, 1983)
76 IBLA 73, 90 I.D. 421 (1983)
78 IBLA 205 (Jan. 5, 1984)
79 IBLA 14 (Feb. 3, 1984)
79 IBLA 315 (Mar. 21, 1984)
79 IBLA 34, 91 I.D. 108 (1984)
79 IBLA 350, 91 I.D. 159 (1984)
81 IBLA 171 (May 31, 1984)
81 IBLA 374 (June 28, 1984)
81 IBLA 385 (June 28, 1984)
84 IBLA 236, 92 I.D. 1 (1985)
84 IBLA 383, 92 I.D. 68 (1985)
2 IBSMA 9, 87 I.D. 11 (1980)
2 IBSMA 34, 87 I.D. 114 (1980)
2 IBSMA 38, 87 I.D. 119 (1980)
2 IBSMA 56 (Apr. 23, 1980)
2 IBSMA 63, 87 I.D. 176 (1980)
2 IBSMA 70, 87 I.D. 172 (1980)
2 IBSMA 90, 87 I.D. 186 (1980)
2 IBSMA 110, 87 I.D. 207 (1980)
2 IBSMA 118, 87 I.D. 245 (1980)
2 IBSMA 158, 87 I.D. 324 (1980)
2 IBSMA 165, 87 I.D. 327 (1980)
2 IBSMA 173, 87 I.D. 331 (1980)
2 IBSMA 180, 87 I.D. 333 (1980)
2 IBSMA 189, 87 I.D. 347 (1980)
2 IBSMA 209, 87 I.D. 377 (1980)
2 IBSMA 215, 87 I.D. 380 (1980)
2 IBSMA 222, 87 I.D. 383 (1980)
2 IBSMA 238, 87 I.D. 414 (1980)
2 IBSMA 249, 87 I.D. 416 (1980)
2 IBSMA 261, 87 I.D. 430 (1980)
2 IBSMA 270, 87 I.D. 434 (1980)
2 IBSMA 277, 87 I.D. 437 (1980)
2 IBSMA 298, 87 I.D. 446 (1980)
2 IBSMA 316, 87 I.D. 521 (1980)
2 IBSMA 325, 87 I.D. 554 (1980)
2 IBSMA 332, 87 I.D. 557 (1980)
2 IBSMA 359, 87 I.D. 579 (1980)
2 IBSMA 372, 87 I.D. 584 (1980)
2 IBSMA 399, 87 I.D. 645 (1980)
3 IBSMA 9, 88 I.D. 266 (1981)
3 IBSMA 17, 88 I.D. 269 (1981)
3 IBSMA 26, 88 I.D. 273 (1981)
3 IBSMA 83, 88 I.D. 448 (1981)
3 IBSMA 92, 88 I.D. 456 (1981)
3 IBSMA 100, 88 I.D. 474 (1981)
3 IBSMA 107, 88 I.D. 477 (1981)
3 IBSMA 111, 88 I.D. 492 (1981)
3 IBSMA 118, 88 I.D. 495 (1981)
3 IBSMA 124, 88 I.D. 498 (1981)
3 IBSMA 128, 88 I.D. 500 (1981)
3 IBSMA 136, 88 I.D. 503 (1981)
3 IBSMA 165, 88 I.D. 581 (1981)

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sec. 1201-1328 ----- 3 IBSMA 175, 88 I.D. 613 (1981)
3 IBSMA 182, 88 I.D. 616 (1981)
3 IBSMA 188, 88 I.D. 652 (1981)
3 IBSMA 200, 88 I.D. 657 (1981)
3 IBSMA 207, 88 I.D. 660 (1981)
3 IBSMA 218, 88 I.D. 672 (1981)
3 IBSMA 228, 88 I.D. 685 (1981)
3 IBSMA 241, 88 I.D. 737 (1981)
3 IBSMA 252, 88 I.D. 742 (1981)
3 IBSMA 287, 88 I.D. 824 (1981)
3 IBSMA 292, 88 I.D. 826 (1981)
3 IBSMA 338, 88 I.D. 861 (1981)
3 IBSMA 383, 88 I.D. 1122 (1981)
4 IBSMA 19, 89 I.D. 87 (1982)
4 IBSMA 24, 89 I.D. 460 (1982)
4 IBSMA 29 (Mar. 15, 1982)
4 IBSMA 51, 89 I.D. 313 (1982)
4 IBSMA 101, 89 I.D. 378 (1982)
4 IBSMA 140, 89 I.D. 467 (1982)
4 IBSMA 156, 89 I.D. 475 (1982)
4 IBSMA 179, 89 I.D. 594 (1982)
4 IBSMA 185, 89 I.D. 604 (1982)
4 IBSMA 211, 89 I.D. 624 (1982)
4 IBSMA 219, 89 I.D. 628 (1982)
4 IBSMA 227, 89 I.D. 632 (1982)
5 IBSMA 1, 90 I.D. 1 (1983)
5 IBSMA 6, 90 I.D. 49 (1983)
5 IBSMA 32, 90 ID. 174 (1983)
5 IBSMA 44, 90 I.D. 181 (1983)
1201(c) ------- 2 IBSMA 359, 87 I.D. 579 (1980)
5 IBSMA 32, 90 I.D. 174 (1983)
1201(e) ------- 2 IBSMA 359, 87 I.D. 579 (1980)
1201(f) -------84 IBLA 371 (Jan. 25, 1985)
2 IBSMA 359, 87 I.D. 579 (1980)
1201(j) ------- 2 IBSMA 359, 87 I.D. 579 (1980)
1202 ---------- 2 IBSMA 45, 87 I.D. 138 (1980)
3 IBSMA 322, 88 I.D. 851 (1981)
4 IBSMA 4 (Feb. 24, 1982)
1202(a) -------81 IBLA 374 (June 28, 1984)
2 IBSMA 359, 87 I.D. 579 (1980)
5 IBSMA 32, 90 I.D. 174 (1983)
1202(e) ------- 3 IBSMA 241, 88 I.D. 737 (1981)
1202(h) ------- 3 IBSMA 338, 88 I.D. 861 (1981)
1202(i) ------- 3 IBSMA 44, 88 I.D. 394 (1981)
1202(m) ------- 2 IBSMA 359, 87 I.D. 579 (1980)
1232(a) -------72 IBLA 337 (Apr. 29, 1983)
1251 ----------81 IBLA 374 (June 28, 1984)
2 IBSMA 70, 87 I.D. 172 (1980)
1251(a)(B) ---- 3 IBSMA 260, 88 I.D. 745 (1981)
1251(b) -------81 IBLA 374 (June 28, 1984)
1252 ---------- 2 IBSMA 189, 87 I.D. 347 (1980)
1252(a) ------- 2 IBSMA 38, 87 I.D. 119 (1980)
2 IBSMA 308, 87 I.D. 494 (1980)
2 IBSMA 359, 87 I.D. 579 (1980)
1252(b) ------- 2 IBSMA 70, 87 I.D. 172 (1980)
2 IBSMA 284, 87 I.D. 439 (1980)
2 IBSMA 341, 87 I.D. 570 (1980)
3 IBSMA 200, 88 I.D. 657 (1981)
1252(c) ------- 2 IBSMA 45, 87 I.D. 138 (1980)
2 IBSMA 70, 87 I.D. 172 (1980)
2 IBSMA 284, 87 I.D. 439 (1980)
2 IBSMA 308, 87 I.D. 494 (1980)
3 IBSMA 200, 88 I.D. 657 (1981)
1252(d) -------77 IBLA 283, 90 I.D. 496 (1983)
HI IBLA 209 (June 5, 1984)
1252(e) ------- 2 IBSMA 70, 87 I.D. 172 (1980)
1253 ----------77 IBLA 283, 90 I.D. 496 (1983)
81 IBLA 374 (June 28, 1984)

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sec. 1255 ----------81 IBLA 374 (June 28, 1984)
2 IBSMA 110, 87 I.D. 207 (1980)
1255(b) ------- 2 IBSMA 180, 87 I.D. 333 (1980)
2 IBSMA 341, 87 I.D. 570 (1980)
1260 ---------- 4 IBSMA 69, 89 I.D. 331 (1982)
1260(d) ------- 3 IBSMA 200, 88 I.D. 657 (1981)
1261(a)(3) ---- 4 IBSMA 19, 89 I.D. 87 (1982)
1263(b) ------- 4 IBSMA 4 (Feb. 24, 1982)
1263-1264 ----- 4 IBSMA 4 (Feb. 24, 1982)
4 IBSMA 69, 89 I.D. 331 (1982)
1264(c) ------- 4 IBSMA 4 (Feb. 24, 1982)
1265(b)(3) ----76 IBLA 129, 90 I.D. 425 (1983)
2 IBSMA 341, 87 I.D. 570 (1980)
1265(b)(10) --- 3 IBSMA 207, 88 I.D. 660 (1981)
4 IBSMA 101, 89 I.D. 378 (1982)
4 IBSMA 227, 89 I.D. 632 (1982)
1265(b)(21) --- 3 IBSMA 207, 88 I.D. 660 (1981)
1265(b)(24) --- 3 IBSMA 207, 88 I.D. 660 (1981)
1265(d)(2) ----76 IBLA 129, 90 I.D. 425 (1983)
2 IBSMA 341, 87 I.D. 570 (1980)
1265(e) -------76 IBLA 129, 90 I.D. 425 (1983)
2 IBSMA 341, 87 I.D. 570 (1980)
1265(e)(1) ---- 2 IBSMA 341, 87 I.D. 570 (1980)
1267(a) ------- 3 IBSMA 72, 88 I.D. 406 (1981)
1267(b)(3) ---- 2 IBSMA 261, 87 I.D. 430 (1980)
3 IBSMA 377, 88 I.D. 1112 (1981)
1267(c)(2) ----77 IBLA 283, 90 I.D. 496 (1983)
1267(h) ------- 3 IBSMA 44, 88 I.D. 394 (1981)
4 IBSMA 69, 89 I.D. 331 (1982)
1268 ---------- 2 IBSMA 17 (Feb. 15, 1980)
2 IBSMA 147, 87 I.D. 319 (1980)
2 IBSMA 406, 87 I.D. 669 (1980)
3 IBSMA 31 (Feb. 23, 1981)
3 IBSMA 36 (Mar. 9, 1981)
1268(c) ------- 2 IBSMA 17 (Feb. 15, 1980)
2 IBSMA 32 (Mar. 13, 1980)
2 IBSMA 147, 87 I.D. 319 (1980)
2 IBSMA 233 (Sept. 10, 1980)
2 IBSMA 247 (Sept. 23, 1980)
2 IBSMA 248 (Sept. 23, 1980)
3 IBSMA 16 (Feb. 19, 1981)
3 IBSMA 70 (Mar. 24, 1981)
3 IBSMA 79 (Apr. 15, 1981)
3 IBSMA 81 (Apr. 13, 1981)
3 IBSMA 136, 88 I.D. 503 (1981)
3 IBSMA 163 (May 29, 1981)
3 IBSMA 215 (July 23, 1981)
3 IBSMA 311 (Sept. 21, 1981)
1268(h) ------- 2 IBSMA 316, 87 I.D. 521 (1980)
3 IBSMA 136, 88 I.D. 503 (1981)
1270 ---------- 4 IBSMA 69, 89 I.D. 331 (1982)
1270(a) ------- 4 IBSMA 4 (Feb. 24, 1982)
1271 ----------77 IBLA 283, 90 I.D. 496 (1983)
2 IBSMA 395, 87 I.D. 643 (1980)
3 IBSMA 32, 88 I.D. 344 (1981)
4 IBSMA 113, 89 I.D. 409 (1982)
1271(a) -------82 IBLA 37, 91 I.D. 247 (1984)
2 IBSMA 70, 87 I.D. 172 (1980)
2 IBSMA 372, 87 I.D. 584 (1980)
1271(a)(1) ----77 IBLA 283, 90 I.D. 496 (1983)
81 IBLA 374 (June 28, 1984)
2 IBSMA 118, 87 I.D. 245 (1980)
2 IBSMA 158, 87 I.D. 324 (1980)
2 IBSMA 261, 87 I.D. 430 (1980)
3 IBSMA 322, 88 I.D. 851 (1981)
1271(a)(2) ----84 IBLA 371 (Jan. 25, 1985)
2 IBSMA 81, 87 I.D. 168 (1980)
3 IBSMA 165, 88 I.D. 581 (1981)

TITLE 30: Continued

sec. 1271(a)(3) ----84 IBLA 371 (Jan. 25, 1985)
2 IBSMA 9, 87 I.D. 11 (1980)
2 IBSMA 25, 87 I.D. 61 (1980)
2 IBSMA 45, 87 I.D. 138 (1980)
2 IBSMA 81, 87 I.D. 168 (1980)
2 IBSMA 96, 87 I.D. 196 (1980)
2 IBSMA 118, 87 I.D. 245 (1980)
2 IBSMA 158, 87 I.D. 324 (1980)
2 IBSMA 238, 87 I.D. 414 (1980)
2 IBSMA 249, 87 I.D. 416 (1980)
2 IBSMA 308, 87 I.D. 494 (1980)
2 IBSMA 372, 87 I.D. 584 (1980)
2 IBSMA 382, 87 I.D. 589 (1980)
2 IBSMA 406, 87 I.D. 669 (1980)
3 IBSMA 128, 88 I.D. 500 (1981)
3 IBSMA 145, 88 I.D. 508 (1981)
3 IBSMA 215 (July 23, 1981)
3 IBSMA 218, 88 I.D. 672 (1981)
3 IBSMA 241, 88 I.D. 737 (1981)
3 IBSMA 287, 88 I.D. 824 (1981)
4 IBSMA 51, 89 I.D. 313 (1982)
1271(a)(4) ---- 4 IBSMA 69, 89 I.D. 331 (1982)
1271(a)(5) ----84 IBLA 371 (Jan. 25, 1985)
2 IBSMA 38, 87 I.D. 119 (1980)
2 IBSMA 125, 87 I.D. 304 (1980)
2 IBSMA 372, 87 I.D. 584 (1980)
3 IBSMA 100, 88 I.D. 474 (1981)
3 IBSMA 218, 88 I.D. 672 (1981)
3 IBSMA 241, 88 I.D. 737 (1981)
4 IBSMA 207 (Dec. 17, 1982)
5 IBSMA 32, 90 I.D. 174 (1983)
1271(b) -------81 IBLA 374 (June 28, 1984)
1271(c) ------- 2 IBSMA 70, 87 I.D. 172 (1980)
4 IBSMA 192 (Dec. 10, 1982)
1272(e) -------76 IBLA 73, 90 I.D. 421 (1983)
84 IBLA 371 (Jan. 25, 1985)
3 IBSMA 118, 88 I.D. 495 (1981)
3 IBSMA 154, 88 I.D. 570 (1981)
5 IBSMA 19, 90 I.D. 54 (1983)
1272(e)(4) ---- 2 IBSMA 270, 87 I.D. 434 (1980)
2 IBSMA 308, 87 I.D. 494 (1980)
1272(e)(5) ---- 2 IBSMA 382, 87 I.D. 589 (1980)
4 IBSMA 35, 89 I.D. 113 (1982)
5 IBSMA 19, 90 I.D. 54 (1983)
1273(a) -------68 IBLA 96 (Oct. 26, 1982)
1273(c) -------68 IBLA 96 (Oct. 26, 1982)
4 IBSMA 4 (Feb. 24, 1982)
1274 ----------80 IBLA 200, 91 I.D. 197 (1984)
1275 ---------- 2 IBSMA 406, 87 I.D. 669 (1980)
3 IBSMA 145, 88 I.D. 508 (1981)
4 IBSMA 185, 89 I.D. 604 (1982)
1275(a) -------84 IBLA 371 (Jan. 25, 1985)
4 IBSMA 4 (Feb. 24, 1982)
1275(a)(1) ----84 IBLA 371 (Jan. 25, 1985)
2 IBSMA 147, 87 I.D. 319 (1980)
1275(a)(2) ---- 4 IBSMA 179, 89 I.D. 594 (1982)
1275(b) -------78 IBLA 27 (Dec. 13, 1983)
2 IBSMA 341, 87 I.D. 570 (1980)
1275(c) -------84 IBLA 371 (Jan. 25, 1985)
2 IBSMA 63, 87 I.D. 176 (1980)
3 IBSMA 218, 88 I.D. 672 (1981)
3 IBSMA 338, 88 I.D. 861 (1981)
3 IBSMA 357, 88 I.D. 892 (1981)
4 IBSMA 35, 89 I.D. 113 (1982)
1275(c)(3) ---- 3 IBSMA 218, 88 I.D. 672 (1981)
1275(e) -------84 IBLA 236, 92 I.D. 1 (1985)
2 IBSMA 370 (Nov. 25, 1980)
3 IBSMA 44, 88 I.D. 394 (1981)

TITLE 30: Continued

sec. 1276 ---------- 4 IBSMA 4 (Feb. 24, 1982)
1277 ----------74 IBLA 389 (July 29, 1983)
1278 ----------78 IBLA 27 (Dec. 13, 1983)
78 IBLA 205 (Jan. 5, 1984)
4 IBSMA 24, 89 I.D. 460 (1982)
1278(2) -------74 IBLA 170 (July 13, 1983)
78 IBLA 205 (Jan. 5, 1984)
2 IBSMA 118, 87 I.D. 245 (1980)
2 IBSMA 359, 87 I.D. 579 (1980)
4 IBSMA 24, 89 I.D. 460 (1982)
4 IBSMA 219, 89 I.D. 628 (1982)
5 IBSMA 32, 90 I.D. 174 (1983)
1278(3) ------- 3 IBSMA 92, 88 I.D. 456 (1981)
1291 ---------- 3 IBSMA 44, 88 I.D. 394 (1981)
1291(2) -------76 IBLA 129, 90 I.D. 425 (1983)
2 IBSMA 341, 87 I.D. 570 (1980)
1291(4) -------68 IBLA 96 (Oct. 26, 1982)
4 IBSMA 4 (Feb. 24, 1982)
1291(5) ------- 4 IBSMA 4 (Feb. 24, 1982)
1291(6) ------- 4 IBSMA 4 (Feb. 24, 1982)
1291(8) ------- 3 IBSMA 207, 88 I.D. 660 (1981)
1291(13) ------78 IBLA 205 (Jan. 5, 1984)
4 IBSMA 211, 89 I.D. 624 (1982)
1291(15) ------ 4 IBSMA 211, 89 I.D. 624 (1982)
1291(17) ------ 4 IBSMA 211, 89 I.D. 624 (1982)
1291(18) ------ 4 IBSMA 211, 89 I.D. 624 (1982)
1291(19) ----- 80 IBLA 200, 91 I.D. 197 (1984)
4 IBSMA 211, 89 I.D. 624 (1982)
1291(22) ------ 3 IBSMA 92, 88 I.D. 456 (1981)
1291(25) ------ 4 IBSMA 4 (Feb. 24, 1982)
1291(27) ------68 IBLA 96 (Oct. 26, 1982)
4 IBSMA 4 (Feb. 24, 1982)
1291(28) ------68 IBLA 96 (Oct. 26, 1982)
76 IBLA 73, 90 I.D. 421 (1983)
78 IBLA 27 (Dec. 13, 1983)
79 IBLA 34, 91 I.D. 108 (1984)
80 IBLA 200, 91 I.D. 197 (1984)
84 IBLA 383, 92 I.D. 68 (1985)
2 IBSMA 284, 87 I.D. 439 (1980)
3 IBSMA 260, 88 I.D. 745 (1981)
3 IBSMA 322, 88 I.D. 851 (1981)
4 IBSMA 4 (Feb. 24, 1982)
4 IBSMA 24, 89 I.D. 460 (1982)
1291(28)(A) --- 3 IBSMA 207, 88 I.D. 660 (1981)
1291(28)(B) --- 2 IBSMA 284, 87 I.D. 439 (1980)
3 IBSMA 207, 88 I.D. 660 (1981)
4 IBSMA 29 (Mar. 15, 1982)
4 IBSMA 51, 89 I.D. 313 (1982)
4 IBSMA 219, 89 I.D. 628 (1982)
1292(a) ------- 3 IBSMA 383, 88 I.D. 1122 (1981)
1293 ----------80 IBLA 200, 91 I.D. 197 (1984)
1293(a) -------80 IBLA 200, 91 I.D. 197 (1984)
1294 ---------- 2 IBSMA 70, 87 I.D. 172 (1980)
1501-1542 -----55 IBLA 249, 88 I.D. 609 (1981)

TITLE 31:

sec. 203 ---------- IBCA-1382-8-80 (Dec. 10, 1980)
483a ---------45 IBLA 119 (Jan. 23, 1980)
46 IBLA 35 (Feb. 20, 1980)
50 IBLA 190, 87 I.D. 473 (1980)
52 IBLA 105 (Jan. 12, 1981)
55 IBLA 210 (June 18, 1981)
M-36942, 88 I.D. 1090 (1981)
484 ---------- M-36942, 88 I.D. 1090 (1981)
627 ---------- M-36942, 88 I.D. 1090 (1981)
628 ---------- M-36942, 88 I.D. 1090 (1981)
686 ---------- M-36942, 88 I.D. 1090 (1981)

TITLE 31: Continued

sec. 701 ---------- 9 IBIA 254, 89 I.D. 196 (1982)
725q ---------- M-36942, 88 I.D. 1090 (1981)
725q-1 ---------- M-36942, 88 I.D. 1090 (1981)
951-953 ---------- 9 IBIA 151, 89 I.D. 49 (1982)
9701 ----------84 IBLA 119 (Dec. 10, 1984)

TITLE 33:

sec. 591 ----------55 IBLA 51 (May 29, 1981)
1151-1175 ---------- 3 IBSMA 383, 88 I.D. 1122 (1981)
1251 ----------62 IBLA 299 (Mar. 18, 1982)
68 IBLA 96 (Oct. 26, 1982)
75 IBLA 16, 90 I.D. 352 (1983)
1251 et seq. -- M-36915 (Supp. I), 90 I.D. 255 (1983)
1251(a) ----------62 IBLA 299 (Mar. 18, 1982)
1311 ---------- 2 IBSMA 249, 87 I.D. 416 (1980)
M-36915 (Supp. I), 90 I.D. 255 (1983)
1344 ---------- M-36915 (Supp. I), 90 I.D. 255 (1983)
5 OHA 232 (Jan. 12, 1984)
1344(r) ---------- M-36915 (Supp. I), 90 I.D. 255 (1983)
1362(14) ----------72 IBLA 261, 90 I.D. 189 (1983)
1365(d) ----------84 IBLA 236, 92 I.D. 1 (1985)
1415(g)(4) ----84 IBLA 236, 92 I.D. 1 (1985)

TITLE 39:

sec. 101 ----------76 IBLA 99 (Sept. 21, 1983)

TITLE 40:

sec. 258a ----------55 IBLA 51 (May 29, 1981)
276a-276a-7 -- IBCA-1550-2-82, 89 I.D. 365 (1982)
IBCA-1795, 91 I.D. 350 (1984)
276a-7 ---------- IBCA-1795, 91 I.D. 350 (1984)
327 et seq. -- IBCA-1466-6-81 (Sept. 21, 1982)
IBCA-1536-11-81 (Sept. 22, 1982)
401 ----------54 IBLA 162 (Apr. 21, 1981)
403(a) ----------54 IBLA 162 (Apr. 21, 1981)
408 ----------54 IBLA 162 (Apr. 21, 1981)
471-493 ----------54 IBLA 309 (Apr. 30, 1981)
471-544 ----------10 IBIA 90, 89 I.D. 441 (1982)
471 et seq. -- 4 ANCAB 173, 87 I.D. 123 (1980)
4 ANCAB 207 (Apr. 21, 1980)
472(g) ----------54 IBLA 309 (Apr. 30, 1981)
481 ---------- IBCA-1434-2-81, 88 I.D. 979 (1981)
483 ---------- 6 ANCAB 203, 88 I.D. 1047 (1981)
483(a)(2) ----10 IBIA 90, 89 I.D. 441 (1982)
484 ----------56 IBLA 151 (July 20, 1981)
484(e)(1) ----53 IBLA 79 (Mar. 2, 1981)
484(k)(2) ----53 IBLA 79 (Mar. 2, 1981)
78 IBLA 387 (Jan. 31, 1984)
486 ----------56 IBLA 151 (July 20, 1981)
771-792 ----------76 IBLA 327 (Oct. 19, 1983)
771 et seq. --76 IBLA 327 (Oct. 19, 1983)
781 ----------76 IBLA 327 (Oct. 19, 1983)

TITLE 41:

sec. 15 ---------- IBCA-1382-8-80 (Dec. 10, 1980)
251 et seq. -- IBCA-1434-2-81, 88 I.D. 979 (1981)
321 ----------45 IBLA 64 (Jan. 17, 1980)
501 ---------- M-36931, 88 I.D. 228 (1981)

TITLE 41: Continued

sec. 501 et seq. -- M-36931, 88 I.D. 228 (1981)
601 ---------- IBCA-1429-2-81, 91 I.D. 149 (1984)
601-613 ---------- IBCA-1224-11-78, 87 I.D. 180 (1980)
IBCA-1197-6-78, 1204-8-78, 87 I.D. 450 (1980)
IBCA-1434-2-81, 88 I.D. 979 (1981)
IBCA-1280-7-79, 88 I.D. 1065 (1981)
IBCA-1229-8-79 (Feb. 12, 1982)
IBCA-1350-4-80 (Apr. 14, 1982)
IBCA-1474-6-81, 89 I.D. 92 (1982)
IBCA-1506-8-81, 89 I.D. 233 (1982)
IBCA-1550-2-82, 89 I.D. 365 (1982)
IBCA-1381-8-80 (Dec. 23, 1982)
IBCA-1603-7-82, 89 I.D. 583 (1982)
IBCA-1576-5-82 (Jan. 31, 1983)
IBCA-1591-6-82 & 1605-7-82, 90 I.D. 41 (1983)
IBCA-1346-4-80 (May 26, 1983)
IBCA-1638-11-82, 90 I.D. 230 (1983)
IBCA-1640-12-82, 90 I.D. 228 (1983)
IBCA-1303-9-79, 90 I.D. 401 (1983)
IBCA-1681-6-83 (Oct. 28, 1983)
IBCA-1682-6-83, 90 I.D. 441 (1983)
IBCA-1508-8-81, 91 I.D. 71 (1984)
IBCA-1540-12-81 (Apr. 9, 1984)
54 IBLA 309 (Apr. 30, 1981)
601 et seq. -- IBCA-1420-1-81, 88 I.D. 324 (1981)
IBCA-1681-6-83 (Oct. 28, 1983)
601(4) ---------- IBCA-1471-6-81, 88 I.D. 809 (1981)
602 ---------- IBCA-1640-12-82, 90 I.D. 228 (1983)
602(a) ---------- IBCA-1640-12-82, 90 I.D. 228 (1983)
602(a)(2) ---- IBCA-1591-6-82 & 1605-7-82, 90 I.D. 41 (1983)
602(a)(4) ----54 IBLA 309 (Apr. 30, 1981)
604 ---------- IBCA-1331-2-80 (Sept. 15, 1981)
IBCA-1303-9-79, 90 I.D. 401 (1983)
605 ---------- IBCA-1413-12-80, 88 I.D. 722 (1981)
IBCA-1434-2-81, 88 I.D. 979 (1981)
IBCA-1280-7-79, 88 I.D. 1065 (1981)
IBCA-1299-8-79 (Feb. 12, 1982)
IBCA-1311-10-79, 89 I.D. 30 (1982)
IBCA-1313-11-79 (Sept. 17, 1982)
605(a) ---------- IBCA-1471-6-81, 88 I.D. 809 (1981)
IBCA-1506-8-81, 89 I.D. 233 (1982)

TITLE 41: Continued

sec. 605(a) ------- IBCA-1550-2-82, 89 I.D. 365 (1982)
IBCA-1591-6-82 & 1605-7-82, 90 I.D. 41 (1983)
IBCA-1635-11-82 (June 7, 1983)
IBCA-1536-3-82, 90 I.D. 297 (1983)
605(b) ------- IBCA-1640-12-82, 90 I.D. 228 (1983)
IBCA-1725-9-83 (Nov. 14, 1983)
IBCA-1711-8-83, 90 I.D. 494 (1983)
IBCA-1776-2-84 (Feb. 29, 1984)
605(c) ------- IBCA-1681-6-83 (Oct. 28, 1983)
605(c)(1) ---- IBCA-1511-9-81, 90 I.D. 491 (1983)
606 ---------- IBCA-1359-5-80, 90 I.D. 69 (1983)
IBCA-1646-1-83, 90 I.D. 226 (1983)
IBCA-1618-9-82 (Nov. 4, 1983)
607(d) ------- IBCA-1471-6-81, 88 I.D. 809 (1981)
IBCA-1447-3-81, 89 I.D. 92 (1982)
IBCA-1506-8-81, 89 I.D. 233 (1982)
IBCA-1640-12-82, 90 I.D. 228 (1983)
IBCA-1672-4-83, 90 I.D. 379 (1983)
IBCA-1429-2-81, 91 I.D. 149 (1984)
611 ---------- IBCA-1413-12-80, 88 I.D. 722 (1981)
IBCA-1434-2-81, 88 I.D. 979 (1981)
IBCA-1280-7-79, 88 I.D. 1065 (1981)
IBCA-1299-8-79 (Feb. 12, 1982)
IBCA-1311-10-79, 89 I.D. 30 (1982)
IBCA-1527-10-81 (Mar. 25, 1982)
IBCA-1506-8-81, 89 I.D. 233 (1982)
IBCA-1313-11-79 (Sept. 17, 1982)
IBCA-1635-11-82 (June 7, 1983)
IBCA-1681-6-83 (Oct. 28, 1983)
11 IBIA 285, 90 I.D. 389 (1983)

TITLE 42:

sec. 1746 ----------62 IBLA 187 (Mar. 9, 1982)
1983 ----------80 IBLA 200, 91 I.D. 197 (1984)
1988 ----------11 IBIA 285, 90 I.D. 389 (1983)
65 IBLA 26 (June 22, 1982)
84 IBLA 236, 92 I.D. 1 (1985)
2098 ----------63 IBLA 53 (Mar. 30, 1982)
4321 ----------56 IBLA 284 (July 28, 1981)
58 IBLA 332 (Oct. 16, 1981)
62 IBLA 73 (Feb. 25, 1982)
70 IBLA 214 (Jan. 24, 1983)
73 IBLA 226 (May 31, 1983)
75 IBLA 380 (Aug. 31, 1983)
82 IBLA 39 (Sept. 12, 1984)
84 IBLA 82 (Dec. 5, 1984)
4321-4335 -----45 IBLA 159, 87 I.D. 14 (1980)
45 IBLA 171, 87 I.D. 21 (1980)

TITLE 42: Continued

sec. 4321-4347 -----46 IBLA 35 (Feb. 20, 1980)
51 IBLA 154 (Nov. 26, 1980)
55 IBLA 210 (June 18, 1981)
69 IBLA 39 (Nov. 29, 1982)
79 IBLA 323 (Mar. 21, 1984)
84 IBLA 127 (Dec. 10, 1984)
4321-4361 -----11 IBIA 249, 90 I.D. 329 (1983)
56 IBLA 86, 88 I.D. 646 (1981)
64 IBLA 346 (June 15, 1982)
68 IBLA 26 (Oct. 21, 1982)
79 IBLA 62 (Feb. 13, 1984)
79 IBLA 94, 91 I.D. 115 (1984)
81 IBLA 242 (June 7, 1984)
81 IBLA 352 (June 25, 1984)
81 IBLA 398 (June 29, 1984)
84 IBLA 311, 92 I.D. 37 (1985)
4321 et seq. --82 IBLA 303 (Sept. 5, 1984)
M-36928, 87 I.D. 593 (1980)
M-36900 (Supp. I), 90 I.D. 345 (1983)
4331 ----------45 IBLA 252 (Feb. 4, 1980)
56 IBLA 258, 88 I.D. 665 (1981)
58 IBLA 332 (Oct. 16, 1981)
72 IBLA 261, 90 I.D. 189 (1983)
80 IBLA 304 (May 4, 1984)
4331-4335 -----82 IBLA 339 (Sept. 12, 1984)
4331(b) -------68 IBLA 96 (Oct. 26, 1982)
M-36928, 87 I.D. 593 (1980)
4332 ----------45 IBLA 252 (Feb. 4, 1980)
51 IBLA 154 (Nov. 26, 1980)
55 IBLA 171 (June 11, 1981)
56 IBLA 258, 88 I.D. 665 (1981)
58 IBLA 332 (Oct. 16, 1981)
60 IBLA 293 (Dec. 18, 1981)
62 IBLA 73 (Feb. 25, 1982)
64 IBLA 346 (June 15, 1982)
68 IBLA 96 (Oct. 26, 1982)
75 IBLA 16, 90 I.D. 352 (1983)
76 IBLA 83 (Sept. 21, 1983)
77 IBLA 174 (Nov. 17, 1983)
80 IBLA 14 (Mar. 28, 1984)
80 IBLA 251 (May 2, 1984)
81 IBLA 271 (June 8, 1984)
82 IBLA 324 (Sept. 7, 1984)
84 IBLA 311, 92 I.D. 37 (1985)
4332(2)(B) ----84 IBLA 311, 92 I.D. 37 (1985)
4332(2)(C) ----73 IBLA 226 (May 31, 1983)
79 IBLA 240 (Mar. 1, 1984)
79 IBLA 323 (Mar. 21, 1984)
84 IBLA 211, 92 I.D. 37 (1985)
4332(B) -------60 IBLA 293 (Dec. 18, 1981)
4332(C) -------45 IBLA 347 (Feb. 7, 1980)
51 IBLA 154 (Nov. 26, 1980)
57 IBLA 79 (Aug. 21, 1981)
60 IBLA 293 (Dec. 18, 1981)
68 IBLA 96 (Oct. 26, 1982)
73 IBLA 39 (May 11, 1983)
M-36938, 88 I.D. 903 (1981)
4332(C)(1)-
(v) ---------68 IBLA 96 (Oct. 26, 1982)
4332(C)(ii) ---73 IBLA 39 (May 11, 1983)
4341-4347 -----82 IBLA 339 (Sept. 12, 1984)
4601 ---------- 4 OHA 211 (Nov. 24, 1981)
5 OHA 9 (Aug. 11, 1982)
5 OHA 96 (Feb. 25, 1983)
5 OHA 232 (Jan. 12, 1984)
5 OHA 245 (Jan. 27, 1984)
5 OHA 263 (Feb. 8, 1984)
5 OHA 293 (Mar. 21, 1984)

TITLE 42: Continued

sec. 4601-4655 ----- 4 OHA 86 (Oct. 31, 1980)
5 OHA 143 (Aug. 19, 1983)
5 OHA 168 (Sept. 15, 1983)
5 OHA 325 (May 18, 1984)
4601-4666 ----- 5 OHA 224 (Nov. 7, 1983)
4601 et seq. -- 4 OHA 82 (Sept. 18, 1980)
4 OHA 117 (Feb. 13, 1981)
4 OHA 166 (June 8, 1981)
4 OHA 189 (Aug. 6, 1981)
4 OHA 196 (Oct. 13, 1981)
4 OHA 244 (Mar. 8, 1982)
4601(6) ------- 4 OHA 11 (May 12, 1980)
4 OHA 86 (Oct. 31, 1980)
4 OHA 166 (June 8, 1981)
5 OHA 96 (Feb. 25, 1983)
5 OHA 263 (Feb. 8, 1984)
5 OHA 293 (Mar. 21, 1984)
5 OHA 300 (Apr. 16, 1984)
4601(7) ------- 4 OHA 86 (Oct. 31, 1980)
4601(7)(A) ---- 4 OHA 192 (Aug. 20, 1981)
4601(7)(B) ---- 4 OHA 192 (Aug. 20, 1981)
4601(8) ------- 4 OHA 86 (Oct. 31, 1980)
4602(a) ------- 4 OHA 107 (Jan. 23, 1981)
4 OHA 160 (Apr. 29, 1981)
4603 ---------- 4 OHA 11 (May 12, 1980)
5 OHA 53 (Nov. 9, 1982)
4621 ---------- 5 OHA 232 (Jan. 12, 1984)
5 OHA 251 (Feb. 8, 1984)
4621-4638 ----- 4 OHA 278 (June 1, 1982)
4622 ---------- 4 OHA 1 (Apr. 23, 1980)
4 OHA 20 (June 23, 1980)
4 OHA 36 (Aug. 6, 1980)
4 OHA 53 (Aug. 19, 1980)
4 OHA 86 (Oct. 31, 1980)
4 OHA 173 (July 13, 1981)
4 OHA 196 (Oct. 13, 1981)
4 OHA 216 (Jan. 4, 1982)
4 OHA 221 (Jan. 5, 1982)
4 OHA 234 (Feb. 5, 1982)
4 OHA 252 (Mar. 31, 1982)
4 OHA 277 (May 17, 1982)
4 OHA 278 (June 1, 1982)
5 OHA 40 (Oct. 22, 1982)
5 OHA 87 (Feb. 9, 1983)
5 OHA 201 (Oct. 4, 1983)
5 OHA 270 (Feb. 29, 1984)
5 OHA 296 (Apr. 10, 1984)
4622(a) ------- 3 OHA 179 (Mar. 13, 1980)
4 OHA 36 (Aug. 6, 1980)
4 OHA 192 (Aug. 20, 1981)
5 OHA 148 (Sept. 13, 1983)
5 OHA 232 (Jan. 12, 1984)
4622(a)(1) ---- 3 OHA 173 (Jan. 31, 1980)
4 OHA 117 (Feb. 13, 1981)
5 OHA 84 (Jan. 20, 1983)
5 OHA 104 (Mar. 15, 1983)
5 OHA 205 (Oct. 4, 1983)
4622(a)(2) ---- 4 OHA 234 (Feb. 5, 1982)
5 OHA 9 (Aug. 11, 1982)
5 OHA 166 (Sept. 14, 1983)
5 OHA 232 (Jan. 12, 1984)
4622(c) ------- 3 OHA 191 (Mar. 24, 1980)
4 OHA 36 (Aug. 6, 1980)
4 OHA 192 (Aug. 20, 1981)
4 OHA 244 (Mar. 8, 1982)
5 OHA 87 (Feb. 9, 1983)
5 OHA 93 (Feb. 14, 1983)
5 OHA 212 (Oct. 21, 1983)

TITLE 42: Continued

sec. 4623 ---------- 3 OHA 168 (Jan. 30, 1980)
3 OHA 179 (Mar. 13, 1980)
4 OHA 11 (May 12, 1980)
4 OHA 20 (June 23, 1980)
4 OHA 24 (June 24, 1980)
4 OHA 39 (Aug. 12, 1980)
4 OHA 123 (Feb. 20, 1981)
4 OHA 184 (July 30, 1981)
4 OHA 238 (Feb. 8, 1982)
4 OHA 250 (Mar. 31, 1982)
5 OHA 53 (Nov. 9, 1982)
5 OHA 60 (Dec. 6, 1982)
5 OHA 180 (Sept 28, 1983)
5 OHA 251 (Feb. 8, 1984)
5 OHA 270 (Feb. 29, 1984)
5 OHA 283 (Mar. 8, 1984)
4623(a) ------- 4 OHA 107 (Jan. 23, 1981)
4 OHA 143 (Apr. 9, 1981)
4 OHA 160 (Apr. 29, 1981)
4 OHA 199 (Oct. 22, 1981)
4 OHA 240 (Feb. 16, 1982)
4623(a)(1) ---- 4 OHA 33 (July 30, 1980)
4623(a)(1)(A) - 3 OHA 168 (Jan. 30, 1980)
4 OHA 15 (June 11, 1980)
4 OHA 107 (Jan. 23, 1981)
4 OHA 229 (Jan. 29, 1982)
4623(a)(1)(B) - 4 OHA 208 (Nov. 12, 1981)
5 OHA 221 (Nov. 3, 1983)
4623(a)(1)(C) - 4 OHA 199 (Oct. 22, 1981)
4623(a)(2) ---- 4 OHA 33 (July 30, 1980)
4624 ---------- 4 OHA 11 (May 12, 1980)
4 OHA 30 (July 2, 1980)
4 OHA 33 (July 30, 1980)
4 OHA 250 (Mar. 31, 1982)
4 OHA 278 (June 1, 1982)
4624(1) ------- 4 OHA 101 (Jan. 8, 1981)
4624(2) ------- 5 OHA 333 (June 7, 1984)
4625 ---------- 4 OHA 11 (May 12, 1980)
4626 ---------- 4 OHA 11 (May 12, 1980)
4628 ---------- 5 OHA 205 (Oct. 4, 1983)
4631 ---------- 5 OHA 205 (Oct. 4, 1983)
4633 ---------- 3 OHA 173 (Jan. 31, 1980)
4 OHA 101 (Jan. 8, 1981)
4 OHA 107 (Jan. 23, 1981)
4 OHA 156 (Apr. 17, 1981)
4 OHA 160 (Apr. 29, 1981)
4 OHA 278 (June 1, 1982)
5 OHA 325 (May 18, 1984)
4651 ---------- 4 OHA 107 (Jan. 23, 1981)
4 OHA 278 (June 1, 1982)
5 OHA 300 (Apr. 16, 1984)
4651(1) ------- 5 OHA 300 (Apr. 16, 1984)
4651(2) ------- 4 OHA 208 (Nov. 12, 1981)
4651(5) ------- 3 OHA 179 (Mar. 13, 1980)
4 OHA 107 (Jan. 23, 1981)
4651(9) ------- 5 OHA 175 (Sept. 15, 1983)
4652 ---------- 5 OHA 148 (Sept. 13, 1983)
5 OHA 166 (Sept. 14, 1983)
4653 ---------- 4 OHA 177 (July 14, 1981)
4 OHA 208 (Nov. 12, 1981)
4 OHA 227 (Jan. 18, 1982)
4 OHA 272 (Apr. 16, 1982)
5 OHA 300 (Apr. 16, 1984)
4653(1) ------- 5 OHA 58 (Nov. 9, 1982)
5 OHA 300 (Apr. 16, 1984)
4653(2) ------- 5 OHA 300 (Apr. 16, 1984)
4653(3) ------- 4 OHA 153 (Apr. 13, 1981)
5 OHA 300 (Apr. 16, 1984)

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sec. 6501 ----------68 IBLA 359 (Nov. 22, 1982)
6501-6507 -----78 IBLA 115 (Dec. 22, 1983)
6501 et seq. -- M-36940, 91 I.D. 1 (1984)
6502 ----------57 IBLA 71 (Aug. 20, 1981)
68 IBLA 359 (Nov. 22, 1982)
6508 ----------78 IBLA 115 (Dec. 22, 1983)
7151 ----------66 IBLA 307 (Aug. 24, 1982)
7152 ----------66 IBLA 174 (Aug. 12, 1982)
66 IBLA 265 (Aug. 17, 1982)
7152(b)(5) ----60 IBLA 331 (Dec. 22, 1981)
7172 ----------79 IBLA 286 (Mar. 20, 1984)
7254 ----------73 IBLA 73 (May 17, 1983)
7401 ----------68 IBLA 96 (Oct. 26, 1982)
7401-7642 -----84 IBLA 236, 92 I.D. 1 (1985)
7607(f) -------84 IBLA 236, 92 I.D. 1 (1985)

TITLE 43:

sec. 2 ----------62 IBLA 310 (Mar. 19, 1982)
70 IBLA 75 (Jan. 11, 1983)
84 IBLA 338 (Jan. 15, 1985)
M-36910 (Supp.), 88 I.D. 909 (1981)
4 ----------59 IBLA 170 (Oct. 26, 1981)
6(b) -------59 IBLA 364 (Nov. 9, 1981)
21(1) -------75 IBLA 242 (Aug. 24, 1983)
42(b) ------- 7 ANCAB 106, 89 I.D. 293 (1982)
95-98(a) ---- M-36942, 88 I.D. 1090 (1981).
102-106 ------68 IBLA 342, 89 I.D. 586 (1982)
118(d) -------75 IBLA 40 (Aug. 5, 1983)
141 ---------- 4 ANCAB 173, 87 I.D. 123 (1980)
45 IBLA 51 (Jan. 14, 1980)
45 IBLA 264, 87 I.D. 34 (1980)
52 IBLA 87, 88 I.D. 31 (1981)
55 IBLA 20 (May 26, 1981)
61 IBLA 149 (Jan. 18, 1982)
66 IBLA 390 (Aug. 31, 1982)
70 IBLA 228 (Jan. 24, 1983)
74 IBLA 295 (July 27, 1983)
78 IBLA 349 (Jan. 25, 1984)
82 IBLA 257 (Aug. 29, 1984)
141-142 ------81 IBLA 103 (May 30, 1984)
141-143 ------51 IBLA 115 (Nov. 20, 1980)
52 IBLA 87, 88 I.D. 31 (1981)
53 IBLA 23 (Feb. 26, 1981)
53 IBLA 279 (Mar. 24, 1981)
55 IBLA 23 (May 26, 1981)
58 IBLA 260 (Oct. 6, 1981)
142 ----------45 IBLA 51 (Jan. 14, 1980)
52 IBLA 87, 88 I.D. 31 (1981)
55 IBLA 20 (May 26, 1981)
58 IBLA 188 (Sept. 28, 1981)
61 IBLA 149 (Jan. 18, 1982)
66 IBLA 390 (Aug. 31, 1982)
70 IBLA 228 (Jan. 24, 1983)
78 IBLA 349 (Jan. 25, 1984)
81 IBLA 103 (May 30, 1984)
154 ----------47 IBLA 121 (Apr. 28, 1980)
53 IBLA 42 (Feb. 26, 1981)
54 IBLA 8 (Apr. 6, 1981)
66 IBLA 92 (July 30, 1982)
66 IBLA 328 (Aug. 25, 1982)
67 IBLA 32 (Sept. 7, 1982)
81 IBLA 402 (June 29, 1984)
158 ----------47 IBLA 223 (May 13, 1980)
49 IBLA 87 (July 22, 1980)
54 IBLA 38, 88 I.D. 437 (1981)
69 IBLA 343 (Dec. 28, 1982)
84 IBLA 344 (Jan. 16, 1985)

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sec. 161 ----------48 IBLA 329 (July 3, 1980)
52 IBLA 198 (Jan. 26, 1981)
67 IBLA 317 (Oct. 1, 1982)
75 IBLA 236 (Aug. 24, 1983)
78 IBLA 300 (Jan. 10, 1984)
81 IBLA 74 (May 23, 1984)
84 IBLA 192 (Dec. 21, 1984)
161 et seq. --46 IBLA 165 (Mar. 21, 1980)
164 ----------46 IBLA 165 (Mar. 21, 1980)
84 IBLA 192 (Dec. 21, 1984)
169 ----------74 IBLA 373, 90 I.D. 338 (1983)
170 ----------74 IBLA 1 (June 21, 1983)
171 ----------80 IBLA 101 (Apr. 3, 1984)
182 ----------48 IBLA 263 (June 30, 1980)
51 IBLA 132 (Nov. 20, 1980)
185 ----------48 IBLA 51 (May 29, 1980)
48 IBLA 76 (May 29, 1980)
68 IBLA 279 (Nov. 17, 1982)
74 IBLA 373, 90 I.D. 338 (1983)
189 ----------48 IBLA 199 (June 16, 1980)
48 IBLA 365 (July 11, 1980)
48 IBLA 373 (July 11, 1980)
58 IBLA 21 (Sept. 16, 1981)
59 IBLA 170 (Oct. 26, 1981)
190 ----------48 IBLA 199 (June 16, 1980)
48 IBLA 365 (July 11, 1980)
48 IBLA 373 (July 11, 1980)
58 IBLA 21 (Sept. 16, 1981)
59 IBLA 170 (Oct. 26, 1981)
201 ----------48 IBLA 329 (July 3, 1980)
211(b) -------57 IBLA 333 (Sept. 1, 1981)
218 ----------71 IBLA 109 (Feb. 28, 1983)
226(c) -------71 IBLA 209 (Mar. 15, 1983)
251 ----------66 IBLA 71 (July 29, 1982)
270 ----------57 IBLA 95 (Aug. 25, 1981)
74 IBLA 373, 90 I.D. 338 (1983)
270-1 --------45 IBLA 28 (Jan. 14, 1980)
50 IBLA 61 (Sept. 15, 1980)
50 IBLA 353 (Oct. 16, 1980)
51 IBLA 165 (Nov. 26, 1980)
54 IBLA 346 (May 12, 1981)
55 IBLA 305 (June 25, 1981)
72 IBLA 13 (Apr. 4, 1983)
77 IBLA 130 (Nov. 15, 1983)
81 IBLA 303 (June 15, 1984)
270-1--270-3 - 5 ANCAB 195 (Mar. 31, 1981)
45 IBLA 28 (Jan. 14, 1980)
45 IBLA 43 (Jan. 14, 1980)
46 IBLA 56 (Feb. 22, 1980)
46 IBLA 165 (Mar. 21, 1980)
46 IBLA 177 (Mar. 21, 1980)
46 IBLA 303 (Mar. 31, 1980)
46 IBLA 326 (Apr. 4, 1980)
46 IBLA 373 (Apr. 8, 1980)
47 IBLA 58 (Apr. 14, 1980)
47 IBLA 241 (May 13, 1980)
47 IBLA 249 (May 13, 1980)
48 IBLA 229 (June 17, 1980)
48 IBLA 377 (July 11, 1980)
49 IBLA 213 (Aug. 11, 1980)
51 IBLA 165 (Nov. 26, 1980)
52 IBLA 222 (Jan. 30, 1981)
53 IBLA 208, 88 I.D. 373 (1981)
53 IBLA 306 (Mar. 25, 1981)
54 IBLA 295 (Apr. 29, 1981)
54 IBLA 306 (Apr. 29, 1981)
54 IBLA 346 (May 12, 1981)
55 IBLA 305 (June 25, 1981)

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sec. 270-1--270-3 --56 IBLA 69 (July 10, 1981)
56 IBLA 242, 88 I.D. 663 (1981)
59 IBLA 345 (Nov. 5, 1981)
59 IBLA 361 (Nov. 9, 1981)
59 IBLA 384 (Nov. 9, 1981)
60 IBLA 14 (Nov. 16, 1981)
60 IBLA 101 (Nov. 19, 1981)
60 IBLA 214 (Nov. 27, 1981)
60 IBLA 252 (Dec. 4, 1981)
60 IBLA 394 (Dec. 23, 1981)
60 IBLA 399 (Dec. 28, 1981)
61 IBLA 1 (Dec. 28, 1981)
61 IBLA 181 (Jan. 26, 1982)
61 IBLA 189 (Jan. 26, 1982)
61 IBLA 282 (Feb. 2, 1982)
61 IBLA 316 (Feb. 8, 1982)
61 IBLA 399 (Feb. 22, 1982)
62 IBLA 90 (Feb. 25, 1982)
63 IBLA 64 (Mar. 30, 1982)
63 IBLA 74 (Mar. 30, 1982)
63 IBLA 335 (Apr. 28, 1982)
63 IBLA 343 (Apr. 28, 1982)
64 IBLA 72 (May 10, 1982)
64 IBLA 97 (May 17, 1982)
64 IBLA 167 (May 25, 1982)
64 IBLA 180 (May 26, 1982)
64 IBLA 289 (June 4, 1982)
64 IBLA 304 (June 8, 1982)
65 IBLA 26 (June 22, 1982)
65 IBLA 317 (July 15, 1982)
66 IBLA 38 (July 23, 1982)
66 IBLA 77 (July 29, 1982)
66 IBLA 367 (Aug. 27, 1982)
67 IBLA 157 (Sept. 20, 1982)
70 IBLA 369 (Feb. 3, 1983)
71 IBLA 63 (Feb. 22, 1983)
71 IBLA 394 (Mar. 30, 1983)
72 IBLA 13 (Apr. 4, 1983)
76 IBLA 264 (Oct. 18, 1983)
77 IBLA 130 (Nov. 15, 1983)
77 IBLA 321 (Dec. 1, 1983)
77 IBLA 347 (Dec. 5, 1983)
78 IBLA 196 (Jan. 5, 1984)
84 IBLA 150 (Dec. 12, 1984)
84 IBLA 350 (Jan. 17, 1985)
270-2 ---------53 IBLA 208, 88 I.D. 373 (1981)
60 IBLA 14 (Nov. 16, 1981)
61 IBLA 282 (Feb. 2, 1982)
270-3 ---------51 IBLA 165 (Nov. 26, 1980)
54 IBLA 346 (May 12, 1981)
60 IBLA 14 (Nov. 16, 1981)
61 IBLA 282 (Feb. 2, 1982)
66 IBLA 367 (Aug. 27, 1982)
78 IBLA 196 (Jan. 5, 1984)
80 IBLA 221 (Apr. 30, 1984)
270-11 --------64 IBLA 97 (May 17, 1982)
270-12 --------64 IBLA 97 (May 17, 1982)
274 ----------72 IBLA 197 (Apr. 19, 1983)
78 IBLA 255, 91 I.D. 14 (1984)
279 ----------59 IBLA 337 (Nov. 5, 1981)
291 ----------45 IBLA 127 (Jan. 23, 1980)
48 IBLA 329 (July 3, 1980)
59 IBLA 155 (Oct. 26, 1981)
76 IBLA 48 (Sept. 19, 1983)
78 IBLA 311 (Jan. 12, 1984)
84 IBLA 166 (Dec. 19, 1984)
291-298 -------45 IBLA 127 (Jan. 23, 1980)
291-300 -------45 IBLA 127 (Jan. 23, 1980)

TITLE 43: Continued

sec. 291-301 -------45 IBLA 127 (Jan. 23, 1980)
55 IBLA 257 (June 22, 1981)
59 IBLA 155 (Oct. 26, 1981)
291-302 -------63 IBLA 260 (Apr. 19, 1982)
291 et seq. -- M-36937, 88 I.D. 813 (1981)
299 ----------45 IBLA 127 (Jan. 23, 1980)
48 IBLA 329 (July 3, 1980)
52 IBLA 390 (Feb. 24, 1981)
59 IBLA 155 (Oct. 26, 1981)
67 IBLA 304, 89 I.D. 496 (1982)
76 IBLA 276 (Oct. 18, 1983)
78 IBLA 155 (Dec. 29, 1983)
79 IBLA 76 (Feb. 16, 1984)
79 IBLA 255 (Mar. 5, 1984)
M-36937, 88 I.D. 813 (1981)
300 ----------46 IBLA 101 (Feb. 29, 1980)
50 IBLA 154 (Sept. 30, 1980)
M-36914 (Supp. II), 90 I.D. 81 (1983)
315 ----------45 IBLA 127 (Jan. 23, 1980)
47 IBLA 71 (Apr. 21, 1980)
48 IBLA 365 (July 11, 1980)
48 IBLA 373 (July 11, 1980)
49 IBLA 251 (Aug. 18, 1980)
50 IBLA 235 (Sept. 30, 1980)
51 IBLA 115 (Nov. 20, 1980)
52 IBLA 52 (Jan. 6, 1981)
53 IBLA 23 (Feb. 26, 1981)
53 IBLA 208, 88 I.D. 373 (1981)
53 IBLA 279 (Mar. 24, 1981)
55 IBLA 23 (May 26, 1981)
55 IBLA 68 (June 1, 1981)
55 IBLA 131 (June 3, 1981)
55 IBLA 332 (June 26, 1981)
58 IBLA 21 (Sept. 16, 1981)
58 IBLA 260 (Oct. 6, 1981)
59 IBLA 170 (Oct. 26, 1981)
59 IBLA 182 (Oct. 27, 1981)
61 IBLA 381 (Feb. 17, 1982)
65 IBLA 196 (June 29, 1982)
66 IBLA 71 (July 29, 1982)
67 IBLA 293 (Sept. 29, 1982)
70 IBLA 348 (Feb. 3, 1983)
71 IBLA 46 (Feb. 18, 1983)
75 IBLA 44 (Aug. 5, 1983)
75 IBLA 192 (Aug. 22, 1983)
76 IBLA 17 (Sept. 6, 1983)
76 IBLA 83 (Sept. 21, 1983)
76 IBLA 170 (Sept. 30, 1983)
78 IBLA 255, 91 I.D. 14 (1984)
315-315f -------48 IBLA 385 (July 11, 1980)
65 IBLA 231 (July 9, 1982)
66 IBLA 109 (Aug. 10, 1982)
315-315n -------51 IBLA 115 (Nov. 20, 1980)
53 IBLA 23 (Feb. 26, 1981)
53 IBLA 279 (Mar. 24, 1981)
55 IBLA 23 (May 26, 1981)
58 IBLA 260 (Oct. 6, 1981)
315-315o -------80 IBLA 42 (Mar. 28, 1984)
315-315o-1 -----75 IBLA 44 (Aug. 5, 1983)
315 et seq. ----45 IBLA 127 (Jan. 23, 1980)
48 IBLA 329 (July 3, 1980)
64 IBLA 293 (June 7, 1982)
70 IBLA 348 (Feb. 3, 1983)
75 IBLA 301 (Aug. 39, 1983)
82 IBLA 265 (Aug. 29, 1984)
M-36914 (Supp. I), 88 I.D. 1055 (1981)

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sec. 315a ---------48 IBLA 385 (July 11, 1980)
55 IBLA 68 (June 1, 1981)
64 IBLA 293 (June 7, 1982)
65 IBLA 196 (June 29, 1982)
66 IBLA 109 (Aug. 10, 1982)
71 IBLA 46 (Feb. 18, 1983)
76 IBLA 170 (Sept. 30, 1983)
80 IBLA 42 (Mar. 28, 1984)
315a-315r ----50 IBLA 235 (Sept. 30, 1980)
55 IBLA 68 (June 1, 1981)
61 IBLA 381 (Feb. 17, 1982)
65 IBLA 196 (June 29, 1982)
67 IBLA 293 (Sept. 29, 1982)
70 IBLA 348 (Feb. 3, 1983)
71 IBLA 46 (Feb. 18, 1983)
75 IBLA 40 (Aug. 5, 1983)
76 IBLA 170 (Sept. 30, 1983)
315a et seq. - M-36914 (Supp.), 88 I.D. 253 (1981)
315b ---------56 IBLA 258, 88 I.D. 665 (1981)
75 IBLA 301 (Aug. 29, 1983)
80 IBLA 42 (Mar. 28, 1984)
80 IBLA 168 (Apr. 13, 1984)
315f ---------51 IBLA 115 (Nov. 20, 1980)
53 IBLA 23 (Feb. 26, 1981)
53 IBLA 279 (Mar. 24, 1981)
55 IBLA 23 (May 26, 1981)
58 IBLA 21 (Sept. 16, 1981)
58 IBLA 213 (Sept. 29, 1981)
58 IBLA 260 (Oct. 6, 1981)
59 IBLA 170 (Oct. 26, 1981)
59 IBLA 182 (Oct. 27, 1981)
64 IBLA 379 (June 15, 1982)
66 IBLA 150 (Aug. 10, 1982)
67 IBLA 140 (Sept. 16, 1982)
70 IBLA 126 (Jan. 13, 1983)
71 IBLA 1 (Feb. 9, 1983)
73 IBLA 82 (May 18, 1983)
74 IBLA 20 (June 24, 1983)
75 IBLA 192 (Aug. 22, 1983)
76 IBLA 205 (Oct. 11, 1983)
79 IBLA 234 (Feb. 29, 1984)
80 IBLA 1 (Mar. 27, 1984)
81 IBLA 58 (May 22, 1984)
315g ---------52 IBLA 156, 88 I.D. 232 (1981)
52 IBLA 246 (Feb. 6, 1981)
53 IBLA 153 (Mar. 12, 1981)
58 IBLA 115 (Sept. 24, 1981)
58 IBLA 329 (Oct. 16, 1981)
61 IBLA 8 (Dec. 29, 1981)
68 IBLA 11 (Oct. 18, 1982)
315g(c) ------52 IBLA 156, 88 I.D. 232 (1981)
53 IBLA 153 (Mar. 12, 1981)
315g(d) ------61 IBLA 8 (Dec. 29, 1981)
315g-1 -------53 IBLA 153 (Mar. 12, 1981)
315h-315m ----48 IBLA 385 (July 11, 1980)
65 IBLA 231 (July 9, 1982)
66 IBLA 109 (Aug. 10, 1982)
315m ---------50 IBLA 284 (Oct. 6, 1980)
69 IBLA 333 (Dec. 28, 1982)
75 IBLA 301 (Aug. 29, 1983)
315m-1-
315m-4 -----75 IBLA 44 (Aug. 5, 1983)
315n ---------48 IBLA 385 (July 11, 1980)
65 IBLA 231 (July 9, 1982)
66 IBLA 109 (Aug. 10, 1982)
315p ---------53 IBLA 153 (Mar. 12, 1981)

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sec. 316 ----------47 IBLA 363 (May 21, 1980)
64 IBLA 318 (June 10, 1982)
316a ----------47 IBLA 363 (May 21, 1980)
321 ----------46 IBLA 140 (Mar. 19, 1980)
48 IBLA 263 (June 30, 1980)
59 IBLA 276 (Oct. 29, 1981)
61 IBLA 149 (Jan. 18, 1982)
65 IBLA 338 (July 15, 1982)
66 IBLA 71 (July 29, 1982)
69 IBLA 341 (Dec. 28, 1982)
73 IBLA 220 (May 27, 1983)
75 IBLA 236 (Aug. 24, 1983)
77 IBLA 325 (Dec. 5, 1983)
78 IBLA 330 (Jan. 24, 1984)
80 IBLA 283 (May 4, 1984)
82 IBLA 1 (July 2, 1984)
82 IBLA 34 (July 10, 1984)
82 IBLA 97 (July 23, 1984)
84 IBLA 96, 91 I.D. 359 (1984)
M-36914 (Supp.), 88 I.D. 253 (1981)
M-36914 (Supp. I), 88 I.D. 1055 (1981)
321-323 ------57 IBLA 370 (Sept. 8, 1981)
321-324 ------55 IBLA 59 (May 29, 1981)
321-339 ------55 IBLA 59 (May 29, 1981)
55 IBLA 83 (June 1, 1981)
73 IBLA 165 (May 24, 1983)
74 IBLA 239 (July 19, 1983)
79 IBLA 234 (Feb. 29, 1984)
81 IBLA 58 (May 22, 1984)
82 IBLA 9 (July 2, 1984)
322 ----------66 IBLA 71 (July 29, 1982)
73 IBLA 165 (May 24, 1983)
75 IBLA 236 (Aug. 24, 1983)
324 ----------84 IBLA 96, 91 I.D. 359 (1984)
325 ----------46 IBLA 140 (Mar. 19, 1980)
74 IBLA 239 (July 19, 1983)
326 ----------62 IBLA 310 (Mar. 19, 1982)
327 ----------55 IBLA 83 (June 1, 1981)
75 IBLA 236 (Aug. 24, 1983)
84 IBLA 96, 91 I.D. 359 (1984)
328 ----------75 IBLA 236 (Aug. 24, 1983)
329 ----------48 IBLA 51 (May 29, 1980)
48 IBLA 76 (May 29, 1980)
55 IBLA 83 (June 1, 1981)
68 IBLA 279 (Nov. 17, 1982)
333 ----------68 IBLA 279 (Nov. 17, 1982)
334 ----------51 IBLA 132 (Nov. 20, 1980)
68 IBLA 279 (Nov. 17, 1982)
336 ----------68 IBLA 279 (Nov. 17, 1982)
371 ----------47 IBLA 12 (Apr. 10, 1980)
372 ---------- M-36914 (Supp. I), 88 I.D. 1055 (1981)
383 ---------- M-36914 (Supp. I), 88 I.D. 1055 (1981)
387 ----------77 IBLA 137 (Nov. 15, 1983)
415f ---------66 IBLA 150 (Aug. 10, 1982)
67 IBLA 140 (Sept. 16, 1982)
70 IBLA 196 (Jan. 21, 1983)
416 ----------47 IBLA 12 (Apr. 10, 1980)
51 IBLA 285 (Dec. 15, 1980)
52 IBLA 56 (Jan. 6, 1981)
54 IBLA 8 (Apr. 6, 1981)
54 IBLA 103 (Apr. 15, 1981)
55 IBLA 42 (May 28, 1981)
55 IBLA 59 (May 29, 1981)

TITLE 43: Continued

sec. 416 ----------57 IBLA 370 (Sept. 8, 1981)
66 IBLA 100 (Aug. 4, 1982)
81 IBLA 402 (June 29, 1984)
4 OHA 166 (June 8, 1981)
5 OHA 286 (Mar. 16, 1984)
424a ---------46 IBLA 140 (Mar. 19, 1980)
432 ----------66 IBLA 100 (Aug. 4, 1982)
81 IBLA 402 (June 29, 1984)
434 ----------81 IBLA 402 (June 29, 1984)
460q-460q-9 --82 IBLA 339 (Sept. 12, 1984)
460q-5 -------74 IBLA 271 (July 25, 1983)
82 IBLA 339 (Sept. 12, 1984)
462 ---------- 4 OHA 204 (Oct. 26, 1981)
485g ---------- 4 OHA 204 (Oct. 26, 1981)
491 ---------- 5 OHA 286 (Mar. 16, 1984)
492 ---------- 4 OHA 204 (Oct. 26, 1981)
603 ---------- M-36944, 89 I.D. 403 (1982)
612(a) -------82 IBLA 230 (Aug. 23, 1984)
621 ----------77 IBLA 380 (Dec. 7, 1983)
641 ----------48 IBLA 250 (June 26, 1980)
49 IBLA 221 (Aug. 12, 1980)
643 ----------48 IBLA 250 (June 26, 1980)
49 IBLA 221 (Aug. 12, 1980)
661 ---------- 5 ANCAB 174, 88 I.D. 352 (1981)
65 IBLA 391 (July 23, 1982)
77 IBLA 80 (Nov. 9, 1983)
M-36914 (Supp.), 88 I.D. 253 (1981)
M-36914 (Supp. I), 88 I.D. 1055 (1981)
666 ---------- M-36914 (Supp. I), 88 I.D. 1055 (1981)
682a ---------45 IBLA 28 (Jan. 14, 1980)
46 IBLA 265 (Mar. 27, 1980)
48 IBLA 159 (June 9, 1980)
54 IBLA 281 (Apr. 28, 1981)
72 IBLA 373 (May 4, 1983)
73 IBLA 156 (May 24, 1983)
73 IBLA 167 (May 24, 1983)
74 IBLA 4 (June 21, 1983)
74 IBLA 285 (July 25, 1983)
74 IBLA 350 (July 28, 1983)
76 IBLA 20 (Sept. 6, 1983)
79 IBLA 298 (Mar. 20, 1984)
81 IBLA 366 (June 27, 1984)
682a-682c ----57 IBLA 74 (Aug. 20, 1981)
682a-682e ----73 IBLA 27 (May 9, 1983)
74 IBLA 350 (July 28, 1983)
687 ----------82 IBLA 247 (Aug. 28, 1984)
687a -------- 46 IBLA 239 (Mar. 27, 1980)
50 IBLA 69 (Sept. 17, 1980)
50 IBLA 290 (Oct. 7, 1980)
55 IBLA 223 (June 18, 1981)
57 IBLA 95 (Aug. 25, 1981)
59 IBLA 337 (Nov. 5, 1981)
64 IBLA 318 (June 10, 1982)
65 IBLA 94 (June 23, 1982)
70 IBLA 171 (Jan. 20, 1983)
74 IBLA 295 (July 27, 1983)
82 IBLA 247 (Aug. 28, 1984)
687a-687a-5 --74 IBLA 295 (July 27, 1983)
687a-687a-6 --82 IBLA 247 (Aug. 28, 1984)
687a-1 -------46 IBLA 239 (Mar. 27, 1980)
50 IBLA 69 (Sept. 17, 1980)
53 IBLA 208, 88 I.D. 373 (1981)
55 IBLA 223 (June 18, 1981)
57 IBLA 95 (Aug. 25, 1981)

TITLE 43: Continued

sec. 687a ----------70 IBLA 171 (Jan. 20, 1983)
74 IBLA 295 (July 27, 1983)
77 IBLA 20 (Oct. 31, 1983)
687a-6 -------82 IBLA 247 (Aug. 28, 1984)
84 IBLA 119 (Dec. 10, 1984)
697 ----------47 IBLA 17, 87 I.D. 143 (1980)
719 ----------51 IBLA 368 (Dec. 30, 1980)
720 ----------51 IBLA 368 (Dec. 30, 1980)
732 ----------45 IBLA 87 (Jan. 17, 1980)
51 IBLA 368 (Dec. 30, 1980)
65 IBLA 44 (June 23, 1982)
732-736 -------46 IBLA 257 (Mar. 27, 1980)
67 IBLA 121 (Sept. 16, 1982)
733 ----------11 IBIA 155, 90 I.D. 165 (1983)
733-736 -------45 IBLA 87 (Jan. 17, 1980)
46 IBLA 132 (Mar. 19, 1980)
46 IBLA 198 (Mar. 24, 1980)
48 IBLA 123 (May 30, 1980)
48 IBLA 377 (July 11, 1980)
51 IBLA 368 (Dec. 30, 1980)
751 ----------70 IBLA 75 (Jan. 11, 1983)
70 IBLA 383 (Feb. 8, 1983)
752 ----------58 IBLA 52 (Sept. 21, 1981)
70 IBLA 75 (Jan. 11, 1983)
753 ----------70 IBLA 75 (Jan. 11, 1983)
772 ----------47 IBLA 315 (May 19, 1980)
77 IBLA 106 (Nov. 14, 1983)
773 ----------70 IBLA 75 (Jan. 11, 1983)
851 ----------50 IBLA 367 (Oct. 21, 1980)
58 IBLA 213 (Sept. 29, 1981)
78 IBLA 255, 91 I.D. 14 (1984)
80 IBLA 1 (Mar. 27, 1984)
80 IBLA 195 (Apr. 24, 1984)
80 IBLA 354, 91 I.D. 212 (1984)
81 IBLA 23 (May 15, 1984)
852 ----------50 IBLA 367 (Oct. 21, 1980)
66 IBLA 367 (Aug. 27, 1982)
80 IBLA 1 (Mar. 27, 1984)
80 IBLA 195 (Apr. 24, 1984)
80 IBLA 354, 91 I.D. 212 (1984)
81 IBLA 23 (May 15, 1984)
852(a) -------50 IBLA 367 (Oct. 21, 1980)
852(a)(1) ----50 IBLA 367 (Oct. 21, 1980)
852(b) -------78 IBLA 255, 91 I.D. 14 (1984)
80 IBLA 354, 91 I.D. 212 (1984)
852(d)(1) ----50 IBLA 367 (Oct. 21, 1980)
869 ----------46 IBLA 177 (Mar. 21, 1980)
46 IBLA 213 (Mar. 27, 1980)
49 IBLA 256 (Aug. 18, 1980)
58 IBLA 21 (Sept. 16, 1981)
59 IBLA 320 (Nov. 4, 1981)
71 IBLA 178 (Mar. 10, 1983)
73 IBLA 82 (May 18, 1983)
77 IBLA 174 (Nov. 17, 1983)
81 IBLA 29 (May 17, 1984)
81 IBLA 222 (June 6, 1984)
869-869-3 ----79 IBLA 48 (Feb. 9, 1984)
869-869-4 ----46 IBLA 213 (Mar. 27, 1980)
62 IBLA 198 (Mar. 9, 1982)
64 IBLA 379 (June 15, 1982)
77 IBLA 174 (Nov. 17, 1983)
81 IBLA 29 (May 17, 1984)
82 IBLA 162 (Aug. 6, 1984)
869(c) -------49 IBLA 256 (Aug. 18, 1980)
869-1 --------51 IBLA 212 (Dec. 10, 1980)
73 IBLA 82 (May 18, 1983)
76 IBLA 301, 90 I.D. 464 (1983)

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sec. 869-1 ---------77 IBLA 374 (Nov. 17, 1983)
78 IBLA 355 (Jan. 25, 1984)
82 IBLA 162 (Aug. 6, 1984)
869-2 ---------81 IBLA 29 (May 17, 1984)
870 ----------50 IBLA 382 (Oct. 22, 1980)
870(c) --------50 IBLA 382 (Oct. 22, 1980)
871a ---------50 IBLA 382 (Oct. 22, 1980)
872 ----------70 IBLA 46 (Jan. 10, 1983)
75 IBLA 396 (Sept. 2, 1983)
898 ----------54 IBLA 174 (Apr. 21, 1981)
66 IBLA 191 (Aug. 13, 1982)
904 ----------67 IBLA 8 (Sept. 1, 1982)
912 ----------48 IBLA 118 (May 30, 1980)
932 ----------53 IBLA 159 (Mar. 12, 1981)
55 IBLA 151 (June 8, 1981)
55 IBLA 360 (June 26, 1981)
64 IBLA 318 (June 10, 1982)
72 IBLA 125 (Apr. 18, 1983)
74 IBLA 275 (July 25, 1983)
77 IBLA 270 (Nov. 30, 1983)
82 IBLA 6 (July 2, 1984)
5 OHA 286 (Mar. 16, 1984)
934 ----------68 IBLA 142, 89 I.D. 561 (1982)
934-939 -------68 IBLA 142, 89 I.D. 561 (1982)
937 ----------68 IBLA 142, 89 I.D. 561 (1982)
945 ---------- 5 ANCAB 354 (July 24, 1981)
7 ANCAB 43, 89 I.D. 219 (1982)
51 IBLA 212 (Dec. 10, 1980)
81 IBLA 29 (May 17, 1984)
946 ----------47 IBLA 155 (May 6, 1980)
77 IBLA 80 (Nov. 9, 1983)
946-949 -------47 IBLA 155 (May 6, 1980)
950 ----------68 IBLA 142, 89 I.D. 561 (1982)
951 ----------47 IBLA 155 (May 6, 1980)
956 ----------65 IBLA 391 (July 23, 1982)
75 IBLA 153, 90 I.D. 382 (1983)
77 IBLA 80 (Nov. 9, 1983)
79 IBLA 345 (Mar. 22, 1984)
959 ---------- 5 ANCAB 174, 88 I.D. 352 (1981)
47 IBLA 71 (Apr. 21, 1980)
51 IBLA 390 (Dec. 31, 1980)
56 IBLA 139 (July 20, 1981)
63 IBLA 176 (Apr. 8, 1982)
65 IBLA 391 (July 23, 1982)
68 IBLA 96 (Oct. 26, 1982)
73 IBLA 199 (May 26, 1983)
77 IBLA 80 (Nov. 9, 1983)
961 ----------48 IBLA 233 (June 17, 1980)
49 IBLA 23 (July 15, 1980)
55 IBLA 218 (June 18, 1981)
55 IBLA 390 (June 30, 1981)
56 IBLA 167 (July 20, 1981)
57 IBLA 215 (Aug. 27, 1981)
60 IBLA 163 (Nov. 24, 1981)
60 IBLA 221 (Nov. 30, 1981)
61 IBLA 343 (Feb. 11, 1982)
63 IBLA 9 (Mar. 25, 1982)
64 IBLA 164 (May 25, 1982)
65 IBLA 144 (June 29, 1982)
70 IBLA 39 (Jan. 10, 1983)
71 IBLA 88 (Feb. 24, 1983)
71 IBLA 352 (Mar. 28, 1983)
77 IBLA 110 (Nov. 14, 1983)
79 IBLA 5 (Feb. 2, 1984)
80 IBLA 128 (Apr. 5, 1984)
82 IBLA 289 (Aug. 31, 1984)
971 ----------68 IBLA 184 (Nov. 8, 1982)
M-36937, 88 I.D. 813 (1981)

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sec. 971a-971e ----64 IBLA 318 (June 10, 1982)
975 ---------- 7 ANCAB 8, 89 I.D. 118 (1982)
975 et seq. -- 7 ANCAB 8, 89 I.D. 118 (1982)
975c ---------65 IBLA 376 (July 20, 1982)
975d --------- 5 ANCAB 354 (July 24, 1981)
7 ANCAB 43, 89 I.D. 219 (1982)
65 IBLA 376 (July 20, 1982)
982-984 -------51 IBLA 3 (Oct. 28, 1980)
987 ----------51 IBLA 3 (Oct. 28, 1980)
1013 ----------49 IBLA 278, 87 I.D. 350 (1980)
1061 ----------64 IBLA 379 (June 15, 1982)
1068 ---------- 4 ANCAB 151, 87 I.D. 81 (1980)
52 IBLA 141 (Jan. 16, 1981)
52 IBLA 210 (Jan. 30, 1981)
52 IBLA 248 (Feb. 6, 1981)
53 IBLA 188 (Mar. 17, 1981)
55 IBLA 8 (May 26, 1981)
55 IBLA 370 (June 26, 1981)
56 IBLA 145 (July 20, 1981)
58 IBLA 14 (Sept. 16, 1981)
63 IBLA 12 (Mar. 25, 1982)
64 IBLA 159 (May 25, 1982)
65 IBLA 307 (July 13, 1982)
66 IBLA 374, 89 I.D. 415 (1982)
69 IBLA 347 (Dec. 29, 1982)
70 IBLA 207 (Jan. 24, 1983)
71 IBLA 160 (Mar. 10, 1983)
74 IBLA 111 (June 30, 1983)
75 IBLA 89 (Aug. 11, 1983)
75 IBLA 212 (Aug. 23, 1983)
75 IBLA 354 (Aug. 31, 1983)
76 IBLA 143 (Sept. 26, 1983)
77 IBLA 399 (Dec. 9, 1983)
80 IBLA 53 (Mar. 29, 1984)
82 IBLA 285 (Aug. 31, 1984)
82 IBLA 298 (Aug. 31, 1984)
82 IBLA 319 (Sept. 6, 1984)
84 IBLA 182 (Dec. 19, 1984)
1068-1068a ----47 IBLA 373 (May 21, 1980)
74 IBLA 111 (June 30, 1983)
1068-1068b ---- 4 ANCAB 151, 87 I.D. 81 (1980)
IBCA-1606-7-82 (Oct. 19, 1983)
52 IBLA 210 (Jan. 30, 1981)
55 IBLA 8 (May 26, 1981)
55 IBLA 296 (June 26, 1981)
69 IBLA 347 (Dec. 29, 1982)
1068 et seq. --47 IBLA 373 (May 21, 1980)
1068a ---------71 IBLA 160 (Mar. 10, 1983)
75 IBLA 89 (Aug. 11, 1983)
76 IBLA 143 (Sept. 26, 1983)
1074 ----------84 IBLA 344 (Jan. 16, 1985)
1131(c) --------54 IBLA 215 (Apr. 23, 1981)
63 IBLA 165 (Apr. 6, 1982)
1161-1163 -----57 IBLA 95 (Aug. 25, 1981)
1165 ----------55 IBLA 83 (June 1, 1981)
59 IBLA 337 (Nov. 5, 1981)
64 IBLA 318 (June 10, 1982)
65 IBLA 94 (June 23, 1982)
1166 ----------45 IBLA 318 (Feb. 6, 1980)
46 IBLA 326 (Apr. 4, 1980)
51 IBLA 212 (Dec. 10, 1980)
67 IBLA 100 (Sept. 14, 1982)
76 IBLA 301, 90 I.D. 464 (1983)
78 IBLA 235 (Jan. 9, 1984)
79 IBLA 261 (Mar. 7, 1984)
80 IBLA 383 (May 14, 1984)
1171 ----------49 IBLA 278, 87 I.D. 350 (1980)
49 IBLA 325 (Aug. 22, 1980)

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sec. 1171 ----------51 IBLA 115 (Nov. 20, 1980)
53 IBLA 23 (Feb. 26, 1981)
53 IBLA 279 (Mar. 24, 1981)
55 IBLA 23 (May 26, 1981)
58 IBLA 94 (Sept. 24, 1981)
58 IBLA 98 (Sept. 24, 1981)
58 IBLA 103 (Sept. 24, 1981)
58 IBLA 108 (Sept. 24, 1981)
58 IBLA 202 (Sept. 29, 1981)
58 IBLA 260 (Oct. 6, 1981)
59 IBLA 182 (Oct. 27, 1981)
67 IBLA 97 (Sept. 13, 1982)
76 IBLA 192 (Oct. 6, 1983)
78 IBLA 235 (Jan. 9, 1984)
1171(a) --------60 IBLA 305 (Dec. 18, 1981)
63 IBLA 85 (Mar. 31, 1982)
63 IBLA 321 (Apr. 27, 1982)
1181a ----------45 IBLA 252 (Feb. 4, 1980)
45 IBLA 347 (Feb. 7, 1980)
54 IBLA 215 (Apr. 23, 1981)
55 IBLA 171 (June 11, 1981)
60 IBLA 1 (Nov. 12, 1981)
61 IBLA 8 (Dec. 29, 1981)
61 IBLA 166 (Jan. 25, 1982)
61 IBLA 393 (Feb. 19, 1982)
61 IBLA 396 (Feb. 22, 1982)
62 IBLA 299 (Mar. 18, 1982)
72 IBLA 261, 90 I.D. 189 (1983)
75 IBLA 380 (Aug. 31, 1983)
79 IBLA 370 (Mar. 26, 1984)
80 IBLA 237 (Apr. 30, 1984)
80 IBLA 304 (May 4, 1984)
81 IBLA 242 (June 7, 1984)
82 IBLA 275 (Aug. 31, 1984)
1181a-1181d ---61 IBLA 8 (Dec. 29, 1981)
1181a-1181f ---61 IBLA 8 (Dec. 29, 1981)
72 IBLA 261, 90 I.D. 189 (1983)
78 IBLA 46, 90 I.D. 550 (1983)
79 IBLA 370 (Mar. 26, 1984)
80 IBLA 237 (Apr. 30, 1984)
80 IBLA 304 (May 4, 1984)
81 IBLA 242 (June 7, 1984)
1181a-1181j ---45 IBLA 252 (Feb. 4, 1980)
45 IBLA 347 (Feb. 7, 1980)
60 IBLA 1 (Nov. 12, 1981)
61 IBLA 8 (Dec. 29, 1981)
61 IBLA 166 (Jan. 25, 1982)
71 IBLA 67 (Feb. 22, 1983)
1181f ----------72 IBLA 261, 90 I.D. 189 (1983)
1185 ----------46 IBLA 12 (Feb. 20, 1980)
1201 ----------45 IBLA 127 (Jan. 23, 1980)
70 IBLA 75 (Jan. 11, 1983)
1211 ----------84 IBLA 338 (Jan. 15, 1985)
1301-1343 -----78 IBLA 93 (Dec. 19, 1983)
82 IBLA 80 (July 17, 1984)
1301 et seq. -- 7 ANCAB 1 (Mar. 8, 1982)
84 IBLA 211 (Dec. 28, 1984)
M-36927, 87 I.D. 616 (1980)
1301(a) -------- 6 ANCAB 307, 89 I.D. 14 (1982)
7 ANCAB 63, 89 I.D. 242 (1982)
57 IBLA 71 (Aug. 20, 1981)
1311 ----------78 IBLA 390 (Jan. 31, 1984)
1311(a) -------- 6 ANCAB 307, 89 I.D. 14 (1982)
7 ANCAB 63, 89 I.D. 242 (1982)
1311(b) -------- 6 ANCAB 307, 89 I.D. 14 (1982)
7 ANCAB 63, 89 I.D. 242 (1982)
1313(a) --------74 IBLA 295 (July 27, 1983)
1331 ----------45 IBLA 313 (Feb. 6, 1980)

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sec. 1331-1343 -----52 IBLA 15, 88 I.D. 1 (1981)
1331-1356 -----50 IBLA 303, 87 I.D. 478 (1980)
1331 et seq. -- M-36923, 87 I.D. 544 (1980)
M-36927, 87 I.D. 616 (1980)
M-36928, 87 I.D. 593 (1980)
1331(k) -------- M-36925, 88 I.D. 699 (1981)
1331(l) -------- M-36925, 88 I.D. 699 (1981)
1332(a) --------50 IBLA 303, 87 I.D. 478 (1980)
1332(b) -------- M-36923, 87 I.D. 544 (1980)
1334 ----------51 IBLA 332, 87 I.D. 648 (1980)
67 IBLA 80 (Sept. 10, 1982)
M-36923, 87 I.D. 544 (1980)
1334(a) --------78 IBLA 93 (Dec. 19, 1983)
M-36923, 87 I.D. 544 (1980)
M-36924, 87 I.D. 563 (1980)
M-36927, 87 I.D. 616 (1980)
1334(a)(1) -----46 IBLA 392 (Apr. 10, 1980)
78 IBLA 93 (Dec. 19, 1983)
M-36923, 87 I.D. 544 (1980)
M-36927, 87 I.D. 616 (1980)
1334(a)(4) -----67 IBLA 80 (Sept. 10, 1982)
M-36923, 87 I.D. 544 (1980)
M-36927, 87 I.D. 616 (1980)
1334(a)(7) ----- M-36923, 87 I.D. 544 (1980)
M-36927, 87 I.D. 616 (1980)
1334(a)(8) ----- M-36923, 87 I.D. 544 (1980)
1334(b) -------- M-36927, 87 I.D. 616 (1980)
1334(c) -------- M-36927, 87 I.D. 616 (1980)
1334(d) -------- M-36927, 87 I.D. 616 (1980)
1334(g) -------- M-36923, 87 I.D. 544 (1980)
1337 ----------49 IBLA 337 (Aug. 25, 1980)
51 IBLA 332, 87 I.D. 648 (1980)
57 IBLA 71 (Aug. 20, 1981)
M-36942, 88 I.D. 1090 (1981)
1337(a)(2) ----- M-36927, 87 I.D. 616 (1980)
1337(b)(2) ----- M-36927, 87 I.D. 616 (1980)
1337(b)(2)(A) - M-36927, 87 I.D. 616 (1980)
1337(b)(2)(B) - M-36927, 87 I.D. 616 (1980)
1337(b)(4) ----- M-36923, 87 I.D. 544 (1980)
1337(b)(5) ----- M-36923, 87 I.D. 544 (1980)
1337(d) -------- M-36927, 87 I.D. 616 (1980)
1338 ---------- M-36942, 88 I.D. 1090 (1981)
1339 ----------65 IBLA 295 (July 13, 1982)
1339(a) --------52 IBLA 74 (Jan. 9, 1981)
65 IBLA 295 (July 13, 1982)
M-36942, 88 I.D. 1090 (1981)
1339(b) --------52 IBLA 74 (Jan. 9, 1981)
65 IBLA 295 (July 13, 1982)
1340 ----------66 IBLA 397, 89 I.D. 430 (1982)
68 IBLA 250 (Nov. 16, 1982)
M-36922, 87 I.D. 517 (1980)
M-36927, 87 I.D. 616 (1980)
1340(a)(1) ----- M-36922, 87 I.D. 517 (1980)
1340(c)(1) ----- M-36927, 87 I.D. 616 (1980)
1344 ---------- M-36932, 88 I.D. 20 (1981)
1344(a) -------- M-36932, 88 I.D. 20 (1981)
1344(a)(1) -----78 IBLA 93 (Dec. 19, 1983)
1344(a)(4) -----78 IBLA 93 (Dec. 19, 1983)
1344(e) -------- M-36932, 88 I.D. 20 (1981)
1344(g) -------- M-36924, 87 I.D. 563 (1980)
M-36925, 88 I.D. 699 (1981)
1345 ---------- M-36923, 87 I.D. 544 (1980)
1347(b) -------- M-36923, 87 I.D. 544 (1980)
1350 ----------76 IBLA 192 (Jan. 5, 1984)
1351 ---------- M-36923, 87 I.D. 544 (1980)
M-36927, 87 I.D. 616 (1980)
1351(a)(1) ----- M-36923, 87 I.D. 544 (1980)
M-36925, 88 I.D. 699 (1981)

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sec. 1351(a)(3) ---- M-36925, 88 I.D. 699 (1981)
1351(b) ------- M-36923, 87 I.D. 544 (1980)
1351(c) ------- M-36923, 87 I.D. 544 (1980)
1351(d) ------- M-36923, 87 I.D. 544 (1980)
1351(e)(1) ---- M-36923, 87 I.D. 544 (1980)
1351(g) ------- M-36923, 87 I.D. 544 (1980)
1351(h) ------- M-36923, 87 I.D. 544 (1980)
1351(i) ------- M-36923, 87 I.D. 544 (1980)
1352(a)(1) ---- M-36924, 87 I.D. 563 (1980)
1352(a)(1)(C) - M-36924, 87 I.D. 563 (1980)
1352(c) ------- M-36925, 88 I.D. 699 (1981)
1353 ---------- M-36942, 88 I.D. 1090 (1981)
1353(b) -------61 IBLA 84 (Dec. 31, 1981)
1353(b)(2) ----57 IBLA 53 (Aug. 17, 1981)
60 IBLA 331 (Dec. 22, 1981)
61 IBLA 84 (Dec. 31, 1981)
1364 ----------52 IBLA 156, 88 I.D. 232 (1981)
61 IBLA 8 (Dec. 29, 1981)
1371 ----------45 IBLA 119 (Jan. 23, 1980)
46 IBLA 35 (Feb. 20, 1980)
50 IBLA 190, 87 I.D. 473 (1980)
84 IBLA 119 (Dec. 10, 1984)
1374 ----------46 IBLA 35 (Feb. 20, 1980)
50 IBLA 190, 87 I.D. 473 (1980)
73 IBLA 308 (June 7, 1983)
M-36942, 88 I.D. 1090 (1981)
1377(b) -------78 IBLA 93 (Dec. 19, 1983)
1411 ----------55 IBLA 131 (June 3, 1981)
55 IBLA 332 (June 26, 1981)
56 IBLA 258, 88 I.D. 665 (1981)
64 IBLA 361 (June 16, 1982)
66 IBLA 150 (Aug. 10, 1982)
67 IBLA 168 (Sept. 21, 1982)
76 IBLA 395 (Oct. 27, 1983)
1411-1413 -----51 IBLA 115 (Nov. 20, 1980)
53 IBLA 23 (Feb. 26, 1981)
53 IBLA 279 (Mar. 24, 1981)
55 IBLA 23 (May 26, 1981)
58 IBLA 94 (Sept. 24, 1981)
58 IBLA 98 (Sept. 24, 1981)
58 IBLA 103 (Sept. 24, 1981)
58 IBLA 202 (Sept. 29, 1981)
58 IBLA 260 (Oct. 6, 1981)
59 IBLA 182 (Oct. 27, 1981)
1411-1418 -----45 IBLA 14 (Jan. 8, 1980)
49 IBLA 325 (Aug. 22, 1980)
53 IBLA 23 (Feb. 26, 1981)
53 IBLA 279 (Mar. 24, 1981)
58 IBLA 94 (Sept. 24, 1981)
58 IBLA 98 (Sept. 24, 1981)
58 IBLA 103 (Sept. 24, 1981)
58 IBLA 108 (Sept. 24, 1981)
58 IBLA 202 (Sept. 29, 1981)
58 IBLA 260 (Oct. 6, 1981)
67 IBLA 97 (Sept. 13, 1982)
75 IBLA 168 (Aug. 19, 1983)
1418 ----------76 IBLA 395 (Oct. 27, 1983)
1421-1427 -----49 IBLA 325 (Aug. 22, 1980)
51 IBLA 115 (Nov. 20, 1980)
55 IBLA 23 (May 26, 1981)
58 IBLA 103 (Sept. 24, 1981)
58 IBLA 108 (Sept. 24, 1981)
58 IBLA 202 (Sept. 29, 1981)
73 IBLA 268 (June 7, 1983)
76 IBLA 208 (Oct. 11, 1983)
1423 ----------76 IBLA 208 (Oct. 11, 1983)
1424 ----------73 IBLA 268 (June 7, 1983)
76 IBLA 208 (Oct. 11, 1983)

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sec. 1431 ----------78 IBLA 379 (Jan. 31, 1984)
1431-1435 -----49 IBLA 278, 87 I.D. 350 (1980)
52 IBLA 227 (Jan. 30, 1981)
55 IBLA 157 (June 9, 1981)
1432 ----------52 IBLA 227 (Jan. 30, 1981)
1435 ----------52 IBLA 227 (Jan. 30, 1981)
1451-1457 -----51 IBLA 301, 87 I.D. 628 (1980)
1457 ----------11 IBIA 184, 90 I.D. 243 (1983)
1464 ----------53 IBLA 101, 88 I.D. 345 (1981)
72 IBLA 62 (Apr. 12, 1983)
74 IBLA 32 (June 28, 1983)
75 IBLA 55 (Aug. 5, 1983)
79 IBLA 141 (Feb. 22, 1984)
1475 ----------66 IBLA 212 (Aug. 16, 1982)
1510 ----------73 IBLA 108 (May 23, 1983)
1601 ---------- 4 ANCAB 173, 87 I.D. 123 (1980)
4 ANCAB 314 (July 9, 1980)
4 ANCAB 350 (July 30, 1980)
5 ANCAB 77, 87 I.D. 480 (1980)
5 ANCAB 123, 87 I.D. 603 (1980)
5 ANCAB 147, 88 I.D. 14 (1981)
6 ANCAB 1, 88 I.D. 771 (1981)
6 ANCAB 37, 88 I.D. 757 (1981)
6 ANCAB 45 (Aug. 24, 1981)
6 ANCAB 50 (Aug. 24, 1981)
6 ANCAB 55 (Aug. 24, 1981)
6 ANCAB 65, 88 I.D. 760 (1981)
6 ANCAB 111 (Sept. 29, 1981)
6 ANCAB 129 (Oct. 22, 1981)
6 ANCAB 157, 88 I.D. 1028 (1981)
7 ANCAB 43, 89 I.D. 219 (1982)
7 ANCAB 106, 89 I.D. 293 (1982)
45 IBLA 198 (Jan. 30, 1980)
46 IBLA 366 (Apr. 8, 1980)
50 IBLA 280 (Oct. 6, 1980)
50 IBLA 353 (Oct. 16, 1980)
55 IBLA 223 (June 18, 1981)
63 IBLA 176 (Apr. 8, 1982)
65 IBLA 44 (June 23, 1982)
66 IBLA 204 (Aug. 13, 1982)
67 IBLA 376 (Oct. 8, 1982)
68 IBLA 359 (Nov. 22, 1982)
70 IBLA 302 (Jan. 28, 1983)
71 IBLA 318 (Mar. 23, 1983)
72 IBLA 48 (Apr. 12, 1983)
72 IBLA 218 (Apr. 25, 1983)
73 IBLA 344 (June 10, 1983)
75 IBLA 242 (Aug. 24, 1983)
76 IBLA 103 (Sept. 21, 1983)
76 IBLA 264 (Oct. 18, 1983)
77 IBLA 20 (Oct. 31, 1983)
79 IBLA 286 (Mar. 20, 1984)
80 IBLA 221 (Apr. 30, 1984)
84 IBLA 211 (Dec. 28, 1984)
1601-1610 -----68 IBLA 359 (Nov. 22, 1982)
1601-1627 ----- 4 ANCAB 173, 87 I.D. 123 (1980)
75 IBLA 316 (Aug. 30, 1983)
79 IBLA 301 (Mar. 20, 1984)
80 IBLA 89 (Mar. 30, 1984)
80 IBLA 231 (Apr. 30, 1984)
1601-1628 ----- 4 ANCAB 112 (Jan. 9, 1980)
4 ANCAB 116, 87 I.D. 1 (1980)
4 ANCAB 130 (Jan. 21, 1980)
4 ANCAB 132 (Jan. 31, 1980)
4 ANCAB 134 (Feb. 8, 1980)
4 ANCAB 151, 87 I.D. 81 (1980)
4 ANCAB 168 (Feb. 28, 1980)
4 ANCAB 171 (Feb. 29, 1980)

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sec. 1601-1628 ——— 4 ANCAB 173, 87 I.D. 123 (1980)
4 ANCAB 207 (Apr. 21, 1980)
4 ANCAB 215 (Apr. 23, 1980)
4 ANCAB 217, 87 I.D. 163 (1980)
4 ANCAB 222, 87 I.D. 164 (1980)
4 ANCAB 232 (May 7, 1980)
4 ANCAB 234 (May 9, 1980)
4 ANCAB 236 (May 12, 1980)
4 ANCAB 238 (May 20, 1980)
4 ANCAB 244 (May 28, 1980)
4 ANCAB 247 (June 2, 1980)
4 ANCAB 250, 87 I.D. 219 (1980)
4 ANCAB 277, 87 I.D. 279 (1980)
4 ANCAB 294, 87 I.D. 286 (1980)
4 ANCAB 307 (July 8, 1980)
4 ANCAB 314 (July 9, 1980)
4 ANCAB 318 (July 15, 1980)
4 ANCAB 321 (July 24, 1980)
4 ANCAB 328 (July 24, 1980)
4 ANCAB 335 (July 24, 1980)
4 ANCAB 342 (July 24, 1980)
4 ANCAB 350 (July 30, 1980)
4 ANCAB 355, 87 I.D. 341 (1980)
5 ANCAB 1 (Aug. 20, 1980)
5 ANCAB 4, 87 I.D. 366 (1980)
5 ANCAB 19, 87 I.D. 372 (1980)
5 ANCAB 32 (Aug. 25, 1980)
5 ANCAB 39 (Aug. 26, 1980)
5 ANCAB 46 (Aug. 26, 1980)
5 ANCAB 54 (Sept. 10, 1980)
5 ANCAB 57 (Sept. 22, 1980)
5 ANCAB 77, 87 I.D. 480 (1980)
5 ANCAB 123, 87 I.D. 603 (1980)
5 ANCAB 139 (Dec. 18, 1980)
5 ANCAB 174, 88 I.D. 352 (1981)
5 ANCAB 197, 88 I.D. 442 (1981)
5 ANCAB 212 (Apr. 15, 1981)
5 ANCAB 220 (Apr. 17, 1981)
5 ANCAB 224, 88 I.D. 460 (1981)
5 ANCAB 257 (Apr. 21, 1981)
5 ANCAB 260, 88 I.D. 511 (1981)
5 ANCAB 265, 88 I.D. 513 (1981)
5 ANCAB 279 (Apr. 30, 1981)
5 ANCAB 281 (May 1, 1981)
5 ANCAB 284 (May 4, 1981)
5 ANCAB 290 (May 11, 1981)
5 ANCAB 297 (May 13, 1981)
5 ANCAB 299 (May 13, 1981)
5 ANCAB 302 (May 29, 1981)
5 ANCAB 304 (May 29, 1981)
5 ANCAB 307, 88 I.D. 629 (1981)
5 ANCAB 324, 88 I.D. 636 (1981)
5 ANCAB 343 (June 26, 1981)
5 ANCAB 354 (July 24, 1981)
5 ANCAB 368 (July 27, 1981)
5 ANCAB 373 (July 28, 1981)
6 ANCAB 1, 88 I.D. 711 (1981)
6 ANCAB 17, 88 I.D. 718 (1981)
6 ANCAB 27 (Aug. 19, 1981)
6 ANCAB 32 (Aug. 19, 1981)
6 ANCAB 37, 88 I.D. 757 (1981)
6 ANCAB 45 (Aug. 24, 1981)
6 ANCAB 50 (Aug. 24, 1981)
6 ANCAB 55 (Aug. 24, 1981)
6 ANCAB 60 (Aug. 24, 1981)
6 ANCAB 65, 88 I.D. 760 (1981)
6 ANCAB 95, 88 I.D. 886 (1981)
6 ANCAB 111 (Sept. 29, 1981)

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sec. 1601-1628 ——— 6 ANCAB 122 (Oct. 6, 1981)
6 ANCAB 129 (Oct. 22, 1981)
6 ANCAB 138 (Oct. 30, 1981)
6 ANCAB 143 (Oct. 30, 1981)
6 ANCAB 147 (Nov. 27, 1981)
6 ANCAB 152, 88 I.D. 1027 (1981)
6 ANCAB 157, 88 I.D. 1028 (1981)
6 ANCAB 181, 88 I.D. 1039 (1981)
6 ANCAB 203, 88 I.D. 1047 (1981)
6 ANCAB 219, 88 I.D. 1086 (1981)
6 ANCAB 242, 88 I.D. 1105 (1981)
6 ANCAB 264 (Jan. 15, 1982)
6 ANCAB 267 (Jan. 15, 1982)
6 ANCAB 270, 89 I.D. 1 (1982)
6 ANCAB 290, 89 I.D. 9 (1982)
6 ANCAB 307, 89 I.D. 14 (1982)
6 ANCAB 340, 89 I.D. 62 (1982)
6 ANCAB 352 (Feb. 16, 1982)
6 ANCAB 359 (Feb. 18, 1982)
6 ANCAB 364 (Feb. 24, 1982)
6 ANCAB 369, 89 I.D. 74 (1982)
7 ANCAB 4 (Mar. 24, 1982)
7 ANCAB 8, 89 I.D. 118 (1982)
7 ANCAB 43, 89 I.D. 219 (1982)
7 ANCAB 63, 89 I.D. 242 (1982)
7 ANCAB 106, 89 I.D. 293 (1982)
7 ANCAB 132, 89 I.D. 303 (1982)
7 ANCAB 157, 89 I.D. 321 (1982)
7 ANCAB 188, 89 I.D. 346 (1982)
7 ANCAB 203 (June 25, 1982)
8 IBIA 218, 88 I.D. 261 (1981)
9 IBIA 3, 88 I.D. 575 (1981)
9 IBIA 70, 88 I.D. 822 (1981)
55 IBLA 305 (June 25, 1981)
63 IBLA 176 (Apr. 8, 1982)
65 IBLA 391 (July 23, 1982)
69 IBLA 1 (Nov. 24, 1982)
69 IBLA 219, 89 I.D. 642 (1982)
71 IBLA 39 (Feb. 16, 1983)
72 IBLA 13 (Apr. 4, 1983)
77 IBLA 181 (Nov. 18, 1983)
77 IBLA 270 (Nov. 30, 1983)
78 IBLA 196 (Jan. 5, 1984)
78 IBLA 323 (Jan. 24, 1984)
80 IBLA 313 (May 4, 1984)
81 IBLA 1 (May 14, 1984)
81 IBLA 7 (May 14, 1984)
81 IBLA 311 (June 18, 1984)
82 IBLA 80 (July 17, 1984)
1601-1630 ———45 IBLA 87 (Jan. 17, 1980)
1601 et seq. — 6 ANCAB 65, 88 I.D. 760 (1981)
7 ANCAB 8, 89 I.D. 118 (1982)
8 IBIA 210 (Nov. 7, 1980)
63 IBLA 35 (Apr. 28, 1982)
71 IBLA 394 (Mar. 30, 1983)
1601(a) ——— 9 IBIA 3, 88 I.D. 575 (1981)
75 IBLA 316 (Aug. 30, 1983)
79 IBLA 301 (Mar. 20, 1984)
80 IBLA 89 (Mar. 30, 1984)
80 IBLA 231 (Apr. 30, 1984)
1601(b) ——— 8 IBIA 218, 88 I.D. 261 (1981)
1601(c) ——— 8 IBIA 218, 88 I.D. 261 (1981)
1602(b) ——— 8 IBIA 218, 88 I.D. 261 (1981)
9 IBIA 3, 88 I.D. 575 (1981)
1602(c) ———75 IBLA 316 (Aug. 30, 1983)
79 IBLA 301 (Mar. 20, 1984)
80 IBLA 89 (Mar. 30, 1984)
80 IBLA 231 (Apr. 30, 1984)

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sec. 1602(d) --------75 IBLA 216 (Aug. 30, 1983)
79 IBLA 301 (Mar. 20, 1984)
80 IBLA 89 (Mar. 30, 1984)
80 IBLA 231 (Apr. 30, 1984)
1602(e) -------- 5 ANCAB 59, 87 I.D. 422 (1980)
67 IBLA 380 (Oct. 8, 1982)
79 IBLA 286 (Mar. 20, 1984)
81 IBLA 222 (June 6, 1984)
1603 ----------56 IBLA 69 (July 10, 1981)
1603(b) --------71 IBLA 318 (Mar. 23, 1983)
1604 ---------- 8 IBIA 218, 88 I.D. 261 (1981)
1604(b) --------80 IBLA 231 (Apr. 30, 1984)
1606 ----------75 IBLA 316 (Aug. 30, 1983)
1607(a) --------68 IBLA 359 (Nov. 22, 1982)
1608 ----------80 IBLA 313 (May 4, 1984)
1608(c) --------58 IBLA 118 (Sept. 24, 1981)
1608(g) --------58 IBLA 118 (Sept. 24, 1981)
1610 ---------- 6 ANCAB 157, 88 I.D. 1028 (1981)
63 IBLA 176 (Apr. 8, 1982)
72 IBLA 387 (May 5, 1983)
74 IBLA 364 (July 28, 1983)
77 IBLA 316 (Nov. 30, 1983)
77 IBLA 383, 90 I.D. 543 (1983)
81 IBLA 311 (June 18, 1984)
84 IBLA 347 (Jan. 17, 1985)
1610(a) --------67 IBLA 317 (Oct. 1, 1982)
70 IBLA 302 (Jan. 28, 1983)
80 IBLA 313 (May 4, 1984)
1610(a)(1) ----65 IBLA 44 (June 23, 1982)
81 IBLA 222 (June 6, 1984)
1610(a)(1)(A) -53 IBLA 306 (Mar. 25, 1981)
71 IBLA 63 (Feb. 22, 1983)
76 IBLA 264 (Oct. 18, 1983)
1610(a)(3) ----75 IBLA 309 (Aug. 30, 1983)
75 IBLA 316 (Aug. 30, 1983)
77 IBLA 383, 90 I.D. 543 (1983)
81 IBLA 69 (May 23, 1984)
1610(a)(3)(A) -81 IBLA 311 (June 18, 1984)
1610(b)(1) ----11 IBIA 155, 90 I.D. 165 (1983)
51 IBLA 368 (Dec. 30, 1980)
80 IBLA 231 (Apr. 30, 1984)
1611 ---------- 4 ANCAB 314 (July 9, 1980)
6 ANCAB 37, 88 I.D. 757 (1981)
63 IBLA 176 (Apr. 8, 1982)
67 IBLA 380 (Oct. 8, 1982)
72 IBLA 218 (Apr. 25, 1983)
73 IBLA 344 (June 10, 1983)
75 IBLA 242 (Aug. 24, 1983)
77 IBLA 20 (Oct. 31, 1983)
77 IBLA 374 (Dec. 7, 1983)
77 IBLA 383, 90 I.D. 543 (1983)
78 IBLA 390 (Jan. 31, 1984)
80 IBLA 313 (May 4, 1984)
84 IBLA 163 (Dec. 13, 1984)
84 IBLA 211 (Dec. 28, 1984)
1611(a) -------- 4 ANCAB 350 (July 30, 1980)
5 ANCAB 123, 87 I.D. 603 (1980)
5 ANCAB 147, 88 I.D. 14 (1981)
6 ANCAB 1, 88 I.D. 711 (1981)
67 IBLA 317 (Oct. 1, 1982)
71 IBLA 256 (Mar. 21, 1983)
75 IBLA 242 (Aug. 24, 1983)
77 IBLA 270 (Nov. 30, 1983)
81 IBLA 69 (May 23, 1984)
81 IBLA 222 (June 6, 1984)
1611(a)(1) ----50 IBLA 284 (Oct. 6, 1980)
81 IBLA 222 (June 6, 1984)

TITLE 43: Continued

sec. 1611(c) -------- 5 ANCAB 77, 87 I.D. 480 (1980)
77 IBLA 219 (Nov. 28, 1983)
77 IBLA 383, 90 I.D. 543 (1983)
81 IBLA 311 (June 18, 1984)
1612(b) --------71 IBLA 318 (Mar. 23, 1983)
1613 ----------54 IBLA 165 (Apr. 21, 1981)
67 IBLA 317 (Oct. 1, 1982)
67 IBLA 380 (Oct. 8, 1982)
74 IBLA 139, 90 I.D. 289 (1983)
74 IBLA 281 (July 25, 1983)
75 IBLA 65 (Aug. 10, 1983)
76 IBLA 103 (Sept. 21, 1983)
77 IBLA 219 (Nov. 28, 1983)
79 IBLA 286 (Mar. 20, 1984)
80 IBLA 313 (May 4, 1984)
81 IBLA 311 (June 18, 1984)
82 IBLA 80 (July 17, 1984)
82 IBLA 329 (Sept. 7, 1984)
1613(a) --------73 IBLA 97 (May 23, 1983)
74 IBLA 275 (July 25, 1983)
81 IBLA 317 (June 19, 1984)
82 IBLA 329 (Sept. 7, 1984)
84 IBLA 211 (Dec. 28, 1984)
1613(c) --------55 IBLA 223 (June 18, 1981)
67 IBLA 344 (Oct. 5, 1982)
67 IBLA 376 (Oct. 8, 1982)
73 IBLA 344 (June 10, 1983)
79 IBLA 286 (Mar. 20, 1984)
80 IBLA 313 (May 4, 1984)
1613(c)(1) ----80 IBLA 231 (Apr. 30, 1984)
1613(c)(4) ----67 IBLA 344 (Oct. 5, 1982)
67 IBLA 376 (Oct. 8, 1982)
67 IBLA 380 (Oct. 8, 1982)
75 IBLA 242 (Aug. 24, 1983)
1613(e) -------- 7 ANCAB 43, 89 I.D. 219 (1982)
1613(g) -------- 5 ANCAB 174, 88 I.D. 352 (1981)
5 ANCAB 307, 88 I.D. 629 (1981)
63 IBLA 176 (Apr. 8, 1982)
67 IBLA 344 (Oct. 5, 1982)
67 IBLA 380 (Oct. 8, 1982)
74 IBLA 139, 90 I.D. 289 (1983)
76 IBLA 264 (Oct. 18, 1983)
77 IBLA 270 (Nov. 30, 1983)
79 IBLA 286 (Mar. 20, 1984)
80 IBLA 89 (Mar. 30, 1984)
80 IBLA 313 (May 4, 1984)
81 IBLA 1 (May 14, 1984)
81 IBLA 69 (May 23, 1984)
81 IBLA 222 (June 6, 1984)
81 IBLA 311 (June 18, 1984)
1613(h) --------77 IBLA 383, 90 I.D. 543 (1983)
79 IBLA 301 (Mar. 20, 1984)
80 IBLA 231 (Apr. 30, 1984)
1613(h)(1) ----77 IBLA 383, 90 I.D. 543 (1983)
1613(h)(2) ----75 IBLA 316 (Aug. 30, 1983)
79 IBLA 301 (Mar. 20, 1984)
80 IBLA 231 (Apr. 30, 1984)
81 IBLA 69 (May 23, 1984)
1613(h)(3) ----74 IBLA 308 (July 27, 1983)
1613(h)(5) ----65 IBLA 26 (June 22, 1982)
1613(h)(8) ---- 6 ANCAB 65, 88 I.D. 760 (1981)
6 ANCAB 111 (Sept. 29, 1981)
81 IBLA 311 (June 18, 1984)
1615 ----------68 IBLA 174 (Nov. 4, 1982)
79 IBLA 286 (Mar. 20, 1984)
1615(b) -------- 7 ANCAB 106, 89 I.D. 293 (1982)
79 IBLA 286 (Mar. 20, 1984)

TITLE 43: Continued

sec. 1616 ----------72 IBLA 387 (May 5, 1983)
80 IBLA 313 (May 4, 1984)
84 IBLA 211 (Dec. 28, 1984)
1616(b) --------71 IBLA 256 (Mar. 21, 1983)
72 IBLA 218 (Apr. 25, 1983)
74 IBLA 275 (July 25, 1983)
74 IBLA 308 (July 27, 1983)
77 IBLA 219 (Nov. 28, 1983)
78 IBLA 390 (Jan. 31, 1984)
79 IBLA 335 (Mar. 22, 1984)
81 IBLA 7 (May 14, 1984)
81 IBLA 222 (June 6, 1984)
81 IBLA 317 (June 19, 1984)
84 IBLA 211 (Dec. 28, 1984)
1616(b)(1) ----69 IBLA 219, 89 I.D. 642 (1982)
74 IBLA 275 (July 25, 1983)
77 IBLA 270 (Nov. 30, 1983)
81 IBLA 7 (May 14, 1984)
82 IBLA 329 (Sept. 7, 1984)
84 IBLA 211 (Dec. 28, 1984)
1616(b)(2) ---- 6 ANCAB 157, 88 I.D. 1028 (1981)
77 IBLA 219 (Nov. 28, 1983)
77 IBLA 270 (Nov. 30, 1983)
82 IBLA 329 (Sept. 7, 1984)
1616(b)(3) ----74 IBLA 275 (July 25, 1983)
81 IBLA 222 (June 6, 1984)
1616(d)(1) ----77 IBLA 181 (Nov. 18, 1983)
1616(d)(2) ----72 IBLA 48 (Apr. 12, 1983)
77 IBLA 181 (Nov. 18, 1983)
84 IBLA 209 (Dec. 27, 1984)
1616(d)(2)(C) -77 IBLA 181 (Nov. 18, 1983)
1616(d)(2)(D) -77 IBLA 181 (Nov. 18, 1983)
1617 ---------- 5 ANCAB 195 (Mar. 31, 1981)
8 IBIA 218, 88 I.D. 261 (1981)
9 IBIA 3, 88 I.D. 575 (1981)
45 IBLA 28 (Jan. 14, 1980)
45 IBLA 198 (Jan. 30, 1980)
46 IBLA 56 (Feb. 22, 1980)
46 IBLA 165 (Mar. 21, 1980)
46 IBLA 177 (Mar. 21, 1980)
46 IBLA 303 (Mar. 31, 1980)
46 IBLA 366 (Apr. 8, 1980)
46 IBLA 373 (Apr. 8, 1980)
47 IBLA 58 (Apr. 14, 1980)
47 IBLA 241 (May 13, 1980)
47 IBLA 249 (May 13, 1980)
48 IBLA 229 (June 17, 1980)
48 IBLA 377 (July 11, 1980)
49 IBLA 213 (Aug. 11, 1980)
50 IBLA 61 (Sept. 15, 1980)
51 IBLA 165 (Nov. 26, 1980)
52 IBLA 222 (Jan. 30, 1981)
53 IBLA 208, 88 I.D. 373 (1981)
53 IBLA 306 (Mar. 25, 1981)
54 IBLA 295 (Apr. 29, 1981)
54 IBLA 306 (Apr. 29, 1981)
54 IBLA 346 (May 12, 1981)
55 IBLA 305 (June 25, 1981)
56 IBLA 69 (July 10, 1981)
56 IBLA 242, 88 I.D. 663 (1981)
59 IBLA 345 (Nov. 5, 1981)
59 IBLA 361 (Nov. 9, 1981)
59 IBLA 384 (Nov. 9, 1981)
60 IBLA 101 (Nov. 19, 1981)
60 IBLA 214 (Nov. 27, 1981)
60 IBLA 252 (Dec. 4, 1981)
60 IBLA 394 (Dec. 23, 1981)
60 IBLA 399 (Dec. 28, 1981)

TITLE 43: Continued

sec. 1617 ----------61 IBLA 1 (Dec. 28, 1981)
61 IBLA 181 (Jan. 26, 1982)
61 IBLA 189 (Jan. 26, 1982)
61 IBLA 282 (Feb. 2, 1982)
61 IBLA 316 (Feb. 8, 1982)
61 IBLA 399 (Feb. 22, 1982)
62 IBLA 90 (Feb. 25, 1982)
63 IBLA 64 (Mar. 30, 1982)
63 IBLA 74 (Mar. 30, 1982)
63 IBLA 335 (Apr. 28, 1982)
63 IBLA 343 (Apr. 28, 1982)
64 IBLA 72 (May 10, 1982)
64 IBLA 97 (May 17, 1982)
64 IBLA 167 (May 25, 1982)
64 IBLA 180 (May 26, 1982)
64 IBLA 289 (June 4, 1982)
64 IBLA 304 (June 8, 1982)
66 IBLA 38 (July 23, 1982)
66 IBLA 77 (July 29, 1982)
66 IBLA 367 (Aug. 27, 1982)
67 IBLA 157 (Sept. 20, 1982)
70 IBLA 369 (Feb. 3, 1983)
71 IBLA 63 (Feb. 22, 1983)
71 IBLA 394 (Mar. 30, 1983)
76 IBLA 264 (Oct. 18, 1983)
77 IBLA 316 (Nov. 30, 1983)
81 IBLA 303 (June 15, 1984)
84 IBLA 150 (Dec. 12, 1984)
1617(a) -------- 8 IBIA 218, 88 I.D. 261 (1981)
45 IBLA 43 (Jan. 14, 1980)
47 IBLA 58 (Apr. 14, 1980)
54 IBLA 306 (Apr. 28, 1981)
56 IBLA 69 (July 10, 1981)
56 IBLA 242, 88 I.D. 663 (1981)
59 IBLA 345 (Nov. 5, 1981)
59 IBLA 384 (Nov. 9, 1981)
60 IBLA 14 (Nov. 16, 1981)
60 IBLA 101 (Nov. 19, 1981)
60 IBLA 214 (Nov. 27, 1981)
60 IBLA 252 (Dec. 4, 1981)
60 IBLA 394 (Dec. 23, 1981)
61 IBLA 1 (Dec. 28, 1981)
61 IBLA 282 (Feb. 2, 1982)
63 IBLA 64 (Mar. 30, 1982)
63 IBLA 74 (Mar. 30, 1982)
63 IBLA 335 (Apr. 28, 1982)
64 IBLA 304 (June 8, 1982)
64 IBLA 26 (June 22, 1982)
65 IBLA 317 (July 15, 1982)
66 IBLA 367 (Aug. 27, 1982)
71 IBLA 63 (Feb. 22, 1983)
77 IBLA 347 (Dec. 5, 1983)
82 IBLA 80 (July 17, 1984)
84 IBLA 350 (Jan. 17, 1985)
1618 ---------- 9 IBIA 3, 88 I.D. 575 (1981)
1618(a) -------- 8 IBIA 218, 88 I.D. 261 (1981)
9 IBIA 3, 88 I.D. 575 (1981)
1618(b) -------- 8 IBIA 218, 88 I.D. 261 (1981)
1621 ----------63 IBLA 176 (Apr. 8, 1982)
74 IBLA 364 (July 28, 1983)
75 IBLA 65 (Aug. 10, 1983)
77 IBLA 219 (Nov. 28, 1983)
1621(b) --------67 IBLA 317 (Oct. 1, 1982)
1621(c) -------- 7 ANCAB 106, 89 I.D. 293 (1982)
69 IBLA 160, 89 I.D. 618 (1982)
74 IBLA 139, 90 I.D. 289 (1983)
77 IBLA 270 (Nov. 30, 1983)
78 IBLA 327 (Jan. 24, 1984)

TITLE 43: Continued

sec. 1621(c) -------81 IBLA 1 (May 14, 1984)
82 IBLA 329 (Sept. 7, 1984)
1621(h) -------77 IBLA 383, 90 I.D. 543 (1983)
1621(h)(1) ----72 IBLA 387 (May 5, 1983)
1621(i) ------- 5 ANCAB 174, 88 I.D. 352 (1981)
1621(j) ------- 7 ANCAB 43, 89 I.D. 219 (1982)
1621(j)(2) ----82 IBLA 80 (July 17, 1984)
1621(k) ------- 6 ANCAB 152, 88 I.D. 1027 (1981)
79 IBLA 112 (Feb. 21, 1984)
1624 ---------- 5 ANCAB 59, 87 I.D. 422 (1980)
1631(b) -------70 IBLA 302 (Jan. 28, 1983)
71 IBLA 318 (Mar. 23, 1983)
82 IBLA 80 (July 17, 1984)
1633(A) -------84 IBLA 211 (Dec. 28, 1984)
1634 ----------55 IBLA 305 (June 25, 1981)
78 IBLA 196 (Jan. 5, 1984)
80 IBLA 221 (Apr. 30, 1984)
82 IBLA 165 (Aug. 6, 1984)
1634(a) -------77 IBLA 347 (Dec. 5, 1983)
84 IBLA 350 (Jan. 17, 1985)
1634(a)(1) ----66 IBLA 367 (Aug. 27, 1982)
71 IBLA 63 (Feb. 22, 1983)
77 IBLA 321 (Dec. 1, 1983)
84 IBLA 150 (Dec. 12, 1984)
84 IBLA 350 (Jan. 17, 1985)
1634(a)(4) ----71 IBLA 63 (Feb. 22, 1983)
77 IBLA 321 (Dec. 1, 1983)
77 IBLA 347 (Dec. 5, 1983)
84 IBLA 150 (Dec. 12, 1984)
1634(a)(5)(A) -78 IBLA 196 (Jan. 5, 1984)
1634(a)(5)(B) -70 IBLA 369 (Feb. 3, 1983)
80 IBLA 221 (Apr. 30, 1984)
84 IBLA 350 (Jan. 17, 1985)
1634(c) -------77 IBLA 347 (Dec. 5, 1983)
78 IBLA 196 (Jan. 5, 1984)
1635(c) -------76 IBLA 264 (Oct. 18, 1983)
1651-1655 -----52 IBLA 222 (Jan. 30, 1981)
1700-1728 -----50 IBLA 186, 87 I.D. 462 (1980)
1700 et seq. --82 IBLA 303 (Sept. 5, 1984)
1701 ----------45 IBLA 87 (Jan. 17, 1980)
45 IBLA 305 (Feb. 6, 1980)
46 IBLA 257 (Mar. 27, 1980)
47 IBLA 47 (Apr. 14, 1980)
47 IBLA 284 (May 15, 1980)
48 IBLA 250 (June 26, 1980)
49 IBLA 278, 87 I.D. 350 (1980)
50 IBLA 127 (Sept. 24, 1980)
52 IBLA 56 (Jan. 6, 1981)
53 IBLA 136 (Mar. 9, 1981)
55 IBLA 151 (June 8, 1981)
55 IBLA 390 (June 30, 1981)
56 IBLA 167 (July 20, 1981)
57 IBLA 95 (Aug. 25, 1981)
57 IBLA 221 (Aug. 27, 1981)
58 IBLA 294 (Oct. 14, 1981)
59 IBLA 378 (Nov. 9, 1981)
60 IBLA 1 (Nov. 12, 1981)
60 IBLA 293 (Dec. 18, 1981)
60 IBLA 341 (Dec. 22, 1981)
60 IBLA 349, 88 I.D. 1115 (1981)
61 IBLA 166 (Jan. 25, 1982)
61 IBLA 216 (Jan. 28, 1982)
61 IBLA 396 (Feb. 22, 1982)
62 IBLA 203 (Mar. 9, 1982)
63 IBLA 23 (Mar. 26, 1982)
63 IBLA 317 (Apr. 27, 1982)
64 IBLA 27 (May 6, 1982)
65 IBLA 144 (June 29, 1982)
65 IBLA 271 (July 12, 1982)

TITLE 43: Continued

sec. 1701(a) -------65 IBLA 380 (July 20, 1982)
68 IBLA 219 (Nov. 12, 1982)
69 IBLA 130 (Dec. 15, 1982)
71 IBLA 165 (Mar. 10, 1983)
73 IBLA 308 (June 7, 1983)
75 IBLA 236 (Aug. 24, 1983)
77 IBLA 110 (Nov. 14, 1983)
77 IBLA 228 (Nov. 28, 1983)
79 IBLA 204 (Feb. 28, 1984)
79 IBLA 214 (Feb. 28, 1984)
M-36910 (Supp.), 88 I.D. 909 (1981)
1701-1781 -----45 IBLA 171, 87 I.D. 21 (1980)
1701-1782 -----45 IBLA 347 (Feb. 7, 1980)
46 IBLA 80 (Feb. 22, 1980)
46 IBLA 132 (Mar. 19, 1980)
46 IBLA 198 (Mar. 24, 1980)
47 IBLA 155 (May 6, 1980)
51 IBLA 154 (Nov. 26, 1980)
53 IBLA 153 (Mar. 12, 1981)
54 IBLA 309 (Apr. 30, 1981)
56 IBLA 78, 88 I.D. 643 (1981)
56 IBLA 167 (July 20, 1981)
56 IBLA 258, 88 I.D. 665 (1981)
57 IBLA 215 (Aug. 27, 1981)
57 IBLA 300 (Aug. 31, 1981)
60 IBLA 153 (Nov. 24, 1981)
60 IBLA 221 (Nov. 30, 1981)
63 IBLA 9 (Mar. 25, 1982)
71 IBLA 88 (Feb. 24, 1983)
71 IBLA 352 (Mar. 28, 1983)
79 IBLA 5 (Feb. 2, 1984)
80 IBLA 64, 91 I.D. 165 (1984)
1701-1784 -----76 IBLA 48 (Sept. 19, 1983)
77 IBLA 174 (Nov. 17, 1983)
77 IBLA 181 (Nov. 18, 1983)
78 IBLA 115 (Dec. 22, 1983)
79 IBLA 267 (Mar. 7, 1984)
81 IBLA 366 (June 27, 1984)
82 IBLA 339 (Sept. 12, 1984)
1701 et seq. -- 7 ANCAB 8, 89 I.D. 118 (1982)
47 IBLA 17, 87 I.D. 143 (1980)
60 IBLA 240 (Dec. 4, 1981)
70 IBLA 348 (Feb. 3, 1983)
75 IBLA 40 (Aug. 5, 1983)
M-36914 (Supp.), 88 I.D. 253 (1981)
M-36914 (Supp. I), 88 I.D. 1055 (1981)
1701(a) -------63 IBLA 19 (Mar. 26, 1982)
80 IBLA 42 (Mar. 28, 1984)
81 IBLA 171 (May 31, 1984)
4 OHA 257 (Apr. 9, 1982)
1701(a)(1) ----82 IBLA 303 (Sept. 5, 1984)
1701(a)(4) ----74 IBLA 20 (June 24, 1983)
76 IBLA 205 (Oct. 11, 1983)
1701(a)(5) ----47 IBLA 47 (Apr. 14, 1980)
47 IBLA 155 (May 6, 1980)
50 IBLA 80 (Sept. 17, 1980)
50 IBLA 127 (Sept. 24, 1980)
51 IBLA 89 (Nov. 5, 1980)
58 IBLA 175, 88 I.D. 879 (1981)
75 IBLA 140 (Aug. 17, 1983)
82 IBLA 303 (Sept. 5, 1984)
1701(a)(6) ----60 IBLA 240 (Dec. 4, 1981)
1701(a)(7) -----52 IBLA 280, 88 I.D. 258 (1981)
56 IBLA 258, 88 I.D. 665 (1981)
61 IBLA 43 (Dec. 31, 1981)

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sec. 1701(a)(8) ----47 IBLA 71 (Apr. 21, 1980)
47 IBLA 155 (May 6, 1980)
50 IBLA 80 (Sept. 17, 1980)
63 IBLA 23 (Mar. 26, 1982)
66 IBLA 222 (Aug. 16, 1982)
1701(a)(9) ----48 IBLA 159 (June 9, 1980)
78 IBLA 115 (Dec. 22, 1983)
4 OHA 257 (Apr. 9, 1982)
1701(a)(12) ---47 IBLA 155 (May 6, 1980)
50 IBLA 80 (Sept. 17, 1980)
63 IBLA 23 (Mar. 26, 1982)
77 IBLA 174 (Nov. 17, 1983)
1701(b) -------75 IBLA 140 (Aug. 17, 1983)
1701(g) ------- M-36914 (Supp.), 88 I.D. 253 (1981)
1702 ----------59 IBLA 291 (Oct. 30, 1981)
60 IBLA 1 (Nov. 12, 1981)
61 IBLA 8 (Dec. 29, 1981)
61 IBLA 166 (Jan. 25, 1982)
62 IBLA 43 (Feb. 24, 1982)
62 IBLA 299 (Mar. 18, 1982)
82 IBLA 14 (July 5, 1984)
1702(a) -------47 IBLA 155 (May 6, 1980)
75 IBLA 186 (Aug. 22, 1983)
84 IBLA 311, 92 I.D. 37 (1985)
1702(c) -------56 IBLA 258, 88 I.D. 665 (1981)
68 IBLA 96 (Oct. 26, 1982)
79 IBLA 240 (Mar. 1, 1984)
1702(d) -------47 IBLA 155 (May 6, 1980)
1702(e) -------50 IBLA 303, 87 I.D. 478 (1980)
60 IBLA 305 (Dec. 18, 1981)
61 IBLA 8 (Dec. 29, 1981)
61 IBLA 300 (Feb. 3, 1982)
63 IBLA 172 (Apr. 8, 1982)
63 IBLA 321 (Apr. 27, 1982)
63 IBLA 330 (Apr. 28, 1982)
64 IBLA 27 (May 6, 1982)
67 IBLA 287 (Sept. 28, 1982)
75 IBLA 44 (Aug. 5, 1983)
77 IBLA 144 (Nov. 15, 1983)
77 IBLA 330 (Dec. 5, 1983)
80 IBLA 64, 91 I.D. 165 (1984)
1702(h) -------61 IBLA 166 (Jan. 25, 1982)
1702(i) -------60 IBLA 341 (Dec. 22, 1981)
60 IBLA 349, 88 I.D. 1115 (1981)
71 IBLA 165 (Mar. 10, 1983)
1702(j) -------54 IBLA 38, 88 I.D. 437 (1981)
59 IBLA 348 (Nov. 5, 1981)
68 IBLA 272 (Nov. 17, 1982)
82 IBLA 257 (Aug. 29, 1984)
1711 ----------63 IBLA 23 (Mar. 26, 1982)
64 IBLA 50 (May 6, 1982)
71 IBLA 100 (Feb. 24, 1983)
76 IBLA 31 (Sept. 8, 1983)
1711(a) -------54 IBLA 215 (Apr. 23, 1981)
56 IBLA 206 (July 22, 1981)
61 IBLA 300 (Feb. 3, 1982)
61 IBLA 329 (Feb. 10, 1982)
62 IBLA 319 (Mar. 22, 1982)
63 IBLA 165 (Apr. 6, 1982)
65 IBLA 126 (June 28, 1982)
65 IBLA 271 (July 12, 1982)
71 IBLA 67 (Feb. 22, 1983)
72 IBLA 100 (Apr. 14, 1983)
76 IBLA 116 (Sept. 21, 1983)
77 IBLA 330 (Dec. 5, 1983)
78 IBLA 133 (Dec. 29, 1983)

TITLE 43: Continued

sec. 1712 ----------60 IBLA 305 (Dec. 18, 1981)
61 IBLA 300 (Feb. 3, 1982)
62 IBLA 153 (Mar. 5, 1982)
63 IBLA 321 (Apr. 27, 1982)
63 IBLA 330 (Apr. 28, 1982)
64 IBLA 50 (May 6, 1982)
66 IBLA 287 (Aug. 19, 1982)
71 IBLA 380 (Mar. 29, 1983)
78 IBLA 115 (Dec. 22, 1983)
79 IBLA 262 (Mar. 23, 1984)
81 IBLA 181 (June 1, 1984)
84 IBLA 359, 92 I.D. 58 (1985)
M-36910 (Supp.), 88 I.D. 909 (1981)
1712(a) -------70 IBLA 214 (Jan. 24, 1983)
75 IBLA 140 (Aug. 17, 1983)
1712(c) -------68 IBLA 96 (Oct. 26, 1982)
82 IBLA 303 (Sept. 5, 1984)
1712(c)(1) ----54 IBLA 309 (Apr. 30, 1981)
1712(c)(3) ----75 IBLA 186 (Aug. 22, 1983)
1712(f) -------70 IBLA 214 (Jan. 24, 1983)
75 IBLA 140 (Aug. 17, 1983)
1713 ----------48 IBLA 385 (July 11, 1980)
62 IBLA 328 (Mar. 23, 1982)
66 IBLA 374, 89 I.D. 415 (1982)
72 IBLA 373 (May 4, 1983)
73 IBLA 27 (May 9, 1983)
73 IBLA 156 (May 24, 1983)
74 IBLA 4 (June 21, 1983)
74 IBLA 285 (July 25, 1983)
74 IBLA 350 (July 28, 1983)
76 IBLA 20 (Sept. 6, 1983)
76 IBLA 208 (Oct. 11, 1983)
79 IBLA 340 (Mar. 22, 1984)
81 IBLA 29 (May 17, 1984)
82 IBLA 230 (Aug. 23, 1984)
82 IBLA 289 (Aug. 31, 1984)
M-36900 (Supp. I), 90 I.D. 345 (1983)
1713(a) -------82 IBLA 230 (Aug. 23, 1984)
1713(d) -------74 IBLA 4 (June 21, 1983)
74 IBLA 285 (July 25, 1983)
74 IBLA 350 (July 28, 1983)
76 IBLA 20 (Sept. 6, 1983)
1713(f) -------81 IBLA 366 (June 27, 1984)
82 IBLA 230 (Aug. 23, 1984)
1714 ----------48 IBLA 250 (June 26, 1980)
50 IBLA 186, 87 I.D. 462 (1980)
53 IBLA 251 (Mar. 19, 1981)
54 IBLA 103 (Apr. 15, 1981)
57 IBLA 370 (Sept. 8, 1981)
58 IBLA 329 (Oct. 16, 1981)
62 IBLA 24[illegible] (Mar. 15, 1982)
65 IBLA 338 (July 15, 1982)
66 IBLA 100 (Aug. 4, 1982)
76 IBLA 383 (Oct. 27, 1983)
77 IBLA 181 (Nov. 18, 1983)
78 IBLA 320 (Jan. 24, 1984)
78 IBLA 349 (Jan. 25, 1984)
79 IBLA 267 (Mar. 7, 1984)
81 IBLA 53 (May 22, 1984)
82 IBLA 14 (July 5, 1984)
82 IBLA 162 (Aug. 6, 1984)
84 IBLA 166 (Dec. 19, 1984)
84 IBLA 233 (Dec. 31, 1984)
1714(a) ------- 7 ANCAB 8, 89 I.D. 118 (1982)
50 IBLA 186, 87 I.D. 462 (1980)

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sec. 1714(a) ——— 61 IBLA 8 (Dec. 31, 1981)
66 IBLA 100 (Aug. 4, 1982)
1714(b) ——— 50 IBLA 186, 87 I.D. 462 (1980)
1714(b)(1) ——— 50 IBLA 186, 87 I.D. 462 (1980)
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68 IBLA 325 (Nov. 22, 1982)
69 IBLA 180 (Dec. 15, 1982)
75 IBLA 16, 90 I.D. 352 (1983)
1714(b)(1)(c) ——— 68 IBLA 84 (Oct. 21, 1982)
1714(e) ——— 84 IBLA 124 (Dec. 10, 1984)
1714(g) ——— 51 IBLA 178 (Dec. 2, 1980)
61 IBLA 220 (Jan. 28, 1982)
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69 IBLA 180 (Dec. 15, 1982)
74 IBLA 1 (June 21, 1983)
79 IBLA 214 (Feb. 28, 1984)
81 IBLA 239 (June 6, 1984)
1714(h) ——— 68 IBLA 84 (Oct. 21, 1982)
1714(i) ——— 7 ANCAB 8, 89 I.D. 118 (1982)
45 IBLA 171, 87 I.D. 21 (1980)
61 IBLA 68 (Dec. 31, 1981)
67 IBLA 380 (Oct. 8, 1982)
1714(l) ——— 52 IBLA 56 (Jan. 6, 1981)
67 IBLA 287 (Sept. 28, 1982)
68 IBLA 84 (Oct. 21, 1982)
1714(l)(1) ——— 67 IBLA 287 (Sept. 28, 1982)
1715 ——— 52 IBLA 302 (Feb. 10, 1981)
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1715(c) ——— 61 IBLA 8 (Dec. 29, 1981)
1716 ——— 53 IBLA 153 (Mar. 12, 1981)
58 IBLA 329 (Oct. 16, 1981)
58 IBLA 390, 88 I.D. 918 (1981)
61 IBLA 8 (Dec. 29, 1981)
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73 IBLA 320 (June 7, 1983)
74 IBLA 350 (July 28, 1983)
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78 IBLA 366 (Jan. 30, 1984)
79 IBLA 362 (Mar. 23, 1984)
1716(a) ——— 52 IBLA 156, 88 I.D. 232 (1981)
63 IBLA 192 (Apr. 8, 1982)
78 IBLA 68 (Dec. 16, 1983)
78 IBLA 366 (Jan. 30, 1984)
79 IBLA 362 (Mar. 23, 1984)
1716(b) ——— 78 IBLA 68 (Dec. 16, 1983)
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1719 ——— 54 IBLA 137 (Apr. 17, 1981)
55 IBLA 296 (June 26, 1981)
58 IBLA 390, 88 I.D. 918 (1981)
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1719(b) ——— 50 IBLA 197 (Sept. 30, 1980)
53 IBLA 362 (Mar. 30, 1981)
55 IBLA 296 (June 26, 1981)
69 IBLA 118 (Nov. 30, 1982)
73 IBLA 92 (May 19, 1983)
78 IBLA 311 (Jan. 12, 1984)
1719(b)(1) ——— 50 IBLA 197 (Sept. 30, 1980)
53 IBLA 362 (Mar. 30, 1981)
54 IBLA 137 (Apr. 17, 1981)
55 IBLA 296 (June 26, 1981)
73 IBLA 92 (May 19, 1983)
78 IBLA 311 (Jan. 12, 1984)
1720 ——— 82 IBLA 303 (Sept. 5, 1984)
1721 ——— 79 IBLA 340 (Mar. 22, 1984)
1721(b) ——— 79 IBLA 340 (Mar. 22, 1984)
1721(b)(2) ——— 79 IBLA 340 (Mar. 22, 1984)
1721(c)(1) ——— 79 IBLA 340 (Mar. 22, 1984)

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sec. 1722 ——— 49 IBLA 278, 87 I.D. 350 (1980)
52 IBLA 227 (Jan. 30, 1981)
55 IBLA 157 (June 9, 1981)
1722(a) ——— 52 IBLA 227 (Jan. 30, 1981)
1731 ——— 60 IBLA 1 (Nov. 12, 1981)
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61 IBLA 396 (Feb. 22, 1982)
81 IBLA 242 (June 7, 1984)
1732 ——— 46 IBLA 265 (Mar. 27, 1980)
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66 IBLA 287 (Aug. 19, 1982)
71 IBLA 165 (Mar. 10, 1983)
75 IBLA 278 (Aug. 26, 1983)
76 IBLA 116 (Sept. 21, 1983)
77 IBLA 144 (Nov. 15, 1983)
81 IBLA 181 (June 1, 1984)
81 IBLA 242 (June 7, 1984)
1732(a) ——— 60 IBLA 1 (Nov. 12, 1981)
61 IBLA 396 (Feb. 22, 1982)
62 IBLA 43 (Feb. 24, 1982)
68 IBLA 96 (Oct. 26, 1982)
1732(b) ——— 45 IBLA 87 (Jan. 17, 1980)
45 IBLA 219 (Jan. 31, 1980)
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60 IBLA 341 (Dec. 22, 1981)
64 IBLA 379 (June 15, 1982)
68 IBLA 96 (Oct. 26, 1982)
70 IBLA 214 (Jan. 24, 1983)
75 IBLA 153, 90 I.D. 382 (1983)
75 IBLA 236 (Aug. 24, 1983)
84 IBLA 359, 92 I.D. 58 (1985)
M-36910 (Supp.), 88 I.D. 909 (1981)
1733 ——— 75 IBLA 278 (Aug. 26, 1983)
1733(a) ——— 47 IBLA 47 (Apr. 14, 1980)
50 IBLA 127 (Sept. 24, 1980)
1734 ——— 45 IBLA 305 (Feb. 6, 1980)
50 IBLA 190, 87 I.D. 473 (1980)
52 IBLA 134 (Jan. 16, 1981)
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60 IBLA 44 (Nov. 17, 1981)
63 IBLA 146 (Apr. 6, 1982)
63 IBLA 373 (Apr. 30, 1982)
69 IBLA 251 (Dec. 21, 1982)
71 IBLA 385 (Mar. 29, 1983)
1734(a) ——— 52 IBLA 105 (Jan. 12, 1981)
60 IBLA 29 (Nov. 16, 1981)
84 IBLA 119 (Dec. 10, 1984)

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sec. 1734(b) ——— 84 IBLA 119 (Dec. 10, 1984)
1734(c) ——— 50 IBLA 190, 87 I.D. 473 (1980)
63 IBLA 228, 89 I.D. 207 (1982)
63 IBLA 373 (Apr. 30, 1982)
73 IBLA 308 (June 7, 1983)
M-36942, 88 I.D. 1090 (1981)
1735 ——— 50 IBLA 190, 87 I.D. 473 (1980)
1737(a) ——— 60 IBLA 293 (Dec. 18, 1981)
1737(c) ——— IBCA-1471-6-81, 88 I.D. 809 (1981)
61 IBLA 8 (Dec. 29, 1981)
1739(e) ——— 75 IBLA 140 (Aug. 17, 1983)
1740 ——— 47 IBLA 47 (Apr. 14, 1980)
47 IBLA 71 (Apr. 21, 1980)
48 IBLA 233 (June 17, 1980)
49 IBLA 23 (July 15, 1980)
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1744 ——— 6 ANCAB 111 (Sept. 29, 1981)
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53 IBLA 192, 88 I.D. 369 (1981)
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69 IBLA 137 (Dec. 9, 1982)
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73 IBLA 336 (June 8, 1983)
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73 IBLA 398 (June 15, 1983)
74 IBLA 139, 90 I.D. 289 (1983)
74 IBLA 153 (July 12, 1983)
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74 IBLA 163 (July 12, 1983)
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81 IBLA 29 (May 17, 1984)
81 IBLA 402 (June 29, 1984)
82 IBLA 46 (July 11, 1984)
82 IBLA 67 (July 12, 1984)
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M-36893 (Supp. II), 88 I.D. 247 (1981)

1744(a) ------ 45 IBLA 389 (Feb. 13, 1980)
46 IBLA 62 (Feb. 22, 1980)
46 IBLA 319 (Apr. 4, 1980)

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sec. 1744(a) -------47 IBLA 200 (May 7, 1980)
47 IBLA 386 (May 21, 1980)
47 IBLA 389 (May 22, 1980)
48 IBLA 48 (May 29, 1980)
48 IBLA 129 (May 30, 1980)
48 IBLA 184 (June 9, 1980)
48 IBLA 211 (June 16, 1980)
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67 IBLA 130 (Sept. 16, 1982)
67 IBLA 388 (Oct. 8, 1982)

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71 IBLA 402 (Mar. 31, 1983)
73 IBLA 52 (May 12, 1983)
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81 IBLA 295 (June 12, 1984)
84 IBLA 186 (Dec. 21, 1984)

1744(a)(1) ——— 46 IBLA 62 (Feb. 22, 1980)
46 IBLA 93 (Feb. 28, 1980)
46 IBLA 360 (Apr. 8, 1980)
47 IBLA 135 (Apr. 30, 1980)
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49 IBLA 43 (July 21, 1980)
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52 IBLA 366 (Feb. 19, 1981)
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53 IBLA 200 (Mar. 17, 1981)
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54 IBLA 155 (Apr. 21, 1981)
54 IBLA 232 (Apr. 27, 1981)
55 IBLA 5 (May 26, 1981)
55 IBLA 77 (June 1, 1981)
56 IBLA 55 (July 10, 1981)
56 IBLA 236 (July 22, 1981)
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57 IBLA 122 (Aug. 25, 1981)
57 IBLA 351 (Sept. 8, 1981)
58 IBLA 75 (Sept. 22, 1981)
58 IBLA 265 (Oct. 7, 1981)
58 IBLA 403 (Oct. 21, 1981)
59 IBLA 199 (Oct. 27, 1981)
59 IBLA 238 (Oct. 28, 1981)
60 IBLA 85 (Nov. 19, 1981)
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64 IBLA 104 (May 17, 1982)
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67 IBLA 388 (Oct. 8, 1982)
68 IBLA 206 (Nov. 10, 1982)
68 IBLA 390 (Nov. 23, 1982)
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70 IBLA 59 (Jan. 10, 1983)

1744(a)(2) ——— 45 IBLA 215 (Jan. 30, 1980)
46 IBLA 62 (Feb. 22, 1980)
46 IBLA 93 (Feb. 28, 1980)
46 IBLA 360 (Apr. 8, 1980)
47 IBLA 135 (Apr. 30, 1980)
47 IBLA 175 (May 7, 1980)

TITLE 43: Continued

sec. 1744(a)(2) ——— 47 IBLA 386 (May 21, 1980)
49 IBLA 43 (July 21, 1980)
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50 IBLA 394 (Oct. 24, 1980)
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70 IBLA 59 (Jan. 10, 1983)

1744(b) ——— 7 ANCAB 106, 89 I.D. 293 (1982)
46 IBLA 62 (Feb. 22, 1980)
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46 IBLA 127 (Feb. 29, 1980)
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47 IBLA 132 (Apr. 29, 1980)
47 IBLA 146 (May 6, 1980)
47 IBLA 152 (May 6, 1980)
47 IBLA 172 (May 7, 1980)
47 IBLA 196 (May 7, 1980)
47 IBLA 204 (May 7, 1980)
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47 IBLA 229 (May 13, 1980)
47 IBLA 286 (May 15, 1980)
47 IBLA 289 (May 15, 1980)
47 IBLA 293 (May 15, 1980)
47 IBLA 309 (May 19, 1980)
47 IBLA 332 (May 21, 1980)
47 IBLA 345 (May 21, 1980)
47 IBLA 348 (May 21, 1980)
47 IBLA 360 (May 21, 1980)

TITLE 43: Continued

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48 IBLA 87 (May 29, 1980)
48 IBLA 93 (May 29, 1980)
48 IBLA 175 (June 9, 1980)
48 IBLA 180 (June 9, 1980)
48 IBLA 193 (June 9, 1980)
48 IBLA 203 (June 16, 1980)
48 IBLA 214 (June 16, 1980)
48 IBLA 222 (June 16, 1980)
49 IBLA 43 (July 21, 1980)
49 IBLA 111 (July 28, 1980)
49 IBLA 114 (July 28, 1980)
49 IBLA 125 (July 28, 1980)
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57 IBLA 120 (Aug. 25, 1981)
57 IBLA 152 (Aug. 25, 1981)

TITLE 43: Continued

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57 IBLA 342 (Sept. 3, 1981)
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62 IBLA 166 (Mar. 8, 1982)
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72 IBLA 223 (Apr. 26, 1983)
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73 IBLA 171 (May 24, 1983)
74 IBLA 167 (July 12, 1983)
75 IBLA 168 (Aug. 19, 1983)
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76 IBLA 362 (Oct. 24, 1983)
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77 IBLA 366 (Dec. 7, 1983)
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79 IBLA 279 (Mar. 16, 1984)
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80 IBLA 39 (Mar. 28, 1984)
80 IBLA 99 (Apr. 3, 1984)
80 IBLA 195 (Apr. 24, 1984)

TITLE 43: Continued

sec. 1744(b) ——— 81 IBLA 103 (May 30, 1984)
81 IBLA 279 (June 12, 1984)
81 IBLA 295 (June 12, 1984)
82 IBLA 67 (July 12, 1984)
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84 IBLA 344 (Jan. 16, 1985)

1744(c) ——— 46 IBLA 62 (Feb. 22, 1980)
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48 IBLA 255 (June 26, 1980)
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TITLE 43: Continued

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55 IBLA 5 (May 26, 1981)

TITLE 43: Continued

sec. 1744(c) -------55 IBLA 28 (May 27, 1981)
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TITLE 43: Continued

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TITLE 43: Continued

sec. 1744(c) --------61 IBLA 356 (Feb. 16, 1982)
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66 IBLA 212 (Aug. 16, 1982)
66 IBLA 230 (Aug. 16, 1982)

TITLE 43: Continued

sec. 1744(c) --------66 IBLA 334 (Aug. 26, 1982)
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68 IBLA 206 (Nov. 10, 1982)
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68 IBLA 397 (Nov. 23, 1982)
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71 IBLA 131 (Mar. 9, 1983)
71 IBLA 402 (Mar. 31, 1983)
72 IBLA 30 (Apr. 5, 1983)
72 IBLA 197 (Apr. 19, 1983)
72 IBLA 364 (May 2, 1983)
75 IBLA 309 (Aug. 30, 1983)
76 IBLA 236 (Oct. 17, 1983)
84 IBLA 186 (Dec. 21, 1984)
1745 ----------56 IBLA 388 (Aug. 3, 1981)
65 IBLA 326 (July 15, 1982)
66 IBLA 374, 89 I.D. 415 (1982)
70 IBLA 46 (Jan. 10, 1983)
75 IBLA 388 (Sept. 2, 1983)
82 IBLA 89 (July 17, 1984)
1745(a) --------56 IBLA 388 (Aug. 3, 1981)
66 IBLA 374, 89 I.D. 415 (1982)
1745(c) --------66 IBLA 374, 89 I.D. 415 (1982)
82 IBLA 89 (July 17, 1984)
1746 ----------46 IBLA 101 (Feb. 29, 1980)
47 IBLA 17, 87 I.D. 143 (1980)
51 IBLA 368 (Dec. 30, 1980)
57 IBLA 8 (Aug. 5, 1981)
65 IBLA 391 (July 23, 1982)
79 IBLA 261 (Mar. 7, 1984)
80 IBLA 101 (Apr. 3, 1984)
1751-1753 -----48 IBLA 385 (July 11, 1980)
55 IBLA 68 (June 1, 1981)
65 IBLA 196 (June 29, 1982)
71 IBLA 46 (Feb. 18, 1983)
76 IBLA 170 (Sept. 30, 1983)
80 IBLA 42 (Mar. 28, 1984)
1752 ----------72 IBLA 62 (Apr. 12, 1983)
1752(c) --------67 IBLA 89 (Sept. 13, 1982)
69 IBLA 333 (Dec. 28, 1982)
75 IBLA 44 (Aug. 5, 1983)
1752(e) --------80 IBLA 42 (Mar. 28, 1984)
1752(h) --------75 IBLA 44 (Aug. 5, 1983)
1761 ----------50 IBLA 154 (Sept. 30, 1980)
51 IBLA 26 (Oct. 28, 1980)
51 IBLA 154 (Nov. 26, 1980)
55 IBLA 151 (June 8, 1981)
55 IBLA 210 (June 18, 1981)
55 IBLA 336 (June 26, 1981)
55 IBLA 360 (June 26, 1981)
55 IBLA 390 (June 30, 1981)
58 IBLA 4 (Sept. 15, 1981)

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sec. 1761 ----------60 IBLA 81 (Nov. 19, 1981)
60 IBLA 240 (Dec. 4, 1981)
63 IBLA 347, 89 I.D. 227 (1982)
66 IBLA 53 (July 28, 1982)
66 IBLA 121 (Aug. 10, 1982)
68 IBLA 184 (Nov. 8, 1982)
69 IBLA 110 (Nov. 30, 1982)
71 IBLA 380 (Mar. 29, 1983)
75 IBLA 115 (Aug. 15, 1983)
78 IBLA 305 (Jan. 12, 1984)
79 IBLA 345 (Mar. 22, 1984)
80 IBLA 111 (Apr. 3, 1984)
81 IBLA 332 (June 19, 1984)
82 IBLA 6 (July 2, 1984)
82 IBLA 216 (Aug. 22, 1984)
82 IBLA 395 (Sept. 17, 1984)
84 IBLA 359, 92 I.D. 58 (1985)
M-36900 (Supp. I), 90 I.D. 345 (1983)
1761-1770 -----75 IBLA 115 (Aug. 15, 1983)
1761-1771 -----50 IBLA 190, 87 I.D. 473 (1980)
51 IBLA 390 (Dec. 31, 1980)
52 IBLA 105 (Jan. 12, 1981)
61 IBLA 343 (Feb. 11, 1982)
62 IBLA 203 (Mar. 9, 1982)
63 IBLA 176 (Apr. 8, 1982)
64 IBLA 164 (May 25, 1982)
64 IBLA 342 (June 15, 1982)
64 IBLA 346 (June 15, 1982)
65 IBLA 391 (July 23, 1982)
69 IBLA 103 (Nov. 30, 1982)
70 IBLA 39 (Jan. 10, 1983)
76 IBLA 283 (Oct. 18, 1983)
77 IBLA 80 (Nov. 9, 1983)
78 IBLA 305 (Jan. 12, 1984)
79 IBLA 5 (Feb. 2, 1984)
79 IBLA 53 (Feb. 9, 1984)
79 IBLA 345 (Mar. 22, 1984)
82 IBLA 6 (July 2, 1984)
82 IBLA 289 (Aug. 31, 1984)
82 IBLA 395 (Sept. 17, 1984)
M-36921, 87 I.D. 291 (1980)
1761 *et seq.* -- M-36900 (Supp. I), 90 I.D. 345 (1983)
1761(a) ------- 5 ANCAB 174, 88 I.D. 352 (1981)
52 IBLA 280, 88 I.D. 258 (1981)
55 IBLA 390 (June 30, 1981)
56 IBLA 167 (July 20, 1981)
60 IBLA 163 (Nov. 24, 1981)
62 IBLA 133 (Mar. 4, 1982)
65 IBLA 144 (June 29, 1982)
65 IBLA 213 (June 30, 1982)
66 IBLA 121 (Aug. 10, 1982)
66 IBLA 222 (Aug. 16, 1982)
67 IBLA 154 (Sept. 20, 1982)
67 IBLA 287 (Sept. 28, 1982)
76 IBLA 45 (Sept. 19, 1983)
M-36921, 87 I.D. 291 (1980)
M-36900 (Supp. I), 90 I.D. 345 (1983)
1761(a)(1) ----47 IBLA 71 (Apr. 21, 1980)
1761(a)(4) -----64 IBLA 65 (May 6, 1982)
64 IBLA 172 (May 26, 1982)
71 IBLA 213 (Mar. 16, 1983)
1761(b) ------- M-36900 (Supp. I), 90 I.D. 345 (1983)

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sec. 1761(b)(1) ----60 IBLA 81 (Nov. 19, 1981)
M-36900 (Supp. I), 90 I.D. 345 (1983)
1761(e) -------55 IBLA 390 (June 30, 1981)
1762 ---------- M-36900 (Supp. I), 90 I.D. 345 (1983)
1762(c) -------82 IBLA 6 (July 2, 1984)
1763 ---------- M-36900 (Supp. I), 90 I.D. 345 (1983)
1764 ----------50 IBLA 190, 87 I.D. 473 (1980)
55 IBLA 210 (June 18, 1981)
69 IBLA 103 (Nov. 30, 1982)
82 IBLA 159 (Aug. 2, 1984)
M-36900 (Supp. I), 90 I.D. 345 (1983)
1764(a) -------47 IBLA 155 (May 6, 1980)
62 IBLA 81 (Feb. 25, 1982)
1764(b) -------65 IBLA 213 (June 30, 1982)
1764(c) -------56 IBLA 167 (July 20, 1981)
65 IBLA 144 (June 29, 1982)
65 IBLA 213 (June 30, 1982)
75 IBLA 115 (Aug. 15, 1983)
82 IBLA 395 (Sept. 17, 1984)
1764(e) ------- M-36900 (Supp. I), 90 I.D. 345 (1983)
1764(g) -------48 IBLA 233 (June 17, 1980)
49 IBLA 23 (July 15, 1980)
55 IBLA 218 (June 18, 1981)
56 IBLA 139 (July 20, 1981)
60 IBLA 163 (Nov. 24, 1981)
63 IBLA 347, 89 I.D. 227 (1982)
64 IBLA 65 (May 6, 1982)
64 IBLA 172 (May 26, 1982)
64 IBLA 342 (June 15, 1982)
65 IBLA 50 (June 23, 1982)
66 IBLA 121 (Aug. 10, 1982)
71 IBLA 213 (Mar. 16, 1983)
76 IBLA 283 (Oct. 18, 1983)
77 IBLA 80 (Nov. 9, 1983)
78 IBLA 305 (Jan. 12, 1984)
79 IBLA 5 (Feb. 2, 1984)
79 IBLA 53 (Feb. 9, 1984)
79 IBLA 308 (Mar. 20, 1984)
79 IBLA 345 (Mar. 22, 1984)
81 IBLA 332 (June 19, 1984)
81 IBLA 358 (June 27, 1984)
82 IBLA 6 (July 2, 1984)
82 IBLA 159 (Aug. 2, 1984)
1764(j) ------- M-36900 (Supp. I), 90 I.D. 345 (1983)
1765 ----------51 IBLA 154 (Nov. 26, 1980)
68 IBLA 96 (Oct. 26, 1982)
69 IBLA 103 (Nov. 30, 1982)
75 IBLA 115 (Aug. 15, 1983)
80 IBLA 251 (May 2, 1984)
M-36900 (Supp. I), 90 I.D. 345 (1983)
1765(b) -------69 IBLA 103 (Nov. 30, 1982)
1765(b)(vi) ---47 IBLA 155 (May 6, 1980)
1765(g) -------69 IBLA 110 (Nov. 30, 1982)
1766 ----------55 IBLA 390 (June 30, 1981)
75 IBLA 115 (Aug. 15, 1983)
1767 ----------51 IBLA 26 (Oct. 28, 1980)
1767(a) -------51 IBLA 26 (Oct. 28, 1980)
55 IBLA 272 (June 25, 1981)
1769 ----------71 IBLA 88 (Feb. 24, 1983)

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sec. 1769(a) --------55 IBLA 390 (June 30, 1981)
57 IBLA 215 (Aug. 27, 1981)
60 IBLA 221 (Nov. 30, 1981)
61 IBLA 343 (Feb. 11, 1982)
63 IBLA 9 (Mar. 25, 1982)
64 IBLA 164 (May 25, 1982)
71 IBLA 88 (Feb. 24, 1983)
71 IBLA 352 (Mar. 28, 1983)
77 IBLA 80 (Nov. 9, 1983)
79 IBLA 5 (Feb. 2, 1984)
82 IBLA 289 (Aug. 31, 1984)
1770 ----------48 IBLA 233 (June 17, 1980)
51 IBLA 26 (Oct. 28, 1980)
1770(a) --------48 IBLA 233 (June 17, 1980)
49 IBLA 23 (July 15, 1980)
63 IBLA 176 (Apr. 8, 1982)
65 IBLA 391 (July 23, 1982)
75 IBLA 115 (Aug. 15, 1983)
79 IBLA 345 (Mar. 22, 1984)
1781 ----------47 IBLA 284 (May 15, 1980
59 IBLA 291 (Oct. 30, 1981)
67 IBLA 197 (Sept. 22, 1982)
1781(d) --------58 IBLA 213 (Sept. 29, 1981)
84 IBLA 311, 92 I.D. 37 (1985)
1782 ----------45 IBLA 252 (Feb. 4, 1980)
49 IBLA 169 (July 30, 1980)
53 IBLA 159 (Mar. 12, 1981)
54 IBLA 31 (Apr. 6, 1981)
54 IBLA 242, 88 I.D. 490 (1981)
54 IBLA 300 (Apr. 29, 1981)
57 IBLA 79 (Aug. 21, 1981)
57 IBLA 149 (Aug. 25, 1981)
58 IBLA 213 (Sept. 29, 1981)
58 IBLA 294 (Oct. 14, 1981)
59 IBLA 291 (Oct. 30, 1981)
59 IBLA 301 (Nov. 3, 1981)
60 IBLA 54 (Nov. 17, 1981)
60 IBLA 278 (Dec. 17, 1981)
60 IBLA 341 (Dec. 22, 1981)
60 IBLA 349, 88 I.D. 1115 (1981)
61 IBLA 139 (Jan. 18, 1982)
61 IBLA 193 (Jan. 26, 1982)
61 IBLA 222 (Jan. 28, 1982)
61 IBLA 279 (Feb. 2, 1982)
61 IBLA 329 (Feb. 10, 1982)
61 IBLA 370 (Feb. 17, 1982)
61 IBLA 387 (Feb. 18, 1982)
62 IBLA 99 (Mar. 1, 1982)
62 IBLA 153 (Mar. 5, 1982)
62 IBLA 274 (Mar. 15, 1982)
62 IBLA 367 (Mar. 24, 1982)
63 IBLA 23 (Mar. 26, 1982)
63 IBLA 30 (Mar. 26, 1982)
63 IBLA 172 (Apr. 8, 1982)
63 IBLA 208 (Apr. 12, 1982)
63 IBLA 330 (Apr. 28, 1982)
64 IBLA 7 (May 4, 1982)
64 IBLA 27 (May 6, 1982)
64 IBLA 50 (May 6, 1982)
64 IBLA 307 (June 8, 1982)
65 IBLA 126 (June 28, 1982)
65 IBLA 153 (June 29, 1982)
65 IBLA 223 (July 9, 1982)
66 IBLA 14 (July 23, 1982)
66 IBLA 249 (Aug. 17, 1982)
66 IBLA 287 (Aug. 19, 1982)
66 IBLA 300 (Aug. 20, 1982)
66 IBLA 340 (Aug. 26, 1982)

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sec. 1782 ----------67 IBLA 201 (Sept. 22, 1982)
67 IBLA 207 (Sept. 22, 1982)
67 IBLA 287 (Sept. 28, 1982)
67 IBLA 340 (Oct. 5, 1982)
68 IBLA 272 (Nov. 17, 1982)
71 IBLA 100 (Feb. 24, 1983)
71 IBLA 153, 90 I.D. 84 (1983)
71 IBLA 165 (Mar. 10, 1983)
73 IBLA 266 (May 31, 1983)
74 IBLA 106 (June 30, 1983)
75 IBLA 140 (Aug. 17, 1983)
75 IBLA 278 (Aug. 26, 1983)
76 IBLA 31 (Sept. 8, 1983)
76 IBLA 116 (Sept. 21, 1983)
76 IBLA 245 (Oct. 17, 1983)
76 IBLA 383 (Oct. 27, 1983)
78 IBLA 115 (Dec. 22, 1983)
81 IBLA 181 (June 1, 1984)
82 IBLA 105 (July 24, 1984)
M-36910 (Supp.), 88 I.D. 909 (1981)
1782(a) --------45 IBLA 347 (Feb. 7, 1980)
54 IBLA 215 (Apr. 23, 1981)
54 IBLA 300 (Apr. 29, 1981)
56 IBLA 206 (July 22, 1981)
60 IBLA 240 (Dec. 4, 1981)
60 IBLA 305 (Dec. 18, 1981)
60 IBLA 341 (Dec. 22, 1981)
60 IBLA 349, 88 I.D. 1115 (1981)
61 IBLA 23 (Dec. 29, 1981)
61 IBLA 99 (Jan. 4, 1982)
61 IBLA 124 (Jan. 15, 1982)
61 IBLA 300 (Feb. 3, 1982)
61 IBLA 387 (Feb. 18, 1982)
62 IBLA 45 (Feb. 24, 1982)
62 IBLA 153 (Mar. 5, 1982)
62 IBLA 263 (Mar. 15, 1982)
62 IBLA 319 (Mar. 22, 1982)
63 IBLA 23 (Mar. 26, 1982)
63 IBLA 30 (Mar. 26, 1982)
63 IBLA 85 (Mar. 31, 1982)
63 IBLA 165 (Apr. 6, 1982)
63 IBLA 321 (Apr. 27, 1982)
64 IBLA 50 (May 6, 1982)
65 IBLA 84 (June 23, 1982)
66 IBLA 282 (Aug. 19, 1982)
66 IBLA 287 (Aug. 19, 1982)
66 IBLA 340 (Aug. 26, 1982)
67 IBLA 25 (Sept. 7, 1982)
67 IBLA 124 (Sept. 16, 1982)
68 IBLA 219 (Nov. 12, 1982)
68 IBLA 262 (Nov. 17, 1982)
69 IBLA 182 (Dec. 15, 1982)
70 IBLA 259 (Jan. 26, 1983)
71 IBLA 4 (Feb. 10, 1983)
71 IBLA 100 (Feb. 24, 1983)
71 IBLA 67 (Feb. 22, 1983)
71 IBLA 112 (Feb. 28, 1983)
71 IBLA 153, 90 I.D. 84 (1983)
71 IBLA 165 (Mar. 10, 1983)
71 IBLA 172 (Mar. 10, 1983)
72 IBLA 1 (Apr. 4, 1983)
72 IBLA 100 (Apr. 14, 1983)
72 IBLA 125 (Apr. 18, 1983)
73 IBLA 226 (May 31, 1983)
75 IBLA 163 (Aug. 18, 1983)
75 IBLA 186 (Aug. 22, 1983)
75 IBLA 220 (Aug. 23, 1983)

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sec. 1782(a) -------75 IBLA 256 (Aug. 26, 1983)
76 IBLA 23 (Sept. 8, 1983)
76 IBLA 27 (Sept. 8, 1983)
76 IBLA 31 (Sept. 8, 1983)
76 IBLA 116 (Sept. 21, 1983)
77 IBLA 330 (Dec. 5, 1983)
78 IBLA 133 (Dec. 29, 1983)
84 IBLA 127 (Dec. 10, 1984)
1782(b) -------60 IBLA 240 (Dec. 4, 1981)
60 IBLA 305 (Dec. 18, 1981)
61 IBLA 124 (Jan. 15, 1982)
61 IBLA 300 (Feb. 3, 1982)
62 IBLA 45 (Feb. 24, 1982)
62 IBLA 263 (Mar. 15, 1982)
62 IBLA 319 (Mar. 22, 1982)
63 IBLA 85 (Mar. 31, 1982)
63 IBLA 321 (Apr. 27, 1982)
65 IBLA 84 (June 23, 1982)
66 IBLA 282 (Aug. 19, 1982)
68 IBLA 219 (Nov. 12, 1982)
71 IBLA 112 (Feb. 28, 1983)
72 IBLA 100 (Apr. 14, 1983)
72 IBLA 125 (Apr. 18, 1983)
75 IBLA 220 (Aug. 23, 1983)
75 IBLA 256 (Aug. 26, 1983)
77 IBLA 330 (Dec. 5, 1983)
78 IBLA 133 (Dec. 29, 1983)
84 IBLA 127 (Dec. 10, 1984)
1782(c) -------45 IBLA 347 (Feb. 7, 1980)
49 IBLA 169 (July 30, 1980)
58 IBLA 166 (Sept. 28, 1981)
60 IBLA 240 (Dec. 4, 1981)
60 IBLA 305 (Dec. 18, 1981)
60 IBLA 341 (Dec. 22, 1981)
60 IBLA 349, 88 I.D. 1115 (1981)
61 IBLA 300 (Feb. 3, 1982)
62 IBLA 263 (Mar. 15, 1982)
63 IBLA 23 (Mar. 26, 1982)
64 IBLA 27 (May 6, 1982)
65 IBLA 126 (June 25, 1982)
65 IBLA 153 (June 29, 1982)
65 IBLA 223 (July 9, 1982)
65 IBLA 380 (July 20, 1982)
66 IBLA 249 (Aug. 17, 1982)
67 IBLA 207 (Sept. 22, 1982)
67 IBLA 340 (Oct. 5, 1982)
68 IBLA 219 (Nov. 12, 1982)
71 IBLA 100 (Feb. 24, 1983)
71 IBLA 153, 90 I.D. 84 (1983)
71 IBLA 165 (Mar. 10, 1983)
72 IBLA 1 (Apr. 4, 1983)
73 IBLA 39 (May 11, 1983)
73 IBLA 226 (May 31, (1983)
74 IBLA 106 (June 30, 1983)
76 IBLA 245 (Oct. 17, 1983)
77 IBLA 330 (Dec. 5, 1983)
79 IBLA 204 (Feb. 28, 1984)
82 IBLA 105 (July 24, 1984)
M-36910 (Supp.), 88 I.D. 909 (1981)
1802 ---------- M-36942, 88 I.D. 1090 (1981)
1802(1) ------- M-36923, 87 I.D. 544 (1980)
1802(3) ------- M-36923, 87 I.D. 544 (1980)
1802(5) ------- M-36923, 87 I.D. 544 (1980)
1802(6) ------- M-36923, 87 I.D. 544 (1980)
1863 ---------- M-36924, 87 I.D. 563 (1980)
1866(a) ------- M-36923, 87 I.D. 544 (1980)

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sec. 1901-1908 -----61 IBLA 381 (Feb. 17, 1982)
80 IBLA 42 (Mar. 28, 1984)
4622(a) ------- 5 OHA 93 (Feb. 14, 1983)
5814 ----------66 IBLA 307 (Aug. 24, 1982)

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sec. 35 ----------73 IBLA 291 (June 7, 1983)
79 IBLA 271 (Mar. 12, 1984)
80 IBLA 135 (Apr. 6, 1984)
80 IBLA 174 (Apr. 13, 1984)
307 ---------- IBCA-1447-3-81, 89 I.D. 92 (1982)
1505 ----------61 IBLA 149 (Jan. 18, 1982)
1505(a) ------- 3 IBSMA 154, 88 I.D. 570 (1981)
1507 ----------45 IBLA 1 (Jan. 8, 1980)
46 IBLA 93 (Feb. 28, 1980)
46 IBLA 312 (Apr. 4, 1980)
47 IBLA 196 (May 7, 1980)
47 IBLA 204 (May 7, 1980)
47 IBLA 235 (May 13, 1980)
47 IBLA 289 (May 15, 1980)
47 IBLA 389 (May 22, 1980)
48 IBLA 99 (May 29, 1980)
48 IBLA 127 (May 30, 1980)
48 IBLA 175 (June 9, 1980)
48 IBLA 180 (June 9, 1980)
48 IBLA 222 (June 16, 1980)
48 IBLA 255 (June 26, 1980)
48 IBLA 351 (July 11, 1980)
48 IBLA 398 (July 11, 1980)
49 IBLA 11 (July 15, 1980)
49 IBLA 40 (July 21, 1980)
49 IBLA 106 (July 28, 1980)
49 IBLA 111 (July 28, 1980)
49 IBLA 137 (July 28, 1980)
49 IBLA 150 (July 30, 1980)
49 IBLA 157 (July 30, 1980)
49 IBLA 184 (July 31, 1980)
49 IBLA 193 (Aug. 6, 1980)
49 IBLA 197 (Aug. 6, 1980)
49 IBLA 200 (Aug. 11, 1980)
49 IBLA 217 (Aug. 11, 1980)
49 IBLA 228 (Aug. 12, 1980)
49 IBLA 267 (Aug. 18, 1980)
49 IBLA 271 (Aug. 18, 1980)
49 IBLA 335 (Aug. 25, 1980)
50 IBLA 1 (Sept. 5, 1980)
50 IBLA 47 (Sept. 9, 1980)
50 IBLA 50 (Sept. 15, 1980)
50 IBLA 127 (Sept. 24, 1980)
50 IBLA 201 (Sept. 30, 1980)
51 IBLA 188 (Dec. 2, 1980)
51 IBLA 194 (Dec. 5, 1980)
51 IBLA 294 (Dec. 17, 1980)
51 IBLA 364 (Dec. 29, 1980)
52 IBLA 5 (Jan. 5, 1981)
52 IBLA 9 (Jan. 5, 1981)
52 IBLA 119, 88 I.D. 38 (1981)
52 IBLA 125 (Jan. 13, 1981)
52 IBLA 179 (Jan. 26, 1981)
52 IBLA 214 (Jan. 30, 1981)
52 IBLA 273 (Feb. 6, 1981)
52 IBLA 288 (Feb. 9, 1981)
52 IBLA 308 (Feb. 10, 1981)
52 IBLA 375 (Feb. 19, 1981)
53 IBLA 34 (Feb. 26, 1981)
53 IBLA 92, 88 I.D. 341 (1981)

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sec. 1507 ----------53 IBLA 136 (Mar. 9, 1981)
53 IBLA 247 (Mar. 19, 1981)
54 IBLA 155 (Apr. 21, 1981)
54 IBLA 184 (Apr. 22, 1981)
54 IBLA 221 (Apr. 23, 1981)
54 IBLA 229 (Apr. 27, 1981)
55 IBLA 116 (June 3, 1981)
55 IBLA 193 (June 16, 1981)
56 IBLA 280 (July 28, 1981)
56 IBLA 315 (July 29, 1981)
56 IBLA 318 (July 29, 1981)
56 IBLA 323 (July 29, 1981)
56 IBLA 334 (July 30, 1981)
56 IBLA 350 (Aug. 3, 1981)
56 IBLA 354 (Aug. 3, 1981)
56 IBLA 361 (Aug. 3, 1981)
56 IBLA 375 (Aug. 3, 1981)
56 IBLA 385 (Aug. 3, 1981)
57 IBLA 23 (Aug. 6, 1981)
57 IBLA 40 (Aug. 10, 1981)
57 IBLA 46 (Aug. 17, 1981)
57 IBLA 242 (Aug. 27, 1981)
57 IBLA 266 (Aug. 28, 1981)
57 IBLA 271 (Aug. 31, 1981)
57 IBLA 274 (Aug. 31, 1981)
57 IBLA 297 (Aug. 31, 1981)
57 IBLA 339 (Sept. 1, 1981)
58 IBLA 32 (Sept. 16, 1981)
58 IBLA 64 (Sept. 22, 1981)
58 IBLA 88 (Sept. 24, 1981)
58 IBLA 121 (Sept. 24, 1981)
58 IBLA 131 (Sept. 24, 1981)
58 IBLA 211 (Sept. 29, 1981)
58 IBLA 224 (Sept. 30, 1981)
58 IBLA 251 (Oct. 6, 1981)
58 IBLA 265 (Oct. 7, 1981)
58 IBLA 291 (Oct. 13, 1981)
58 IBLA 308 (Oct. 16, 1981)
58 IBLA 319 (Oct. 16, 1981)
58 IBLA 350 (Oct. 19, 1981)
58 IBLA 363 (Oct. 20, 1981)
59 IBLA 146 (Oct. 26, 1981)
59 IBLA 247 (Oct. 29, 1981)
59 IBLA 250 (Oct. 29, 1981)
59 IBLA 283 (Oct. 30, 1981)
59 IBLA 288 (Oct. 30, 1981)
59 IBLA 311 (Nov. 4, 1981)
60 IBLA 65 (Nov. 19, 1981)
60 IBLA 97 (Nov. 19, 1981)
60 IBLA 104 (Nov. 20, 1981)
60 IBLA 171 (Nov. 24, 1981)
61 IBLA 74 (Dec. 31, 1981)
61 IBLA 99 (Jan. 4, 1982)
61 IBLA 158 (Jan. 20, 1982)
61 IBLA 185 (Jan. 26, 1982)
62 IBLA 9 (Feb. 23, 1982)
62 IBLA 13 (Feb. 23, 1982)
62 IBLA 228 (Mar. 10, 1982)
62 IBLA 260 (Mar. 15, 1982)
62 IBLA 307 (Mar. 18, 1982)
62 IBLA 378 (Mar. 24, 1982)
62 IBLA 387 (Mar. 24, 1982)
63 IBLA 5 (Mar. 25, 1982)
63 IBLA 203 (Apr. 8, 1982)
64 IBLA 1 (May 3, 1982)
64 IBLA 104 (May 17, 1982)
64 IBLA 234 (May 27, 1982)
64 IBLA 297 (June 8, 1982)

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sec. 1507 ----------64 IBLA 313 (June 10, 1982)
64 IBLA 383 (June 17, 1982)
65 IBLA 67 (June 23, 1982)
65 IBLA 72 (June 23, 1982)
65 IBLA 114 (June 25, 1982)
65 IBLA 175 (June 29, 1982)
65 IBLA 274 (July 12, 1982)
65 IBLA 277 (July 12, 1982)
65 IBLA 361 (July 20, 1982)
65 IBLA 363 (July 20, 1982)
65 IBLA 387 (July 23, 1982)
66 IBLA 31 (July 23, 1982)
66 IBLA 212 (Aug. 16, 1982)
67 IBLA 135 (Sept. 16, 1982)
67 IBLA 177 (Sept. 21, 1982)
67 IBLA 181 (Sept. 21, 1982)
67 IBLA 242 (Sept. 24, 1982)
67 IBLA 304, 89 I.D. 496 (1982)
67 IBLA 370 (Oct. 8, 1982)
69 IBLA 124 (Dec. 8, 1982)
69 IBLA 135 (Dec. 8, 1982)
69 IBLA 309 (Dec. 23, 1982)
70 IBLA 25 (Jan. 6, 1983)
70 IBLA 29 (Jan. 6, 1983)
70 IBLA 59 (Jan. 10, 1983)
70 IBLA 115 (Jan. 13, 1983)
71 IBLA 368 (Mar. 28, 1983)
72 IBLA 83 (Apr. 13, 1983)
72 IBLA 232 (Apr. 26, 1983)
72 IBLA 383 (May 5, 1983)
72 IBLA 395 (May 5, 1983)
73 IBLA 67 (May 16, 1983)
73 IBLA 108 (May 23, 1983)
73 IBLA 280 (June 7, 1983)
73 IBLA 311 (June 7, 1983)
73 IBLA 381 (June 15, 1983)
73 IBLA 383 (June 15, 1983)
74 IBLA 31 (June 24, 1983)
74 IBLA 163 (July 12, 1983)
74 IBLA 210 (July 18, 1983)
74 IBLA 217 (July 18, 1983)
74 IBLA 234 (July 19, 1983)
74 IBLA 320 (July 28, 1983)
75 IBLA 76 (Aug. 10, 1983)
75 IBLA 133 (Aug. 15, 1983)
75 IBLA 195 (Aug. 22, 1983)
76 IBLA 292 (Oct. 18, 1983)
76 IBLA 364 (Oct. 25, 1983)
77 IBLA 24 (Oct. 31, 1983)
78 IBLA 330 (Jan. 24, 1984)
80 IBLA 107 (Apr. 3, 1984)
81 IBLA 1 (May 14, 1984)
82 IBLA 75 (July 17, 1984)
84 IBLA 96, 91 I.D. 359 (1984)
84 IBLA 124 (Dec. 10, 1984)
84 IBLA 163 (Dec. 13, 1984)

1510 ----------45 IBLA 1 (Jan. 8, 1980)
46 IBLA 93 (Feb. 28, 1980)
46 IBLA 312 (Apr. 4, 1980)
47 IBLA 196 (May 7, 1980)
47 IBLA 204 (May 7, 1980)
47 IBLA 235 (May 13, 1980)
47 IBLA 289 (May 15, 1980)
47 IBLA 389 (May 22, 1980)
48 IBLA 99 (May 29, 1980)
48 IBLA 127 (May 30, 1980)
48 IBLA 175 (June 9, 1980)
48 IBLA 180 (June 9, 1980)

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sec. 1510 ----------48 IBLA 222 (June 16, 1980)
48 IBLA 255 (June 26, 1980)
48 IBLA 351 (July 11, 1980)
48 IBLA 398 (July 11, 1980)
49 IBLA 11 (July 15, 1980)
49 IBLA 40 (July 21, 1980)
49 IBLA 106 (July 28, 1980)
49 IBLA 111 (July 28, 1980)
49 IBLA 137 (July 28, 1980)
49 IBLA 150 (July 30, 1980)
49 IBLA 157 (July 30, 1980)
49 IBLA 184 (July 31, 1980)
49 IBLA 193 (Aug. 6, 1980)
49 IBLA 197 (Aug. 6, 1980)
49 IBLA 200 (Aug. 11, 1980)
49 IBLA 217 (Aug. 11, 1980)
49 IBLA 228 (Aug. 12, 1980)
49 IBLA 267 (Aug. 18, 1980)
49 IBLA 271 (Aug. 18, 1980)
49 IBLA 335 (Aug. 25, 1980)
50 IBLA 1 (Sept. 5, 1980)
50 IBLA 47 (Sept. 9, 1980)
50 IBLA 50 (Sept. 15, 1980)
50 IBLA 127 (Sept. 24, 1980)
50 IBLA 201 (Sept. 30, 1980)
51 IBLA 188 (Dec. 2, 1980)
51 IBLA 194 (Dec. 5, 1980)
51 IBLA 294 (Dec. 17, 1980)
51 IBLA 364 (Dec. 29, 1980)
52 IBLA 5 (Jan. 5, 1981)
52 IBLA 9 (Jan. 5, 1981)
52 IBLA 119, 88 I.D. 38 (1981)
52 IBLA 125 (Jan. 13, 1981)
52 IBLA 179 (Jan. 26, 1981)
52 IBLA 214 (Jan. 30, 1981)
52 IBLA 273 (Feb. 6, 1981)
52 IBLA 288 (Feb. 9, 1981)
52 IBLA 308 (Feb. 10, 1981)
52 IBLA 375 (Feb. 19, 1981)
53 IBLA 34 (Feb. 26, 1981)
53 IBLA 92, 88 I.D. 341 (1981)
53 IBLA 136 (Mar. 9, 1981)
53 IBLA 247 (Mar. 19, 1981)
54 IBLA 155 (Apr. 21, 1981)
54 IBLA 184 (Apr. 22, 1981)
54 IBLA 221 (Apr. 23, 1981)
54 IBLA 229 (Apr. 27, 1981)
55 IBLA 116 (June 3, 1981)
55 IBLA 193 (June 16, 1981)
56 IBLA 280 (July 28, 1981)
56 IBLA 315 (July 29, 1981)
56 IBLA 318 (July 29, 1981)
56 IBLA 323 (July 29, 1981)
56 IBLA 334 (July 30, 1981)
56 IBLA 350 (Aug. 3, 1981)
56 IBLA 354 (Aug. 3, 1981)
56 IBLA 361 (Aug. 3, 1981)
56 IBLA 375 (Aug. 3, 1981)
56 IBLA 385 (Aug. 3, 1981)
57 IBLA 23 (Aug. 6, 1981)
57 IBLA 40 (Aug. 10, 1981)
57 IBLA 46 (Aug. 17, 1981)
57 IBLA 242 (Aug. 27, 1981)
57 IBLA 266 (Aug. 28, 1981)
57 IBLA 271 (Aug. 31, 1981)
57 IBLA 274 (Aug. 31, 1981)
57 IBLA 297 (Aug. 31, 1981)
57 IBLA 339 (Sept. 1, 1981)

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58 IBLA 64 (Sept. 22, 1981)
58 IBLA 88 (Sept. 24, 1981)
58 IBLA 121 (Sept. 24, 1981)
58 IBLA 131 (Sept. 24, 1981)
58 IBLA 211 (Sept. 29, 1981)
58 IBLA 224 (Sept. 30, 1981)
58 IBLA 251 (Oct. 6, 1981)
58 IBLA 265 (Oct. 7, 1981)
58 IBLA 291 (Oct. 13, 1981)
58 IBLA 308 (Oct. 16, 1981)
58 IBLA 319 (Oct. 16, 1981)
58 IBLA 350 (Oct. 19, 1981)
58 IBLA 363 (Oct. 20, 1981)
59 IBLA 146 (Oct. 26, 1981)
59 IBLA 247 (Oct. 29, 1981)
59 IBLA 250 (Oct. 29, 1981)
59 IBLA 283 (Oct. 30, 1981)
59 IBLA 288 (Oct. 30, 1981)
59 IBLA 311 (Nov. 4, 1981)
60 IBLA 65 (Nov. 19, 1981)
60 IBLA 97 (Nov. 19, 1981)
60 IBLA 104 (Nov. 20, 1981)
60 IBLA 171 (Nov. 24, 1981)
61 IBLA 158 (Jan. 20, 1982)
61 IBLA 185 (Jan. 26, 1982)
62 IBLA 9 (Feb. 23, 1982)
62 IBLA 13 (Feb. 23, 1982)
62 IBLA 260 (Mar. 15, 1982)
62 IBLA 307 (Mar. 18, 1982)
62 IBLA 378 (Mar. 24, 1982)
62 IBLA 387 (Mar. 24, 1982)
63 IBLA 5 (Mar. 25, 1982)
63 IBLA 203 (Apr. 8, 1982)
64 IBLA 104 (May 17, 1982)
64 IBLA 234 (May 27, 1982)
64 IBLA 297 (June 8, 1982)
64 IBLA 313 (June 10, 1982)
65 IBLA 67 (June 23, 1982)
65 IBLA 72 (June 23, 1982)
65 IBLA 114 (June 25, 1982)
65 IBLA 175 (June 29, 1982)
65 IBLA 274 (July 12, 1982)
65 IBLA 277 (July 12, 1982)
65 IBLA 361 (July 20, 1982)
65 IBLA 363 (July 20, 1982)
65 IBLA 387 (July 23, 1982)
66 IBLA 31 (July 23, 1982)
67 IBLA 135 (Sept. 16, 1982)
67 IBLA 177 (Sept. 21, 1982)
67 IBLA 181 (Sept. 21, 1982)
67 IBLA 370 (Oct. 8, 1982)
69 IBLA 124 (Dec. 8, 1982)
69 IBLA 135 (Dec. 8, 1982)
69 IBLA 309 (Dec. 23, 1982)
70 IBLA 25 (Jan. 6, 1983)
70 IBLA 29 (Jan. 6, 1983)
70 IBLA 59 (Jan. 10, 1983)
70 IBLA 115 (Jan. 13, 1983)
71 IBLA 368 (Mar. 28, 1983)
72 IBLA 83 (Apr. 13, 1983)
72 IBLA 232 (Apr. 26, 1983)
72 IBLA 383 (May 5, 1983)
72 IBLA 395 (May 5, 1983)
73 IBLA 67 (May 16, 1983)
73 IBLA 280 (June 7, 1983)
73 IBLA 311 (June 7, 1983)
73 IBLA 381 (June 15, 1983)

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74 IBLA 31 (June 24, 1983)
74 IBLA 163 (July 12, 1983)
74 IBLA 210 (July 18, 1983)
74 IBLA 217 (July 18, 1983)
74 IBLA 234 (July 19, 1983)
74 IBLA 320 (July 28, 1983)
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75 IBLA 133 (Aug. 15, 1983)
75 IBLA 195 (Aug. 22, 1983)
76 IBLA 292 (Oct. 18, 1983)
76 IBLA 364 (Oct. 25, 1983)
77 IBLA 24 (Oct. 31, 1983)
78 IBLA 300 (Jan. 24, 1984)
80 IBLA 107 (Apr. 3, 1984)
81 IBLA 1 (May 14, 1984)
82 IBLA 75 (July 17, 1984)
84 IBLA 96, 91 I.D. 359 (1984)
1515 ----------66 IBLA 212 (Aug. 16, 1982)
3301-3324 -----60 IBLA 267 (Dec. 17, 1981)
3501 ----------75 IBLA 298 (Aug. 29, 1983)

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sec. 6(a) ------- 6 ANCAB 157, 88 I.D. 1028 (1981)
6(b) ------- 6 ANCAB 157, 88 I.D. 1028 (1981)
6(g) -------79 IBLA 286 (Mar. 20, 1984)
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62 IBLA 187 (Mar. 9, 1982)
355a ---------11 IBLA 155, 90 I.D. 165 (1983)
355a-355e ----11 IBLA 155, 90 I.D. 165 (1983)
357 ----------55 IBLA 305 (June 25, 1981)
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357b ---------55 IBLA 305 (June 25, 1981)

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372 ----------77 IBLA 347 (Dec. 5, 1983)
376-377 -------55 IBLA 305 (June 25, 1981)
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485 et seq. -- 7 ANCAB 157, 89 I.D. 321 (1982)

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sec. 1(8) ------- M-36945, 89 I.D. 610 (1982)
65 ----------54 IBLA 174 (Apr. 21, 1981)
65(b) -------54 IBLA 174 (Apr. 21, 1981)
61 IBLA 8 (Dec. 29, 1981)
66 IBLA 191 (Aug. 13, 1982)
72 IBLA 197 (Apr. 19, 1983)
211-213 ------49 IBLA 213 (Aug. 11, 1980)
49 IBLA 258 (Aug. 18, 1980)
61 IBLA 68 (Dec. 31, 1981)
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84 IBLA 155 (Dec. 13, 1984)
211(e) -------61 IBLA 68 (Dec. 31, 1981)
212 ----------84 IBLA 155 (Dec. 13, 1984)
212(b) -------49 IBLA 258 (Aug. 18, 1980)
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67 IBLA 380 (Oct. 8, 1982)
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1723 ----------61 IBLA 68 (Dec. 31, 1981)
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TITLE 50:

1611 ----------78 IBLA 387 (Jan. 31, 1984)
1611 et seq. --78 IBLA 387 (Jan. 31, 1984)

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ACCOUNTS
(See also Fees, Funds, Payments--if included in this Index.)

GENERALLY

A Geological Survey Area Supervisor is acting within the authority granted to him by applicable provisions of Indian oil and gas leases and Indian and Federal royalty regulations when he decides to adopt the greater of either 1) actual sales prices of production from the leased lands or 2) a substitute price computed by him which is reasonably based on sales prices from all production from other similar tribal leases in the area, as the "value" of gas produced on these leases, and when he directs lessees to compute royalty based on the greater of the two values so calculated.

Where the Area Supervisor assembles data concerning sales from all Jicarilla tribal leases for a particular year and determines the median sales price, his use of this figure as a minimum floor price by which to determine value will be affirmed, as this decision is within the latitude afforded him, and this price is reasonably based on transactions indicative of the actual value of the production in the area at that time.

A lessee's obligation to pay royalty based on an accurate determination of the current value of production is not mitigated by its having committed by long-term contract to sell this product at a price below this value.

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of the payment subsequently.

The Area Supervisor has the authority to require a lessee to determine the value of the lease product by both the "BTU" and "net-realization" methods and may require the lessee to adopt as value whichever result is higher as the basis for computation of royalty for natural gas.

Where a United States district court has ordered a lessee to adopt a dual accounting method of determining value and has ordered the Department to require this dual accounting from the lessee, the question of the propriety of the Area Supervisor's order doing so is apparently res judicata, the only question being whether the order is the court's final action.

Under controlling provisions, an Area Supervisor has the discretion to establish a cost-of-manufacture allowance for use in the net-realization method of determining value for royalty purposes. Where this allowance is well based on the actual amounts needed to process out by-products of the crude gas, it will be upheld in the absence of a clear showing that it is erroneous.

Supron Energy Corp. et al., 46 IBLA 181 (Mar. 21, 1980)

Where the Department has not formally adopted any methodology for determining the value of production from phosphate leases, but has instead allowed lessees simply to pay royalty based on the minimum value specified in the lease after having advised them that a new method of determining a realistic value was being developed, it may assert that royalty was incorrect even after it has accepted these royalty payments, and may impose the method as approved by the Secretary.

Stauffer Chemical Co. et al., 49 IBLA 381 (Sept. 5, 1980)

ACCOUNTS--Continued

GENERALLY--Continued

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of payment subsequently.

An Area Supervisor's order which requires that royalty be based on either the price specified in the order or the amount actually received, whichever is greater, comports with all regulatory requirements as to definitiveness and finality.

Supron Energy Corp., Atlantic Richfield Co., 55 IBLA 318 (June 26, 1981)

Filing fees submitted in the form of an instrument drawn by a bank on its own assets, and which is signed by an officer of the bank and is a direct obligation of the issuing bank are acceptable under 43 CFR 3112.2-2.

Eloise Miller, David Miller, 56 IBLA 7 (June 30, 1981)

Where coal leases for Indian lands state that the applicable royalty rate is to be based on gross realization, which is defined as the gross sales price at the mining site without any deduction of overhead sales costs or any other business expense, gross realization includes the amounts of the reclamation fee imposed by the Surface Mining Control and Reclamation Act, the tax imposed by the Black Lung Benefits Revenue Act of 1977, and the Arizona State mining tax, since the selling price is increased by these amounts and the seller is reimbursed for that amount by the buyer.

It is proper to deduct the amount of fixed minimum royalty from the gross sales price of coal before calculating royalty due, where an amount representing the higher, percentage-based royalty is added instead, since the latter entirely replaces the former.

Where a coal purchase agreement provides that the purchase price of coal from the holder of an Indian lease shall be reduced by an amount reflecting the percentage of variation from an agreed minimum heat value of coal, and where the adjustment also reduces the purchase price by an amount reflecting the costs of transporting noncalorific material, this adjustment is properly allowed to reduce the gross realization and, as a result, the royalty due to Indian tribes which own the coal, because the low heat value of the coal is intrinsic to the material being "sold" by the tribes, and because the value of the material sold is reduced by the amount spent by the ultimate purchaser of the coal to transport low heat value coal.

Owing to its fiduciary obligation to protect the interests of the Indian tribes, the Department, through officials of the Geological Survey who supervise tribal mineral lease accounts, has the authority to impose late payment charges where equity requires them. Late payment charges are not penalties; rather, they represent the time value of money owed to the tribes, but not paid. Accordingly, they may be imposed even where the lessee files a bona fide appeal of the underlying royalty determination. The lessee is protected from overpayment where the late payment charges are recalculated after final Departmental administrative review to correspond to the amount of royalty ultimately found to be due.

Peabody Coal Co., Navi Indian Tribe, 72 IBLA 337 (Apr. 29, 1983)

ACCOUNTS--Continued

FEES AND COMMISSIONS

Where a mining claimant timely tendered payment to cover service fees for recording 70 mining claim notices of location, but also included four additional mining claim notices which she did not intend to maintain but filed merely for informational purposes, and on appeal she clarifies her intent concerning the four claims and unclear markings on maps which were to show that the four claims were "canceled," the payment and filing will be deemed to have been timely made as to the 70 claims if payment is subsequently made pursuant to a notice given.

Ann M. Warnke, 45 IBLA 305 (Feb. 6, 1980)

Management overhead costs are not recoverable from right-of-way applicants under 43 CFR 2802.1-2.

Colorado-Ute Electric Ass'n, Inc., 46 IBLA 35 (Feb. 20, 1980)

U.S. Steel Corp., 50 IBLA 190 (Sept. 30, 1980)
87 I.D. 473

Management overhead costs are not a reimbursable cost recoverable from right-of-way applicants under 43 CFR 2802.1-2.

Utah Power and Light Co., 52 IBLA 105 (Jan. 12, 1981)

Southern California Edison Co., 55 IBLA 210 (June 16, 1981)

The Bureau of Land Management may properly charge fees for special recreation permits authorizing commercial rafting on the Rogue River, a designated wild and scenic river, under sec. 4(c) of the Land and Water Conservation Fund Act, 16 U.S.C. § 460l-6a(c), and Departmental regulations at 43 CFR Part 8372.

Where, on appeal, commercial outfitters protesting the imposition and increase of special recreation permit fees for commercial raft trips on the Rogue River, fail to demonstrate that the Bureau of Land Management's actions did not comport with its regulations or that the new fee levels have no reasonable basis under the regulations, a decision denying the protest will be affirmed.

Departmental regulations at 43 CFR Subpart 8372 require that, when the Bureau of Land Management issues special recreation permits authorizing use of special areas such as a designated wild and scenic river, fees must be charged for noncommercial as well as commercial users engaging in the same activity, except to the extent that a user is exempted from paying fees by 43 CFR 8372.4(d).

Rogue River Outfitters Ass'n, Dave Helfrich River Outfitters, Inc., 63 IBLA 373 (Apr. 30, 1982)

Under 43 CFR 3112.2-2(c) (1982), BLM properly disqualifies simultaneous oil and gas lease applications submitted with uncollectible filing fees and requires payment of the debt as a condition of further participation in the simultaneous leasing program.

Marguerite Killian, 79 IBLA 105 (Feb. 17, 1984)

MFL Partnership, Main Street Federal Energy Co., 82 IBLA 75 (July 17, 1984)

ACCOUNTS--Continued

FEES AND COMMISSIONS--Continued

Under 43 CFR 3112.2-2 (1982), BLM properly disqualifies simultaneous oil and gas lease applications submitted with uncollectible filing fees and requires payment of the debt as a condition for further participation in the simultaneous leasing program even where an applicant substitutes a collectible remittance after the filing period but prior to the simultaneous oil and gas lease drawing.

Charles B. Brusha, Jr., 80 IBLA 190 (Apr. 20, 1984)

Under 43 CFR 3112.2-2 (1982), it is proper for BLM to disqualify simultaneous oil and gas lease applications submitted with uncollectible filing fees and require payment of the debt as a condition for further participation in the simultaneous leasing program, even where an applicant substitutes a collectible remittance after the filing period.

Satish K. Arora, 80 IBLA 271 (May 4, 1984)

PAYMENTS

Where a mining claimant timely tendered payment to cover service fees for recording 70 mining claim notices of location, but also included four additional mining claim notices which she did not intend to maintain but filed merely for informational purposes, and on appeal she clarifies her intent concerning the four claims and unclear markings on maps which were to show that the four claims were "canceled," the payment and filing will be deemed to have been timely made as to the 70 claims if payment is subsequently made pursuant to a notice given.

Ann M. Warnke, 45 IBLA 305 (Feb. 6, 1980)

Management overhead costs are not recoverable from right-of-way applicants under 43 CFR 2802.1-2.

Colorado-Ute Electric Ass'n, Inc., 46 IBLA 35 (Feb. 20, 1980)

U.S. Steel Corp., 50 IBLA 190 (Sept. 30, 1980)
87 I.D. 473

Pursuant to 43 CFR 2802.1-7(3) increased charges may not be imposed retroactively, but are only to be imposed by the authorized officer after reasonable notice and opportunity for hearing, beginning with the next charge year after the officer's decision.

A grantee of a communications site right-of-way is properly held in default and his right-of-way is properly cancelled pursuant to 43 CFR 2802.1-7(d) where grantee has failed to pay proper amount of rental for 4 years.

James W. Smith, 46 IBLA 233 (Mar. 27, 1980)

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental due is $1,863, the offer will be disqualified under 43 CFR 3112.4-1 when the offeror submits a check for only $1,836 within the time required, but fails to submit the $27 deficiency within the allowed time.

Edward Goodman, 48 IBLA 152 (June 9, 1980)

ACCOUNTS--Continued

PAYMENTS--Continued

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental is due within 15 days from the receipt of notice that such payment is due, the offer will be disqualified under 43 CFR 3112.4-1 when the rental is not received in the proper office within 15 days from the receipt of notice that such payment is due.

Where payment must be accomplished within a specific number of days from receipt of notice, that number includes holidays and weekends which occur in the interim unless it is provided otherwise.

Gordon E. Jacobsen, 49 IBLA 91 (July 22, 1980)

Placing a check for annual rental for oil and gas leases in the mails does not constitute "payment" of annual rental. Rather, the lessee must cause the rental to be received by the office administering her leases, and, until such time as it is received, no "payment" of annual rental has occurred. Placing a check for annual rental for oil and gas leases in the mails does not constitute a tender of payment of annual rental within the meaning of 43 CFR 3108.2-1(c). Rather, a lessee makes a tender of payment only when she submits payment to the BLM office administering her leases and when BLM has the opportunity either to receive or decline it.

Rose M. Koegel, 49 IBLA 106 (July 28, 1980)

The payment of advance rental in connection with an oil and gas lease offer and the acceptance of such payment by the Bureau of Land Management do not create a binding obligation on the Bureau to issue an oil and gas lease.

James Mosley, Sr., 51 IBLA 19 (Oct. 28, 1980)

In the event that none of the land applied for in an oil and gas lease offer was unavailable, the applicant was entitled to a refund of excess rental paid, and failure of BLM to return the excess rental to the offeror after the lease issuance and prior to the next annual rental being due and payable does not prevent the lease from terminating by operation of law.

Alfred Flynn, 51 IBLA 125 (Nov. 20, 1980)

Management overhead costs are not a reimbursable cost recoverable from right-of-way applicants under 43 CFR 2802.1-2.

Utah Power and Light Co., 52 IBLA 185 (Jan. 12, 1981)

Southern California Edison Co., 55 IBLA 210 (June 18, 1981)

A cashier's check is an acceptable form of remittance for payment of the filing fee accompanying a simultaneous oil and gas lease offer under 43 CFR 3112.2-2. A cashier's check is a draft drawn by a bank upon itself, issued by an authorized officer of the bank, and directed to another person. Where a check submitted as a filing fee appears on its face to be a valid cashier's check, a Bureau of Land Management decision refusing such a check will be reversed and the case remanded to BLM.

Gay Petroleum, Inc., 52 IBLA 239 (Feb. 6, 1981)

Frank H. Gough, Jr., 53 IBLA 166 (Mar. 9, 1981)

ACCOUNTS--Continued

PAYMENTS--Continued

Eva Scobee, William J. Holt, 55 IBLA 292 (June 26, 1981)

Orderly administration of the oil and gas leasing program demands that filing fees be paid to BLM in a manner consonant with administrative convenience and in accordance with the regulations. This necessarily requires that BLM cannot, without prior written instruction, transfer money paid for one purpose to another use, e.g., money paid for one month's simultaneous drawing to another month's simultaneous drawing.

Stewart Capital Corp., 53 IBLA 369 (Mar. 30, 1981)

It is proper for the Bureau of Land Management to refuse to accept a check postdated 30 days after receipt as satisfactory payment of service fees for recordation of mining claims.

Jones L. Miller, 54 IBLA 187 (Apr. 22, 1981)

A Traveler's Express money order is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2 (1980), which specifically requires that where remittance is by money order it must be by either post office or bank money order.

Michaels M. Fitzpatrick, George M. Fitzpatrick, 55 IBLA 108 (June 1, 1981)

A regulation should be sufficiently clear that there is no reasonable basis for an oil and gas lease applicant's noncompliance with the regulation before it is interpreted to deprive an applicant of a preference right to a lease. A regulation specifying a bank money order as an acceptable form of remittance requires the acceptance of a personal money order issued by a bank.

Charles J. Rydzewski, 55 IBLA 373 (June 29, 1981) 88 I.D. 625

George M. Reid, 56 IBLA 97 (July 15, 1981)

Robert L. Anderson et al., 56 IBLA 182 (July 20, 1981)

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

M. W. Priest, Michael Bandura, 55 IBLA 398 (June 30, 1981)

A cashier's check is an acceptable form of remittance for payment of the filing fee accompanying a simultaneous oil and gas lease offer under 43 CFR 3112.2-2. A cashier's check is a draft drawn by the issuing bank upon itself, signed by an authorized employee of the bank, and payable to another person. Where a check submitted as a filing fee appears to meet these criteria on its face, it will be considered the equivalent of a cashier's check.

ACCOUNTS--Continued

PAYMENTS--Continued

A regulation specifying a bank money order as an acceptable form of remittance requires the acceptance of a personal money order issued by a bank.

John L. Messinger, Norris C. Delamore, Jr., 56 IBLA 1 (June 30, 1981)

A personal check is not an acceptable form of remittance under 43 CFR 3120.1-4(b) requiring a successful bidder to submit one-fifth of the amount bid as a deposit and must result in rejection of the competitive bid.

Belco Petroleum Corp., 57 IBLA 3 (Aug. 5, 1981)

An American Express money order is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2, which specifically requires that where remittance is by money order it must be by either post office or bank money order.

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

Where an application is drawn first in a simultaneous oil and gas lease drawing and the applicant is notified by the Bureau of Land Management that the rental due is $61, the application will be disqualified and rejected under 43 CFR 3112.4-1 and 3112.6-1, when the applicant submits a payment of $60 within the specified time, but fails to submit the $1 deficiency within the allowed time.

J. Gene Everette, 68 IBLA 225 (Nov. 15, 1982)

A Traveler's Express money order, purchased at a savings and loan institution, is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2 (1981), which specifically requires that where remittance is by money order it must be by either post office or bank money order.

Ellis R. Ferguson, 69 IBLA 352 (Dec. 30, 1982)

A simultaneous oil and gas lease application is properly rejected where the rent is not paid within 30 days of notice to do so as required by 43 CFR 3112.4-1(a) because applicant's draft for the payment, although timely tendered, is dishonored by the drawee.

Kenneth R. Lewis, 70 IBLA 112 (Jan. 13, 1983)

Where a regulation specifies that a filing fee for an oil and gas lease application shall be paid in United States currency, post office or bank money order, bank cashier's check or bank certified check, with the intent to ensure guaranteed remittance, a remittance drawn by a credit union upon a bank is also acceptable where the applicant has provided evidence that payment is guaranteed by a bank.

Elmer T. Stonecipher, 71 IBLA 203 (Mar. 14, 1983)

ACCOUNTS--Continued

PAYMENTS--Continued

An oil and gas lease issued pursuant to the first-drawn application in the simultaneous filing procedures is properly canceled where the rent is not paid within 30 days of notice to do so as required by 43 CFR 3112.4-1(a) because applicant's check for the payment, although timely tendered, is dishonored by the drawee.

Longhorn Oil, Ltd., 72 IBLA 45 (Apr. 7, 1983)

Mark A. Emmons, 76 IBLA 262 (Oct. 17, 1983)

It is the lessee's responsibility to see that any payment tendered for annual rental for an oil and gas lease is so identified that BLM can credit payment to the proper lease account. Where the lessee shows that the payment was received and BLM unreasonably failed to credit the payment to the lease account indicated on the billing notice returned with the payment, the lease is properly held not to have terminated.

Mucorp Energy, Inc., 73 IBLA 101 (May 23, 1983)

Where a check deposited improperly by the Bureau of Land Management was returned as uncollectible, it was not a debt due the United States under 43 CFR 3112.2-2(c) (1982), and its maker was improperly disqualified from future participation in the simultaneous oil and gas leasing program.

Charles Anderson, 76 IBLA 402 (Oct. 27, 1983)

REFUNDS

Failure of the high bidder at a competitive oil and gas lease sale to execute a lease results in forfeiture of the deposit submitted with the high bid. Refund of the deposit because offeror elects after the sale to withdraw his offer is not allowed.

Howell Spear, 56 IBLA 151 (July 20, 1981)

Sec. 10 of the Outer Continental Shelf Lands Act does not authorize refunds to purchasers of royalty oil.

Sec. 10 of the Outer Continental Shelf Lands Act does not authorize refunds to persons who have paid a civil penalty under sec. 24 of the Act.

Refunds and Credits Under the Outer Continental Shelf Lands Act, M-36942 (Dec. 15, 1981) 88 I.D. 1090

Where a noncompetitive oil and gas lease is canceled in part because some of the lands were already patented, the Department may return the excess rentals pursuant to the repayment provision of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1734(c) (1976). However, in absence of statutory provisions, no interest may be paid by the Government on such refunds.

Bonnie B. Jarett, 63 IBLA 228 (Apr. 16, 1982) 89 I.D. 207

ACCOUNTS--Continued

REFUNDS--Continued

Where a noncompetitive oil and gas lease is canceled for having been erroneously issued because the lease was deficient in the first year's rental, which deficiency was not timely cured, the Department may return the rentals pursuant to the repayment statute, 43 U.S.C. § 1734 (1976), in appropriate circumstances where the lessees have derived no benefit from the possession of the lease or there are no other factors militating against repayment.

Warren L. Jacobs, 71 IBLA 385 (Mar. 29, 1983)

An offeror for a noncompetitive oil and gas lease, filing over-the-counter, is not entitled to a refund of the filing fee even though she withdraws the offer prior to issuance of the lease.

Marie W. Suto, 73 IBLA 61 (May 12, 1983)

Where a noncompetitive oil and gas lease is canceled because a rental deficiency is not timely cured, the Department may return the rental pursuant to sec. 304(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1734(c) (1976), in appropriate circumstances where the lessee has derived no benefit from possession of the lease and there are no other factors militating against repayment.

Arden R. Grover, John R. Schumacher, 73 IBLA 308 (June 7, 1983)

Where BLM has unilaterally imposed special stipulations in issuing oil and gas leases and the lessee accepts such leases without protest for 7-1/2 months, she may not thereafter "withdraw" from or relinquish such leases and recover the annual advance rentals paid therefor on the ground that she did not consent to the imposition of the special stipulations, although she might have been permitted to do so had she protested promptly.

Frances Kunkel, 75 IBLA 199 (Aug. 22, 1983)

ACCRETION
(See also Boundaries, Public Lands--if included in this Index.)

Where riparian public land has been eroded away entirely by the actions of a navigable river and the river subsequently returns to its original banks, restoring the eroded land through accretion, title to the accreted land is deemed to be in the remote riparian owner to whose land the accretion attaches, rather than the United States.

Ralph F. Rosenbaum et al., 66 IBLA 374 (Aug. 30, 1982) 89 I.D. 415

Once an island in a navigable stream which is public land washes away totally and then after statehood a new island forms in the same place, title to the new land is in the state.

Where an oil and gas lease offer is rejected based on the conclusion that the land sought evolved from the bed of the Yellowstone River subsequent to North Dakota-Montana statehood in 1889 and, therefore, is state land, and, on appeal, the offeror contends that the land is public land and submits evidence which tends to show the existence of islands in the river prior to statehood that the offeror asserts persisted and, through accretion, merged with the river bank, the

ACCRETION--Continued

decision rejecting the offer may be set aside and the case remanded for consideration of the new evidence.

David A. Provinse, 78 IBLA 85 (Dec. 16, 1983)

Where riparian public land has been completely eroded away by the actions of a navigable river, title is lost to the United States and, where said land is subsequently restored through accretion by the continued action of the river, title belongs to the riparian owner.

David A. Provinse, 81 IBLA 148 (May 31, 1984)

It is a general rule that a meander line is not a line of boundary but one designed to point out the sinuosity of the bank or shore and as a means of ascertaining the quantity of the land in the fractional lot, the boundary line being the waterline itself. The "Basart exception" to this rule is that if, at the time a homestead entry is made, a large body of land previously formed by accretion existed between the meander line and the waters of the stream, then the meander line will be treated as the boundary line of the grant, and the patent will be construed to convey only the lands within the meander line. In determining the applicability of the "Basart exception," consideration must also be given to equitable factors, including unjust enrichment.

Eldin L. R. Johnson, Marilyn Johnson, 82 IBLA 135 (July 27, 1984)

ACQUIRED LANDS

If acquired lands sought for oil and gas leasing have been surveyed under the rectangular system of public land surveys, and their description can be conformed to that system, the lands must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner.

Where an offer for a noncompetitive oil and gas lease for acquired lands contains a defective description of the lands sought and prior to lease issuance a second offer is filed correctly describing the same lands, the lease must be cancelled to the extent of the conflict in the two offers.

Sam P. Jones, 45 IBLA 208 (Jan. 30, 1980)

There is no authority pursuant to which a pro rata or set-off formula can be read into 43 CFR 3503.3-1. Nor do the regulations require BLM to accept all tenders of rental against an anticipated unavailability of some or all of the lands included in a hardrock prospecting application, which may or may not materialize. In the event that some or all of the lands applied for are unavailable, the applicant's remedy is a refund of excess rental paid, and not a set-off against deficiencies.

Failure to remit the "full amount" of the first year's rental as defined at 43 CFR 3503.3-1(a), means failure to remit either a $20 minimum rental for 80 or fewer acres, or the amount computed for the total acreage if known, or the total acreage computed on the

ACQUIRED LANDS--Continued

basis of 40 acres for each smallest subdivision of the acreage involved in the application. An application which is not accompanied by the full amount of advance rental is properly rejected.

The regulation pertaining to attorneys-in-fact, as it relates to corporate applicants, 43 CFR 3502.6-1(a)(3), calls for evidence that the individual who signs an application is also empowered to execute the instrument and bind the corporation. Where an existing file of corporate qualifications sets forth the names of individuals or corporate officers authorized to act for the corporation in mineral applications and leases, and the terms of such authority, the requirements of 43 CFR 3502.6 are fully satisfied by reference to such file. 43 CFR 3502.7-2.

Regarding curable defects in a hardrock prospecting permit application, 43 CFR 3511.2-4(b), priority exists as of the date of cure. Compliance with that regulation establishes priority for those lands not included in junior acceptable applications or otherwise unavailable for hardrock prospecting.

Duval Corp., Amax Exploration, Inc., 45 IBLA 355 (Feb. 7, 1980)

Where applicants for a preference right lease for hardrock minerals fail to present evidence showing the quantity and quality of the minerals discovered in the area covered by the prospecting permit, but rather present evidence showing only an extremely deep deposit of low value ore, which evidence is inadequate to show that they have made a discovery of a valuable mineral deposit, and they do not dispute the findings relied on by the Bureau of Land Management, their application is properly rejected.

John D. Archer, Elizabeth B. Archer, 47 IBLA 268 (May 13, 1980)

Lands acquired by the Forest Service pursuant to the General Exchange Act of 1922 and the Federal Land Policy and Management Act of 1976 have the status of public lands and are not subject to uranium prospecting permits under the Mineral Leasing Act for Acquired Lands, but such lands are subject to location and entry under the general mining law and to leasing under the Mineral Leasing Act of 1920.

Wyoming Fuel Co., 52 IBLA 302 (Feb. 10, 1981)

A noncompetitive oil and gas lease offer for acquired land within the boundaries of the Fort Laramie National Historic Site administered by the National Park Service is properly rejected since the Mineral Leasing Act for Acquired Lands specifically excludes lands within national parks or monuments from its terms.

Ed Pendleton, 57 IBLA 146 (Aug. 25, 1981)

An over-the-counter oil and gas lease offer for acquired lands will be rejected when the lands requested in the offer were formerly included in a canceled or relinquished lease, a lease which automatically terminated for nonpayment of rental or a lease which expired by operation of law at the end of its primary term, because such lands may be leased only in accordance with the simultaneous filing procedures of 43 CFR Subpart 3112.

Lowell J. Simons, 66 IBLA 338 (Aug. 26, 1982)

ACQUIRED LANDS--Continued

Land acquired by the United States does not become public land by the mere process of its acquisition, and, in the absence of specific statutory direction to the contrary, is not open for location of mining claims under 30 U.S.C. § 22 (1976).

Maurice Duval, Marianne Duval, 68 IBLA 1 (Oct. 12, 1982)

ACT OF FEBRUARY 14, 1859

Where the State of Oregon has selected indemnity lands pursuant to the Act of Feb. 28, 1891, ch. 384, 26 Stat. 796, for school sections within an unsurveyed township in the Siskiyou National Forest and thereafter a retracting or survey is run revealing new fractional townships within the area originally protracted, the State is entitled to indemnity lands for those new townships in accordance with the compact it entered with the United States by Act of Feb. 14, 1859.

State of Oregon et al., II, 80 IBLA 354 (May 10, 1984) 91 I.D. 212

ACT OF JULY 26, 1866

Prior to the repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, as amended, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, one who appropriated water pursuant to the 1866 Act could acquire a right-of-way for reservoirs, dams, pipelines, ditches, and canals crossing public land merely by constructing such improvements, no application to the Federal Government being necessary.

Repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, as amended, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, did not affect rights-of-way previously acquired under the 1866 Act.

Under sec. 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1976), the Secretary of the Interior has discretionary authority to correct an error in a conveyance document when the error is clearly established and equitable considerations dictate that relief be granted. Where a company establishes that it acquired a right-of-way pursuant to the Act of July 26, 1866, prior to the repeal of the right-of-way provisions of that Act by the Federal Land Policy and Management Act of 1976, a subsequent interim conveyance to a Native corporation is subject to that right-of-way, and where the conveyance does not reflect that fact, the Secretary may act to correct that error.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

Prior to the repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, as amended, 43 U.S.C. § 661 (1970), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, one who appropriated water pursuant to the 1866 Act could acquire a right-of-way for reservoirs, dams, pipelines, ditches, and canals crossing public land merely by constructing such improvements, no application to the Federal Government being necessary.

Repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, as amended, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, did not affect rights-of-way previously acquired under the 1866 Act.

R. W. Offerle, 77 IBLA 80 (Nov. 9, 1983)

ACT OF JULY 27, 1866

Where there is a deficiency of indemnity land to satisfy losses in place land, the right of a railroad vests to select indemnity under a grant in aid of construction. That right can be conveyed to an innocent purchaser for value and is not affected by a subsequent release filed pursuant to sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1976).

A railroad's right to select indemnity land under the Act of July 27, 1866, which had vested, was a claim which was required to be recorded with the Department within 2 years from the effective date of the Act of Aug. 5, 1955, 69 Stat. 534. Failure to present a claim within the time established by the Act barred acquisition of lands. A list of innocent purchasers for value filed with the Department in 1940 pursuant to sec. 321(b) of the Transportation Act, 49 U.S.C. § 65(b) (1976), did not constitute compliance with the 1955 recordation requirement.

Santa Fe Pacific Railroad Co., 72 IBLA 197 (Apr. 19, 1983)

ACT OF MAY 17, 1884

Under sec. 8 of the Organic Act of May 17, 1884, 23 Stat. 24, settlement on the public lands of Alaska vested in the settler possessory rights in that land that could be asserted against every one except the Government. Such occupancy was inoperative to prevent the United States from reserving the land for its own uses. However, where it is established that the Government intended to except those in possession from the scope of a reservation, the reservation shall not be construed as cutting off those possessory rights.

Pan Alaska Fisheries, Inc., 74 IBLA 295 (July 27, 1983)

ACT OF FEBRUARY 8, 1887

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected where the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been transferred from Federal ownership.

Maudra June Underwood Lentell, Marvin Curtis Swanner, 49 IBLA 317 (Aug. 20, 1980)

Ayo B. Hart Hedrick, 55 IBLA 143 (June 4, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from appropriation under the agricultural land laws on July 7, 1967, when the "Notice of Classification of Public Lands for Multiple Use Management" was published in the Federal Register.

Pamela June Wood Finch, 49 IBLA 325 (Aug. 22, 1980)

ACT OF FEBRUARY 8, 1887--Continued

The effect of the issuance of a patent is to transfer legal title from the United States and to remove the land from jurisdiction of the Department of the Interior. Where BLM's records show lands have been patented, an Indian allotment application filed under the General Allotment Act of Feb. 8, 1887, for such lands is properly rejected.

Mary Patricia Anne Bevans Gibson et al., 52 IBLA 216 (Jan. 30, 1981) 88 I.D. 244

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected where the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from all forms of entry under the public land laws by the Act of Mar. 6, 1958.

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior.

Where BLM records show lands have been patented, an Indian allotment application filed under the General Allotment Act of Feb. 8, 1887, for such lands is properly rejected.

Samuel Lee Gifford et al., 53 IBLA 23 (Feb. 24, 1981)

Lula Lorene McCracken Slower, 58 IBLA 202 (Sept. 29, 1981)

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior.

Where BLM records show lands have been patented, an Indian allotment application filed under the General Allotment Act of Feb. 8, 1887, for such lands is properly rejected.

Samuel Lee Gifford et al. (On Reconsideration), 55 IBLA 1 (May 21, 1981)

Jimmy Lord Gibson, 59 IBLA 170 (Oct. 26, 1981)

Publication in the Federal Register of a classification for multiple use management pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. § 1411 (1976), will segregate the affected land to the extent indicated in the notice, and applications for such land pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), must be rejected.

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior.

Where BLM records show lands have been patented, an Indian allotment application filed pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), for such lands, is properly rejected.

Dorothy L. Standridge et al., 55 IBLA 131 (June 3, 1981)

ACT OF FEBRUARY 8, 1887--Continued

Publication in the Federal Register of a classification for multiple use management pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. § 1411 (1976), will segregate the affected land to the extent indicated in the notice, and applications for such land pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), must be rejected.

Gladys Lee Cardwell Gifford, Betty Ann Gifford Jarman, 55 IBLA 332 (June 26, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from appropriation under the public land laws on Sept. 5, 1969, when the "Notice of Classification of Public Lands for Multiple Use Management" was published in the Federal Register.

Terry Burl Fryrear, 58 IBLA 94 (Sept. 24, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected where the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from all forms of entry under the public land laws by the Act of Mar. 6, 1958.

Marvin Coy Gifford et al., 58 IBLA 98 (Sept. 24, 1981)

Betsy Rosaine Bevill, 58 IBLA 260 (Oct. 6, 1981)

William Hilton, Jr., Cordell Eldon Eugene Morgan, Myrna June Morgan, Jackie Lavern Jarman, 59 IBLA 182 (Oct. 27, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they were segregated from appropriation under the agricultural land laws on July 7, 1967, and Sept. 5, 1969, when the "Notice[s] of Classification of Public Lands for Multiple Use Management" were published in the Federal Register.

Don W. Hill, Sr., Lois Salles Kelso Shrode, 58 IBLA 103 (Sept. 24, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from appropriation under the public land laws on July 7, 1967, when the "Notice of Classification of Public Lands

ACT OF FEBRUARY 8, 1887--Continued

for Multiple Use Management" was published in the Federal Register.

Claires Inez Wood Swanner, 58 IBLA 108 (Sept. 24, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from all forms of entry under the public land laws by the Act of Mar. 6, 1958, and selected by the State of Nevada pursuant to that Act.

Marvin Lee Stokes, 58 IBLA 199 (Sept. 29, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the Federal Register.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

Where Congress has authorized the Secretary to administer reconveyed Coos Bay Wagon Road lands in accordance with a perpetual timber yield policy, and where the Secretary classified them as timber lands in 1947 and they remain so today, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

Under relevant enabling statutes, the Secretary is without authority to classify reconveyed Coos Bay Wagon Road lands as suitable for Indian allotments under the General Allotment Act.

Mary Margaret Wear et al., 67 IBLA 8 (Sept. 1, 1982)

BLM must reject an Indian allotment application filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), where the land has been segregated from all forms of entry under the public land laws pursuant to sec. 3 of the Act of Mar. 6, 1958, P.L. 85-339, 72 Stat. 31 (1958), and reserved for acquisition by the Colorado River Commission of the State of Nevada. The land remains segregated even where the segregation has expired by its terms, but it is still reflected on the public land records of BLM.

Regina Anne Jones, Claudie Lee Jones, 76 IBLA 17 (Sept. 6, 1983)

ACT OF FEBRUARY 28, 1891

Where the State of Oregon has selected indemnity lands pursuant to the Act of Feb. 28, 1891, ch. 384, 26 Stat. 796, for school sections within an unsurveyed township in the Siskiyou National Forest and thereafter a reprotraction or survey is run revealing new fractional townships within the area originally protracted, the State is entitled to indemnity lands for those new townships in accordance with the compact it entered with the United States by Act of Feb. 14, 1859.

A state selecting indemnity lands pursuant to the Act of Feb. 28, 1891, ch. 384, 26 Stat. 796, for unsurveyed school sections within a national forest shall be entitled to select indemnity lands to the extent of two sections for each of said townships in lieu of secs. 16 and 36 therein. Where a protraction on which the state relies to make its indemnity selections reveals that a fractional township is present, the state's entitlement to indemnity lands is calculated according to the pro rata rule set forth at 43 U.S.C. § 852 (1976).

Where a survey on which the state relies to make its indemnity selections pursuant to the Act of Feb. 28, 1891, reveals a fractional township with a school section in place, the state's entitlement should be in an amount equal to the acreage shown by the surveyed school section or in an amount determined by the pro rata rule at the election of the state.

Until a survey of public lands has been run and approved, the designated sections of a township are undefined and the lands are unidentified.

Where the State of Oregon makes an initial selection of indemnity lands pursuant to the Act of Feb. 28, 1891, ch. 384, 26 Stat. 796, for school sections within an unsurveyed fractional township in a national forest, it is not entitled to additional indemnity lands should a subsequent reprotraction or survey be made of the township.

State of Oregon et al., II, 80 IBLA 354 (May 10, 1984)
91 I.D. 212

ACT OF MARCH 3, 1891

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

United States v. Evelyn M. Busch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a

ACT OF MARCH 3, 1891--Continued

homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald M. Braniff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

ACT OF AUGUST 4, 1892

Under provisions of the Act of Aug. 4, 1892, 30 U.S.C. § 161 (1976), known as the Building Stone Act, land chiefly valuable for building stone can only be entered by mining claims in the placer form, regardless of the actual mode of occurrence of the deposit.

While deposits of limestone chiefly valuable for building stone were subject to location only as placer claims, deposits of limestone valuable for their chemical or metallurgical properties are properly located according to the form of their deposition.

Land may be considered "chiefly valuable for building stone" where the building stone values of the mineral deposit sought are greater than any other mineral values or nonmineral values for which the land may be appropriated.

United States v. Richard P. Hankins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

Under the provisions of the Act of Aug. 4, 1892, 30 U.S.C. § 161 (1976), a person authorized to enter lands under the mining laws of the United States may enter lands chiefly valuable for building stone under the provisions of the law in relation to placer mining claims.

Frank Mellusso, 71 IBLA 178 (Mar. 10, 1983)

ACT OF AUGUST 18, 1894

Applications filed for temporary withdrawals of land for proposed development under the Carey Act, 43 U.S.C. § 641 (1976), must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources, 48 IBLA 250 (June 26, 1980)

The Carey Act does not give a state an absolute entitlement to select and reserve desert land acreage regardless of whether or not it has been withdrawn for other purposes. Rather, the Act does not prevent the Secretary from committing such land for any authorized use, including use as a stock driveway. Moreover, the Department has broad discretionary authority to reject Carey Act applications for lands not withdrawn from selection, subject to normal judicial restraints against arbitrary and capricious administrative actions.

Applications filed for segregation of land for proposed development under the Carey Act must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources (On Reconsideration), 49 IBLA 221 (Aug. 12, 1980)

ACT OF JUNE 4, 1897

Where a deed embracing certain base lands is tendered to the United States in an application for an exchange under the Forest Lieu Exchange Act, Act of June 4, 1897, 30 Stat. 31, which title is based on a deed issued for state school lands to a fictitious individual, such deed vests no title in the United States. Where, however, the state deed is issued to a real person, even though it may have been fraudulently obtained from the state, acceptance by the United States of the exchange application is sufficient to vest title in the United States to the base property, even though that title might be subject to defeasance in a proper proceeding.

Where the United States had accepted an application for a forest lieu exchange under the provisions of the Act of June 4, 1897, 30 Stat. 31, title to the base property vested in the United States. Such title was not divested by either the subsequent refusal of the United States to complete the exchange or by the acquisition of the selection rights emanating from the acceptance of the application by a third-party which had been defrauded of the base lands through the actions of the original applicant.

Where the United States had accepted an application for a forest lieu exchange under the provisions of the Act of June 4, 1897, 30 Stat. 31, which application was based on base lands fraudulently secured from a state, and the state subsequently obtained a quitclaim from the applicant of all his interest in the lands, the state did not regain title to the base lands but rather was vested with all selection rights which had properly appertained to the exchange application.

Where the record establishes that, but for the actions of the Department in improperly approving an exchange, a state would have properly exercised its exchange rights pursuant to applicable law, the Department will be estopped from subsequently asserting the exchange was improper where, as here, it would no longer be possible for the state to exercise its exchange rights.

Under the United States Supreme Court's decision in Wyoming v. United States, 255 U.S. 489 (1921), an application for a forest lieu exchange was accepted by the filing of a proper exchange and the acceptability of an exchange was to be judged with reference to the facts existing at the time of filing. The actual acceptance of an exchange application, however, even if based on a misapprehension of the facts, vested title to the offered lands in the United States.

The classification of land as Supplement A, B, or C, by the Oregon Supreme Court in State v. Hyde, 88 Or. 1, 169 P. 757 (1918), is not binding on the United States as to the factual predicates thereof, particularly as the United States was not a party to the case.

When a state obtained a quitclaim deed from a forest lieu applicant whose application had been accepted by the United States, the state merely acquired the same rights to complete the selection which were possessed by the original applicant. Where the state failed to record this forest lieu selection right under the Act of Aug. 5, 1955, 69 Stat. 534, or tender such right for payment under the Act of July 6, 1960, 74 Stat. 338, all rights flowing from the forest lieu selection right to either complete an exchange or have the base property reconveyed terminated.

While it is a general rule that adverse possession does not run against a state, this rule does not apply as against the United States. Where the United States has maintained open and notorious possession of certain parcels of land for over 80 years, the United States has acquired title to those parcels through adverse possession even though the record title holder was a state.

State of Oregon et al., I, 78 IBLA 255 (Jan. 10, 1984)
91 I.D. 14

ACT OF JUNE 4, 1897--Continued

An application for a recordable disclaimer of the Government's interest in a parcel of land in the Inyo National Forest pursuant to sec. 315 of the Act of Oct. 21, 1976, which parcel was deeded to the Government in 1899 in contemplation of selecting another parcel in lieu thereof pursuant to the Act of June 4, 1897, is properly rejected even though the lieu selection was never consummated, because the Act of July 6, 1960, quieted title to such land to the United States as part of the national forest in which the lands are located.

Andy D. Rutledge et al., 82 IBLA 89 (July 17, 1984)

ACT OF FEBRUARY 28, 1899

BLM is without jurisdiction to consider an application for the lease of public land near or adjacent to a hot springs where the land is within a national forest and the Act of Feb. 28, 1899, as amended, 16 U.S.C. § 495 (1976), vests the Secretary of Agriculture with exclusive jurisdiction with respect to the issuance of such leases.

Donn Hopkins, 68 IBLA 184 (Nov. 8, 1982)

ACT OF MAY 17, 1906

The Alaska Native Allotment Act, 43 U.S.C. § 270-1 (1970), granted to qualified applicants a preference right to the land occupied which gives the applicant first choice in the land.

Village & City Council of Aleknagik, Ray H. Olson, Lawrence Murphy, Sr., 77 IBLA 130 (Nov. 15, 1983)

ACT OF MARCH 3, 1909

Patents issued pursuant to the Act of Mar. 3, 1909, or the Act of June 22, 1910, 30 U.S.C. §§ 81, 83-85 (1976) reserved to the United States "all coal" and the right to prospect for, mine and remove the "coal deposits" underlying the patented lands. Congress in the 1909 and 1910 Acts intended to, and did, reserve only the coal and not other minerals found in association with coal. Accordingly, all minerals other than coal, including coalbed gas, passed to the surface owner at the time a patent was issued pursuant to the 1909 or 1910 Acts.

Ownership of and Right to Extract Coalbed Gas in Federal Coal Deposits, M-36935 (May 12, 1981)
88 I.D. 530

Applications for correction of patents are properly denied where the applicant is seeking to have coal rights transferred to it which were reserved in patents pursuant to the Act of Mar. 3, 1909, 30 U.S.C. § 81 (1982), or the Act of June 22, 1910, 30 U.S.C. §§ 83-85 (1982). Such reservations were not a product of mistake or error. The Department of the Interior was required by those Acts to include the reservations.

Walter & Margaret Bales Mineral Trust, 84 IBLA 29 (Nov. 27, 1984)

ACT OF MARCH 15, 1910

Applications filed for temporary withdrawals of land for proposed development under the Carey Act, 43 U.S.C. § 641 (1976), must be rejected where the

ACT OF MARCH 15, 1910--Continued

lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources, 48 IBLA 250 (June 26, 1980)

Applications filed for segregation of land for proposed development under the Carey Act must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources (On Reconsideration), 49 IBLA 221 (Aug. 12, 1980)

ACT OF JUNE 22, 1910

Patents issued pursuant to the Act of Mar. 3, 1909, or the Act of June 22, 1910, 30 U.S.C. §§ 81, 83-85 (1976) reserved to the United States "all coal" and the right to prospect for, mine and remove the "coal deposits" underlying the patented lands. Congress in the 1909 and 1910 Acts intended to, and did, reserve only the coal and not other minerals found in association with coal. Accordingly, all minerals other than coal, including coalbed gas, passed to the surface owner at the time a patent was issued pursuant to the 1909 or 1910 Acts.

Ownership of and Right to Extract Coalbed Gas in Federal Coal Deposits, M-36935 (May 12, 1981) 88 I.D. 538

Applications for correction of patents are properly denied where the applicant is seeking to have coal rights transferred to it which were reserved in patents pursuant to the Act of Mar. 3, 1909, 30 U.S.C. § 81 (1982), or the Act of June 22, 1910, 30 U.S.C. §§ 83-85 (1982). Such reservations were not a product of mistake or error. The Department of the Interior was required by those Acts to include the reservations.

Walter & Margaret Boles Mineral Trust, 84 IBLA 29 (Nov. 27, 1984)

ACT OF JUNE 25, 1910

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by the Pickett Act, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by the terms of 43 U.S.C. § 142 (1970) which provided that withdrawn lands shall remain open to location for metalliferous minerals.

Where BLM filed an application for a protective withdrawal pursuant to Exec. Order No. 10355 which would reserve the subject land from all forms of appropriation including location and entry under the mining laws and the application was duly noted on the official status plats, the lands were segregated from the date of notation to the extent that the withdrawal, if effected, would prevent such forms of appropriation. A protective withdrawal is not a temporary withdrawal under the Pickett Act, 43 U.S.C. § 141 (1970), and is not limited by the terms of 43 U.S.C. § 142 (1970) which provides that temporarily withdrawn lands shall remain open to location for metalliferous minerals.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981) 88 I.D. 31

ACT OF JUNE 25, 1910--Continued

Where an executive order issued subsequent to the Pickett Act of June 25, 1910, as amended, 43 U.S.C. §§ 141, 142 (1970), does not specifically close all lands withdrawn under any authority other than the Act, the said lands are open to exploration, discovery, occupation, and purchase under the mining laws of the United States so far as the same apply to metalliferous minerals.

Western Nuclear, Inc., 55 IBLA 20 (May 26, 1981)

Mining claims located for a nonmetalliferous mineral on land which is withdrawn from mineral location for nonmetalliferous minerals are properly declared null and void ab initio. Such claims are not preserved by a recitation in the location notices that the claims were located for "bentonite and other minerals" where the claimant himself admits that there has been no evaluation of the claims "for other minerals besides bentonite," which is nonmetalliferous.

L. M. Groves, 70 IBLA 228 (Jan. 24, 1983)

When an application is for an allotment under the provisions of 25 U.S.C. § 337 (1976), the application is referred to the Secretary of Agriculture for a determination as to whether the lands are more valuable for agricultural or grazing purposes than for the timber found thereon, the Department of the Interior is bound by the determination of the Secretary of Agriculture and is constrained to follow that decision.

Land included in an application for powersite development under the Federal Power Act of June 10, 1920, 16 U.S.C. § 818 (1976), shall from the date of filing of the application be reserved from entry, location, or other disposal under the laws of the United States, unless otherwise directed by the Federal Power Commission or by Congress. No rights may be acquired by a settler on the public land who initiates settlement at a time when the land is not open to entry.

Shirley A. Clark, 77 IBLA 51 (Nov. 7, 1983)

When an application is made for an allotment under the provisions of 25 U.S.C. § 337 (1976), governing allotments to Indians within national forests, the application is referred to the Secretary of Agriculture for a determination whether the lands are more valuable for agricultural or grazing purposes than for the timber found thereon. The Department of the Interior is bound by the determination of the Secretary of Agriculture and is constrained to follow that decision.

Warren J. Conrad, 79 IBLA 394 (Mar. 27, 1984)

ACT OF JULY 17, 1914

Should coalbed gas occur in lands in which "oil and gas" were reserved to the United States in agricultural patents issued under the Act of July 17, 1914, 30 U.S.C. § 121 (1976), that coalbed gas is reserved to the United States.

Ownership of and Right to Extract Coalbed Gas in Federal Coal Deposits, M-36935 (May 12, 1981) 88 I.D. 538

ACT OF SEPTEMBER 19, 1914

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

ACT OF DECEMBER 29, 1919

A decision approving a bond filed by a locator of mining claims for reserved minerals on land patented under the Stock-Raising Homestead Act will be affirmed in the absence of a showing that the amount of the bond is inadequate to cover damage to crops, improvements, and the value of the land for grazing purposes.

Robert H. Michael et ux., 79 IBLA 255 (Mar. 5, 1984)

ACT OF NOVEMBER 9, 1921

A mining claim located on lands subject to a valid, ongoing, and preexisting material site granted pursuant to the Federal Highway Act of Nov. 9, 1921, 23 U.S.C. § 18 (1946), now the Federal Aid Highway Act, 23 U.S.C. § 317 (1976), is null and void ab initio.

Ralph Gemmott, 61 IBLA 116 (Jan. 6, 1982)

ACT OF MAY 24, 1928

An airport lease issued under the Act of May 24, 1928, is properly canceled where the lessee fails to use the leased land as a public airport. It is irrelevant that the lessee has been unable to arrange financing for reinitiation of airport service, as the terms of the Act, regulations, and lease require that the lands be used as an airport and provide for no dispensation of this requirement.

Jose Rodriguez, 49 IBLA 258 (Aug. 18, 1980)

BLM may properly cancel a public airport lease issued pursuant to the Act of May 24, 1928, as amended, 49 U.S.C. §§ 211-214 (1982), where the lessee fails to complete construction of airport facilities within 6 months of the date of the lease, as required by the terms of the lease.

Alfred Gerstler, 84 IBLA 155 (Dec. 13, 1984)

ACT OF MAY 29, 1928

A mining claim located at a time the land is withdrawn from appropriation by the Act of May 29, 1928, is null and void ab initio. It is immaterial whether future revocation of the withdrawal is being considered.

Samuel P. Speerstra, 78 IBLA 343 (Jan. 24, 1984)

ACT OF APRIL 28, 1930

An application for a recordable disclaimer or a quitclaim deed of the Government's interest in a parcel of land in the Inyo National Forest under sec. 6 of the Act of Apr. 28, 1930, based upon a conveyance in 1900 to the United States of the parcel in anticipation of making a lieu selection under the Act of June 4, 1897, is properly rejected even though the lieu selection was never completed, because the Act of July 6, 1960, precludes the Department from utilizing the 1930 Act for that purpose and provides that title to the lands was quieted to the United States in 1961 as part of the national forest in which the lands are located.

The legislative history of the Act of July 6, 1960, shows the Congress fully considered the constitutionality of the compensation provisions contained therein. The Department is bound to follow these provisions.

Soda Flat Co., Inc., 75 IBLA 388 (Sept. 2, 1983)

An application for a recordable disclaimer or quitclaim deed of the Government's interest in a parcel of land in the Sierra National Forest under sec. 6 of the Act of Apr. 28, 1930, which parcel was deeded to the Government in 1899 in contemplation of selecting another parcel in lieu thereof pursuant to the Act of June 4, 1897, is properly rejected even though the lieu selection never was consummated, because the Act of July 6, 1960, repealed the Department's authority to do so and provided that title to the lands was quieted to the United States as part of the national forest in which the lands are located.

The legislative history of the Act of July 6, 1960, shows the Congress fully considered the constitutionality of the compensation provisions contained therein. The Department is bound to follow these provisions.

O. J. Shaw et al., 75 IBLA 396 (Sept. 2, 1983)

ACT OF MAY 21, 1930

An oil and gas lease offer for lands in a reservoir right-of-way from other than the owner of the right-of-way is properly rejected pursuant to the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976), and 43 CFR 3100.0-3(d)(1) which limit the right to lease deposits of oil and gas in and under rights-of-way to the owner of the right-of-way or his assignees.

BDH Interests, 57 IBLA 163 (Aug. 27, 1981)

Lands under reservoir rights-of-way may be leased for oil and gas only under authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). Such lands are not "available for leasing under the [Mineral Leasing] Act," within the ambit of the 640-acre limitation set forth at 43 CFR 3110.1-3(a). However, a lease offer, which does not include all of the lands within a reservoir right-of-way comprised of only about 110 acres, is properly rejected in the exercise of the Secretary's discretionary authority, and must be rejected as a matter of law when the offeror is not a person qualified under the 1930 Act to lease the lands in question.

Curtis Wheeler, 62 IBLA 384 (Mar. 24, 1982)

Lands under a railroad right-of-way issued pursuant to the Act of Mar. 3, 1875, 18 Stat. 482, are not properly leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (1976), but instead must be leased under the exclusive authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976), and 43 CFR 3100.0-3(d)(1).

An oil and gas lease issued under the Mineral Leasing Act of 1920 does not include the oil and gas deposits underlying a railroad right-of-way, which

ACT OF MAY 21, 1930--Continued

crosses the leased tract, even though the lease does not expressly except such deposits from its coverage.

Chaplin Petroleum Co., 60 IBLA 102 (Oct. 29, 1982) 89 I.D. 551

ACT OF APRIL 23, 1932

A decision rejecting an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration of lands within a reclamation withdrawal to mineral entry and location will be reversed on appeal where the record fails to disclose any objection to granting the application or any way in which it is contrary to the public interest.

Joe Ashburn, 66 IBLA 328 (Aug. 25, 1982)

ACT OF AUGUST 28, 1937

Where Congress has authorized the Secretary to administer reconveyed Coos Bay Wagon Road lands in accordance with a perpetual timber yield policy, and where the Secretary classified them as timber lands in 1947 and they remain so today, the lands are "otherwise appropriated" within the meaning of sec. 8 of the General Allotment Act and are not available for Indian allotment.

Under relevant enabling statutes, the Secretary is without authority to classify reconveyed Coos Bay Wagon Road lands as suitable for Indian allotments under the General Allotment Act.

Mary Margaret Wood et al., 67 IBLA 8 (Sept. 1, 1982)

ACT OF APRIL 29, 1950

The Act of Apr. 29, 1950, 43 U.S.C. § 687a-1 (1976), requires a notice of location to be filed with BLM within 90 days from initiation of a trade and manufacturing site claim. Unless such notice is filed in the proper BLM office within the time prescribed, no credit may be given for occupancy before such filing.

Pan Alaska Fisheries, Inc., 74 IBLA 295 (July 27, 1983)

ACT OF AUGUST 11, 1955

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on power-site lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

Harold R. Yorio, 48 IBLA 206 (June 16, 1980)

Leiry D. Brookshire et al., 56 IBLA 73 (July 15, 1981)

Ronald P. McLean, 77 IBLA 380 (Dec. 7, 1983)

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James H. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

ACT OF MARCH 6, 1958

Where land has been segregated from all forms of disposition under the public land laws pursuant to an Act of Congress, the lands are "otherwise appropriated" within the meaning of sec. 8 of the General Allotment Act, and are not available for Indian allotment.

Gary Lester Gray, Grace Maria Barfield Gray, 67 IBLA 184 (Sept. 22, 1982)

ACT OF AUGUST 27, 1958

Mining claims located on lands subject to valid, ongoing, and pre-existing rights-of-way granted to the State of Idaho pursuant to the Federal Aid Highway Act, 23 U.S.C. § 317 (1976), to use the lands for materials for highway construction, are null and void ab initio.

James F. Ferguson, Wayne A. Reddekopp, 50 IBLA 414 (Oct. 24, 1980)

ACT OF JULY 6, 1960

An application for a quitclaim deed under sec. 6 of the Act of Apr. 28, 1930, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, is properly rejected because the Act of July 6, 1960, precludes the Department from utilizing the 1930 Act for that purpose.

Masonic Homes of California, 70 IBLA 46 (Jan. 10, 1983)

B. E. Herndon, 76 IBLA 353 (Oct. 24, 1983)

An application for a recordable disclaimer or a quitclaim deed of the Government's interest in a parcel of land in the Inyo National Forest under sec. 6 of the Act of Apr. 28, 1930, based upon a conveyance in 1900 to the United States of the parcel in anticipation of making a lieu selection under the Act of June 4, 1897, is properly rejected even though the lieu selection was never completed, because the Act of July 6, 1960, precludes the Department from utilizing the 1930 Act for that purpose and provides that title to the lands was quieted to the United States in 1961 as part of the national forest in which the lands are located.

The Federal Land Policy and Management Act of 1976 did not repeal the Act of July 6, 1960. Therefore, the provisions of the former do not provide authority to grant a disclaimer where doing so is contrary to the provisions of the latter. Further, the Federal Land Policy and Management Act of 1976 requires consultation with any affected agency prior to issuing a disclaimer. Where the Forest Service, which controls the surface of the affected lands within a national forest, expresses strong opposition to issuing a disclaimer, BLM's refusal to exercise the discretionary authority to do so is proper.

The legislative history of the Act of July 6, 1960, shows the Congress fully considered the constitutionality of the compensation provisions contained therein. The Department is bound to follow these provisions.

Soda Flat Co., Inc., 75 IBLA 398 (Sept. 2, 1983)

An application for a recordable disclaimer or quitclaim deed of the Government's interest in a parcel of land in the Sierra National Forest under sec. 6 of the Act of Apr. 28, 1930, which parcel was deeded to the Government in 1899 in contemplation of selecting another parcel in lieu thereof pursuant to the Act of June 4, 1897, is properly rejected even though the lieu selection never was consummated, because the Act of

ACT OF JULY 6, 1960--Continued

July 6, 1960, repealed the Department's authority to do so and provided that title to the lands was quieted to the United States as part of the national forest in which the lands are located.

The legislative history of the Act of July 6, 1960, shows the Congress fully considered the constitutionality of the compensation provisions contained therein. The Department is bound to follow these provisions.

G. J. Shaw et al., 75 IBLA 396 (Sept. 2, 1983)

While it is within the province of the judicial branch to adjudicate the constitutionality of statutes, it is outside the jurisdiction of the Board. The legislative history of the Act of July 6, 1960, shows Congress fully considered the constitutionality of the compensation provisions therein. The Department is bound to follow those provisions.

Legislative history of the Act of July 6, 1960, clearly shows that Congress concluded that the Federal Government holds title to land relinquished to the Federal Government in anticipation of a forest lieu exchange, notwithstanding the failure to consummate the exchange.

An application for a recordable disclaimer of the Government's interest in a parcel of land in the Inyo National Forest pursuant to sec. 315 of the Act of Oct. 21, 1976, which parcel was deeded to the Government in 1899 in contemplation of selecting another parcel in lieu thereof pursuant to the Act of June 4, 1897, is properly rejected even though the lieu selection was never consummated, because the Act of July 6, 1960, quieted title to such land to the United States as part of the national forest in which the lands are located.

Andy D. Rutledge et al., 82 IBLA 89 (July 17, 1984)

ACT OF SEPTEMBER 26, 1961

Where Congress has withdrawn lands for use of the Air Force, and thereby segregated them from all forms of disposal under the public land laws, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

The Secretary is without authority to classify lands withdrawn for Hollis Air Force Base by Congress in the Act of Sept. 26, 1961, as suitable for Indian allotments under sec. 4 of the General Allotment Act.

Lewis Quentin Garver, 67 IBLA 140 (Sept. 16, 1982)

ACT OF SEPTEMBER 3, 1964

Congress, with the passage of the Geothermal Steam Act, 30 U.S.C. § 1001 et seq., intended that geothermal leases be deemed as within the mineral leasing exception of sec. 4(d)(3) of the Wilderness Act of 1964, 16 U.S.C. § 1133(d)(3). Designated wilderness are open to geothermal leasing to the same extent they would have been at the date of their creation. Such leases are subject to the provisions of sec. 4(d)(3) of the Wilderness Act.

Geothermal Leasing in Designated Wilderness Areas, M-36937 (June 11, 1981) 88 I.D. 613

ACT OF SEPTEMBER 19, 1964

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the Federal Register.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

ACT OF OCTOBER 8, 1964

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

A decision to reject an application for a mineral lease within the Lake Mead National Recreation Area will be sustained in the absence of a showing that the authorized officer acted unreasonably in rejecting the lease for reasons relating to the protection of environmental and cultural values.

Edward Seggerman, Jr., 67 IBLA 189 (Sept. 22, 1982)

BLM may properly declare lode mining claims located wholly on land within the Lake Mead National Recreation Area, established pursuant to the Act of Oct. 8, 1964, 16 U.S.C. § 460n (1982), null and void ab initio because such land is implicitly withdrawn from mineral entry.

Marvin F. Johnston, 81 IBLA 295 (June 12, 1984)

ACT OF OCTOBER 15, 1966

Where the evidence establishes that BLM failed to conduct a cultural resource inventory in conformity with the applicable rules and regulations prior to offering timber for sale, BLM will be required to conduct a complete and proper cultural resource inventory before entry onto the land for harvesting is permitted.

In re Lick Gulch Timber Sale, 72 IBLA 261 (Apr. 28, 1983) 90 I.D. 189

Where the record reflects that the BLM decision not to do class III onsite cultural resource studies on the timber sale units was made without the consultation process as required by 36 CFR 800.4(a)(1), BLM will be required to so consult and to take whatever further action is required as a result of the consultation process prior to any entry by the timber purchaser.

Curtis Mitchell & STAND, 82 IBLA 275 (Aug. 31, 1984)

ACT OF SEPTEMBER 26, 1968

Bureau of Land Management properly rejects an application for the sale of public land pursuant to the Unintentional Trespass Act, 43 U.S.C. §§ 1431-1435 (1976), where the applicant refuses to pay related damages for unauthorized use of the land. Where BLM assesses trespass damages based on the reasonable value, extent, and duration of an unauthorized use of the public lands, this assessment will not be disturbed unless the trespasser submits convincing evidence that it is incorrect.

Reed E. Asay, 55 IBLA 157 (June 9, 1981)

ACT OF OCTOBER 1, 1968

The Act establishing the Flaming Gorge National Recreation Area requires that any oil and gas lease or permit be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe. 16 U.S.C. § 460v-4 (1976). Where BLM conditions the grant of a lease upon stipulations required by the Forest Service, the Department of the Interior has no authority to waive compliance with the Act.

Thomas F. Stroock, 77 IBLA 137 (Nov. 15, 1983)

ACT OF DECEMBER 24, 1970

Where the Bureau of Land Management rejects an application to lease for geothermal resources solely on the objection of the commanding officer, Fallon Naval Air Station, and where Bureau officials did not make an independent determination whether leasing the lands is in the public interest, the rejection is not a proper exercise of discretion.

Occidental Geothermal, Inc., 68 IBLA 400 (July 11, 1980)

"Mineral." Geothermal steam, as defined in sec. 2(c) of the Geothermal Steam Act of 1970, 30 U.S.C. § 1001(c), is not a "mineral" as the term is used in the mineral leasing laws. Congress generally did not intend the Steam Act to be treated as a "mineral leasing law."

Geothermal Leasing in Designated Wilderness Areas, M-36937 (June 11, 1981) 88 I.D. 813

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

California Energy Co., 63 IBLA 159 (Apr. 6, 1982)

The Secretary of the Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and Departmental regulation, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

On appeal from a BLM decision rejecting an offeror's competitive bid for a geothermal lease on the basis of Geological Survey's valuation of the tract sought to be leased, the offeror has the burden of showing that the valuation was in error and that the bid should be considered acceptable. In the absence of such a showing, BLM is entitled to rely on the technical expertise of Geological Survey.

ACT OF DECEMBER 24, 1970--Continued

Shaw Resources, Inc., 64 IBLA 57 (July 29, 1982)

ACT OF SEPTEMBER 28, 1976

The Secretary of the Interior is not precluded from contesting a mining claim by the provisions of sec. 6, Act of Sept. 28, 1976, P.L. 94-429, 16 U.S.C. § 1905 (1976), where a contest complaint has been filed within 2 years of the date of enactment of the statute.

United States v. Roy Peterson & Charles R. Svagi, 47 IBLA 92 (Apr. 23, 1980)

Mining claims located in units of the National Park System must be recorded within 1 year of the date of enactment of the Mining in the Parks Act, sec. 8 of the Act of Sept. 28, 1976, 16 U.S.C. § 1907 (1976), rather than within 3 years of the enactment of the Federal Land Policy and Management Act of 1976, Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976).

Alden A. LaBar, Dorothy A. LaBar, 49 IBLA 320 (Aug. 20, (1980)

In order for mining claims located in the Mount McKinley National Park to be valid, a discovery of a valuable mineral deposit must be shown to have existed prior to Sept. 28, 1976, the date lands in this park were withdrawn from mineral entry by the Act of Sept. 28, 1976, as well as on the date of the administrative hearing.

United States v. Alaska Limestone Corp., 64 IBLA 316 (Aug. 25, 1982)

ACT OF OCTOBER 21, 1976

An application for a recordable disclaimer of the Government's interest in a parcel of land in the Inyo National Forest pursuant to sec. 315 of the Act of Oct. 21, 1976, which parcel was deeded to the Government in 1899 in contemplation of selecting another parcel in lieu thereof pursuant to the Act of June 4, 1897, is properly rejected even though the lieu selection was never consummated, because the Act of July 6, 1960, quieted title to such land to the United States as part of the national forest in which the lands are located.

Andy D. Rutledge et al., 82 IBLA 89 (July 17, 1984)

ACT OF APRIL 3, 1980

Sec. 7(c) of the Paiute Indian Tribe of Utah Restoration Act of 1980, 25 U.S.C. § 761 et seq. (Supp. IV 1980), contains the phrase "available public...lands" which must be construed as those lands administered by the BLM which are available for disposal; that is, lands which are not withdrawn, appropriated or reserved.

National Forest lands are not "available public... lands." As such, they are not intended by Congress to be included within the Paiute's proposed reservation enlargement plan under the Paiute Restoration Act.

Proposed Paiute Restoration Plan, M-36944 (May 7, 1982) 89 I.D. 403

ADMINISTRATIVE AUTHORITY
(See also Delegation of Authority, Federal Employees & Officers, Secretary of the Interior--if included in this Index.)

GENERALLY

So long as the legal title to public lands remains in the United States, it has the power, after proper notice and upon adequate hearing, to determine whether a millsite claim is valid, and if it be found invalid, to declare it null and void.

United States of America v. Utah International, Inc., 45 IBLA 73 (Jan. 17, 1980)

A Presidential proclamation, which extended the boundaries of a forest reserve and which specifically stated that prior proclamations respecting the reserve were "superseded," had the effect of and was construed as restoring to entry lands earlier withdrawn by a Secretarial order which reserved from public entry, for protection of giant sequoia trees, a township situated within the boundaries of the forest reserve. This conclusion is particularly compelling in view of the long continued course of administrative action treating the subject township as having been restored to entry for purposes of prospecting, locating and developing mineral resources, subject to compliance with the rules and regulations pertaining to forest reserves.

Dolores Olsen and Wesley R. Mace, et al., 45 IBLA 232 (Feb. 4, 1980)

In granting a right-of-way over public lands pursuant to the Federal Aid Highway Act of 1958, 23 U.S.C. § 317 (1976), the Secretary of the Interior does not give up administrative authority over the lands subject to the right-of-way. Subsequent issuance of a patent for lands encompassing a Federally granted right-of-way issued under the Federal Aid Highway Act, supra, does not change the Secretary's jurisdiction over the right-of-way grant.

State of Alaska, 46 IBLA 12 (Feb. 20, 1980)

Reliance upon erroneous information given by BLM employees cannot confer upon an oil and gas lease applicant any rights not authorized by law.

Mary E. Cummings, 47 IBLA 10 (Apr. 10, 1980)

A hardrock prospecting permit erroneously issued for lands already subject to such a permit must be canceled to the extent of conflict.

Reliance on incomplete records maintained by Federal land offices cannot confer upon a hardrock prospecting permittee any rights in derogation of a prior permittee.

ASARCO, Inc., 47 IBLA 14 (Apr. 11, 1980)

The validity or legality of regulations, orders, or policies formulated by the Secretary of the Interior are not issues within the appellate jurisdiction of the Board of Land Appeals. However, the Board may review decisions of the Geological Survey or the Bureau of Land Management to determine whether such Secretarial regulations, orders, or policies have been correctly implemented.

Dana Enterprises Production Co., 48 IBLA 11 (May 27, 1980)

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

Department of the Interior, as agency of executive branch of Government, is not a proper forum to decide whether or not the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Alice M. Deetz, 48 IBLA 59 (May 29, 1980)

Abner Wood, 50 IBLA 141 (Sept. 26, 1980)

William C. Rabey, 56 IBLA 190 (July 20, 1981)

Shirley Thompson, Duane R. Thompson, 57 IBLA 154 (Aug. 25, 1981)

Petro-Lewis Corp., Partnership Properties Co., 57 IBLA 300 (Aug. 31, 1981)

Reliance upon erroneous information given by BLM employees cannot confer upon an applicant for millsite patent any rights not authorized by the regulations.

Morrill A. Nielson, 48 IBLA 398 (July 11, 1980)

The Department of the Interior, as an agency of the executive branch of Government, is not the proper forum to decide whether or not the recordation of mining claims provisions of the Mining in the Parks Act, 90 Stat. 1342, 16 U.S.C. § 1907 (1976), are constitutional.

Elden A. LeBor, Dorothy A. LeBor, 49 IBLA 320 (Aug. 20, 1980)

As the Department's final review authority on decisions relating to the public lands, the Board of Land Appeals exercises all the powers which the Department would have in making an initial decision.

Frederick H. Larson v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

The Department of Interior, as agency of Executive Branch of Government, is not the proper forum to decide whether or not the recordation provisions of the Federal Land Policy and Management Act of 1976 relating to mining claims are constitutional.

Marvin E. Brown, Jose M. Brown, 52 IBLA 44 (Jan. 6, 1981)

The Secretary of the Interior is charged with seeing that valid mining claims are recognized, invalid ones eliminated, and the rights of the public preserved.

United States v. Ernest Wiehe et al., 52 IBLA 83 (Jan. 9, 1981)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Alex Pinkham, Mary Anne Pinkham, 52 IBLA 149 (Jan. 16, 1981)

Lynn Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369

Fahey Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

United States Energy Corp. et al., 58 IBLA 159 (Sept. 28, 1981)

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

Rupert Thorne, 58 IBLA 319 (Oct. 16, 1981)

Edgar W. Cook, Barlene Cook, 58 IBLA 350 (Oct. 20, 1981)

Enterprise Mines, Inc., 58 IBLA 372 (Oct. 20, 1981)

Conoco, Inc., 58 IBLA 390 (Oct. 21, 1981) 88 I.D. 918

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 3, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Olive H. Stirland, 65 IBLA 363 (July 20, 1982)

James D. Ross, Maria J. Ross, 72 IBLA 395 (May 5, 1983)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not the Federal Land Policy and Management Act of 1976 is constitutional.

Lowell L. Potter, 52 IBLA 299 (Feb. 10, 1981)

Hugh A. Johnson, 54 IBLA 144 (Apr. 17, 1981)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

William Adolph Yonkee et al., 54 IBLA 232 (Apr. 27, 1981)

Reliance upon erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Estoppel will not lie where allegedly misleading advice is timely rebutted by existing regulations negating the advice given.

Vincent M. D'Amico, Walt C. Stengel, 55 IBLA 116 (June 3, 1981)

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Energy Trading, Inc., 55 IBLA 167 (June 9, 1981)

Robert E. Fennell, Clair B. Colburn, d.b.a. Colfennch Mining Ass'n, 56 IBLA 43 (July 8, 1981)

Del Rupp, 57 IBLA 297 (Aug. 31, 1981)

Grant Kirkham, Roberta Kirkham, 58 IBLA 131 (Sept. 24, 1981)

Robert Wright, 61 IBLA 158 (Jan. 20, 1982)

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

Dale J. Patches, Gay M. Patches, 61 IBLA 165 (Jan. 26, 1982)

William J. McGrath, 62 IBLA 110 (Mar. 2, 1982)

Floyd E. Deaton, 62 IBLA 243 (Mar. 15, 1982)

Exxon Oil Co., 74 IBLA 260 (July 22, 1983)

Harriet C. Shaftel, 79 IBLA 228 (Feb. 29, 1984)

Under the "equal-footing" doctrine, a state has title to lands beneath its navigable rivers, and this Board has no jurisdiction to determine the validity of such riverbed mining claims asserted under state law. However, where an unpatented mining claim is filed for record with the Bureau of Land Management pursuant to the Federal mining law and the public records disclose that all public lands embraced in the claim had been withdrawn from mining location before the claimant located the mining claim, the filing is properly rejected by BLM and the claim declared null and void ab initio.

Gary Willis, 56 IBLA 217 (July 22, 1981)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

Harvell Mining Co., Wilford F. Montgomery, 56 IBLA 236 (July 22, 1981)

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

The validity or legality of regulations, orders, or policies formulated by the Secretary of the Interior are not issues within the appellate jurisdiction of the Board of Land Appeals. However, the Board may review decisions of the Geological Survey to determine whether such Secretarial regulations, orders, or policies have been correctly implemented.

Superior Oil Co., 57 IBLA 404 (Sept. 14, 1981)

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Wayne Cook, 58 IBLA 350 (Oct. 19, 1981)

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

A.C.O.T.S., 60 IBLA 1 (Nov. 12, 1981)

Susan Dallas et al., 66 IBLA 407 (Aug. 31, 1982)

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

Like other entities of the executive branch of the Federal Government, the Board of Land Appeals is not empowered to adjudicate the constitutionality of a statute. That is the province of the judicial system.

David and Reirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Sidney O. Smith, 62 IBLA 376 (Mar. 24, 1982)

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

A Bureau of Land Management instruction memorandum is merely a document for internal use by BLM employees. Such documents are not regulations and have no legal force or effect.

United States v. Kargee Bentonite Corp, et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether a statute enacted by Congress is constitutional.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

Tenoco Petroleum Corp., 65 IBLA 99 (June 24, 1982)

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)

A cooperative agreement for the private maintenance of livestock under the protection of the Wild Free-Roaming Horses and Burros Act may be summarily canceled by the Bureau of Land Management upon good and sufficient evidence that the terms of the agreement have been violated by depriving the animals of adequate food, water, and health care and/or by subjecting them to inhumane treatment. The deteriorating condition of the animals themselves, and credible reports by third parties of substandard care, constitutes such good and sufficient evidence, and the decision to cancel will be affirmed in the absence of a showing that persuasive countervailing evidence exists.

Dennis Turnipseed, 66 IBLA 63 (July 29, 1982)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by laches, neglect of duty, failure to act, or delays in the performance of their duties.

Maurice Duval, Marianne Duval, 68 IBLA 1 (Oct. 12, 1982)

The Board of Land Appeals must defer to the Secretary's decision to approve the granting of a contract, where such approval implicitly ratifies the entire process which led up to issuance of the contract itself, including compliance with the National Environmental Protection Act of 1969, 42 U.S.C. §§ 4321-4361 (1976). The Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

Donald Ray, 68 IBLA 26 (Oct. 21, 1982)

Established and longstanding departmental interpretations relating to issuance of oil and gas leases are binding on all Departmental employees until such time as they are changed by competent authority.

Chanplin Petroleum Co., 68 IBLA 142 (Oct. 29, 1982) 89 I.D. 561

When the Secretary changes his construction of an ambiguous statutory provision for reasons of policy and law, the new construction operates prospectively only, and does not operate to invalidate actions (issuance of leases and approval of lease transfers) previously taken.

Railroad Affiliates & Coal Leasing, M-36945 (Dec. 6, 1982) 89 I.D. 610

As a general rule an appeal is subject to dismissal where either the appeal or the application which is the subject of the appeal is withdrawn by appellant. An appeal is properly dismissed where the application upon which it is based is withdrawn and the only error in the decision below is a misapplication of the regulations which only the appellant has standing to appeal.

Jerry E. Pritchard, 70 IBLA 154 (Jan. 18, 1983)

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

A decision becomes final when the appeal period has run and the Bureau of Land Management may reconsider and amend a decision pursuant to a petition for reconsideration filed during the appeal period.

Tommy L. Alford, 71 IBLA 29 (Feb. 16, 1983)

The authority of the United States to enforce a public right or protect a public right or protect a public interest is not vitiated or lost by acquiescence of its officers, nor can reliance upon information or actions of any officer, agent, or employee operate to vest any right not authorized by law.

Bachalk Production, Inc., 71 IBLA 374 (Mar. 29, 1983)

Where, on appeal from the automatic termination of an oil and gas lease pursuant to 30 U.S.C. § 188(b), appellant submits an affidavit in support of its assertion that no termination could occur under the statute because there was present on the lease a well capable of producing oil or gas in paying quantities on the anniversary date of the lease, and that statement is absolutely false, the misrepresentation is one of material fact which, if knowingly and willfully made, constitutes a criminal violation of 18 U.S.C. § 1001 (1976).

Funk Exploration, 73 IBLA 111 (May 23, 1983)

BLM may not act to approve or disapprove the assignment of an oil and gas lease where the assignor's legal guardian has revoked the power of attorney pursuant to which the assignment was executed and has requested BLM to disapprove the assignment, as any action would be contrary to established Departmental policy to maintain the status quo of the lease where there is evidence of a private dispute or controversy concerning the validity of the assignment.

Spectrum Oil & Gas Co., 73 IBLA 162 (May 24, 1983)

Withdrawals remain in force until specifically revoked or modified by competent authority. The Alaska National Interest Lands Conservation Act, P.L. 96-478 (94 Stat. 2371), does not affect the existence or validity of Public Land Order No. 5250.

Larry McMaster et al., 76 IBLA 370 (Oct. 25, 1983)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether a statute enacted by Congress is unconstitutional.

Joseph A. Barnes et al., 78 IBLA 46 (Dec. 13, 1983)
90 I.D. 550

A decision of the Bureau of Indian Affairs that cancels a lease of Indian trust lands generally involves an interpretation of the lease provisions, relevant Federal regulations governing cancellation procedures, and applicable Federal, state, and tribal case and statutory law. Such a decision cannot properly be characterized under 25 CFR 2.19 as solely discretionary.

Clayton J. Wray v. Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 146 (Jan. 27, 1984)
91 I.D. 87

ADMINISTRATIVE AUTHORITY--Continued

GENERALLY--Continued

The Department of the Interior, as an agency of the executive branch of Government, is without authority to waive requirements imposed by statute.

Jerald A. Waters, 78 IBLA 387 (Jan. 31, 1984)

A decision by an officer of the BLM which does not fall within any of the enumerated exceptions in 43 CFR 4.410 is subject to appeal to the Board of Land Appeals and a BLM officer is without authority to state otherwise.

Utah Wilderness Ass'n, 80 IBLA 64 (Mar. 30, 1984)
91 I.D. 165

While it is within the province of the judicial branch to adjudicate the constitutionality of statutes, it is outside the jurisdiction of the Board. The legislative history of the Act of July 6, 1960, shows Congress fully considered the constitutionality of the compensation provisions therein. The Department is bound to follow those provisions.

Andy D. Rutledge et al., 82 IBLA 89 (July 17, 1984)

Lands classified as within a known geologic structure of a producing oil and gas field (KGS) at any time prior to lease issuance must be leased competitively. The simultaneous oil and gas lease offer for such lands must be rejected even though the KGS determination probably would not have been applied to the lands but for the delay in lease issuance caused by the Secretary's suspension of the simultaneous oil and gas leasing program. Furthermore, applicant's rights are not impaired in such a case because the drawing merely establishes the priority of filing an offer, it does not vest in the lease applicant the right to an oil and gas lease.

The Secretary has the power to prescribe proper and necessary rules and regulations to accomplish the purpose of the Mineral Leasing Act, and pursuant to this and other authority, the Secretary has the power to create, and operate, or to suspend the simultaneous oil and gas leasing program which was designed to implement the noncompetitive leasing provisions of the Act.

Joseph A. Talladira, 83 IBLA 256 (Oct. 23, 1984)

ESTOPPEL

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements.

Alva P. Rockwell and Alva A. Rockwell, 47 IBLA 272 (May 13, 1980)

Dollie L. Glaab, 48 IBLA 404 (July 11, 1980)

Reliance upon erroneous advice or incomplete information provided by Departmental employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute for his failure to comply with its requirements.

Elden A. LeRoy, Dorothy A. LeRoy, 49 IBLA 320 (Aug. 20, 1980)

ADMINISTRATIVE AUTHORITY--Continued

ESTOPPEL--Continued

Stephen Greist, 51 IBLA 287 (Dec. 17, 1980)

St. Francis Mining Co., 53 IBLA 133 (Mar. 5, 1981)

The general rule is that reliance upon erroneous or incomplete information or opinions provided by any officer, agent, or employee of the Department cannot operate to vest any right not authorized by law.

Energy Trading Inc., 50 IBLA 9 (Sept. 5, 1980)

Palmyra Mines, Inc., 53 IBLA 89 (Mar. 2, 1981)

Adobe Oil & Gas Corp., 73 IBLA 263 (June 7, 1983)

LBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

Stephen S. Thompson, 84 IBLA 146 (Dec. 12, 1984)

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination. The erroneous acceptance of rental payment a year later cannot create such authority nor estop the the Government from regarding the lease as having terminated.

Jack J. Grynberg, 53 IBLA 165 (Mar. 12, 1981)

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of fact upon which a party was led to rely to his ultimate detriment.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

The Government is not estopped from requiring the recalculation of royalty payments, even if it has accepted improper payments in the past.

FMC Corp., 54 IBLA 77 (Apr. 14, 1981)

Exclusion of appellant members of the Metlakatla Community from benefits under provisions of the Alaska Native Claims Settlement Act held not to be precluded by a contrary result reached in a prior Administrative Law Judge's decision in a similar case. The determination by the agency factfinder in the separate but similar situation is not binding upon the Board of Indian Appeals, which renders final decision for the Department in disenrollment appeals referred on appeal to the Board.

Corinne Mae Howell & Her Minor Children Gary Arnold Howell, Richard Dewayne Howell, and Darcy Lynn Howell v. United States, 9 IBIA 70 (Sept. 9, 1981) 88 I.D. 822

Where a party, in the course of various proceedings before the Department, asserts facts that would, if proven, entitle him or her to obtain patent to land owned by the United States, and the litigation proceeds on the assumption that the facts are as stated, appellant will not be heard in a subsequent hearing to deny that those facts existed.

United States v. Richard P. Hankins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

ADMINISTRATIVE AUTHORITY--Continued

ESTOPPEL--Continued

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of material fact upon which a person was led to rely to his or her ultimate detriment.

Arpee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

The erroneous opinion or information of a Federal officer, agent or employee cannot operate to vest any right not authorized by law.

George L. Hawkins, Wallace G. Heath, 66 IBLA 390 (Aug. 31, 1982)

Lasar & Christine Burnett, 78 IBLA 349 (Jan. 25, 1984)

The Secretary of the Interior is not estopped by the principles of res judicata or finality of administrative action from correcting, reversing, or overruling an erroneous decision by subordinates or predecessors in interest. The Board of Land Appeals, in exercising the Secretary's review authority as fully and finally as might the Secretary, is not required to accept as precedent erroneous decisions made by the Secretary's subordinates.

Pathfinder Mines Corp., 70 IBLA 264 (Jan. 26, 1983) 90 I.D. 10

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Gerard C. Barrows, 71 IBLA 262 (Mar. 22, 1983)

Estoppel of the Government, especially where public lands are concerned, is a remedy applicable only to extraordinary circumstances. A sine qua non of estoppel of the Government is affirmative misconduct by an authorized officer which results in a misrepresentation of fact upon which there is detrimental reliance. Unless a wrong was consciously committed, the failure to correct a misunderstanding is insufficient grounds for estoppel.

Francis J. Furlong II, 73 IBLA 67 (May 16, 1983)

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Inexco Oil Co., 74 IBLA 260 (July 22, 1983)

LACHES

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Frederick H. Larson v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

Simon A. Rife, 56 IBLA 378 (Aug. 3, 1981)

James H. Tibbals, Janet D. Tibbals, 58 IBLA 42 (Sept. 17, 1981)

ADMINISTRATIVE AUTHORITY--Continued

LACHES--Continued

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Gerard C. Barrows, 71 IBLA 262 (Mar. 22, 1983)

Warren L. Jacobs, 71 IBLA 385 (Mar. 29, 1983)

Alyson A. Allison, James N. Allison III, 72 IBLA 333 (Apr. 29, 1983)

Lone Star Steel Co., 79 IBLA 345 (Mar. 22, 1984)

Viking Resources Corp., 80 IBLA 245 (Apr. 30, 1984)

Rogue River Outfitters Ass'n, 83 IBLA 151 (Oct. 10, 1984)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost through lack of enforcement by some of its officers.

Clyde K. Robberson, 58 IBLA 268 (Oct. 8, 1981) 88 I.D. 915

Janet A. Rodgers, 58 IBLA 275 (Oct. 8, 1981)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Byers, 63 IBLA 100 (Mar. 31, 1982)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties, nor can reliance upon information or opinion of any officer, agent, or employee, or on records maintained by land offices, operate to vest any right not authorized by law.

Virgil T. Peterson, 66 IBLA 156 (Aug. 10, 1982)

Jones B. W. Tapp, 69 IBLA 387 (Jan. 4, 1983)

Howard E. Davis, 70 IBLA 7 (Jan. 6, 1983)

J. Pat Kaufman, 71 IBLA 183 (Mar. 10, 1983)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through erroneous interpretations of the regulations allegedly provided by Departmental employees.

Dennis B. Joy, 66 IBLA 260 (Aug. 17, 1982)

Richard F. Carroll (On Reconsideration), 76 IBLA 151 (Sept. 27, 1983) 90 I.D. 437

ADMINISTRATIVE AUTHORITY--Continued

LACHES--Continued

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers.

D. H. Yates, 70 IBLA 134 (Jan. 14, 1983)

ADMINISTRATIVE PRACTICE

A long continued course of action by administrative agencies regarding an interpretation of the law within their jurisdictions should not be departed from by the agencies unless such course of action is clearly erroneous.

Dolores Glass and Wesley E. Sacy, et al., 45 IBLA 232 (Feb. 4, 1980)

Where a majority of the Board of Land Appeals has ruled that an agreement between a filing service company and its clientele create no interest in the company and its president which would violate the regulations requiring disclosure of other interests in the lease offers and which preclude multiple filings in simultaneous filing-drawing procedures and that the president's filing an offer in his own name competing with the clientele of the company does not violate the regulations, a case involving similar factual and legal issues will follow the Board's majority position.

It is a proper exercise of discretionary authority for a Bureau of Land Management office to suspend action on an oil and gas lease offer pending resolution of similar cases on appeal to the Board of Land Appeals and a court proceeding. However, where the court case is remanded to the Department of the Interior for further consideration and the Board has resolved cases with substantive issues similar to those in the case under consideration, it will set aside the Bureau's decision, and dismiss the protest and remand the case for action in accord with those rulings. Where there are no disputed factual issues controlling resolution of the case, the protestant's request for a hearing will be denied as well as his request for further suspension of the case.

Jack Buckhorn, 45 IBLA 337 (Feb. 7, 1980)

Management overhead costs are not recoverable from right-of-way applicants under 43 CFR 2802.1-2.

Colorado-Ute Electric Ass'n, Inc., 46 IBLA 35 (Feb. 20, 1980)

Decisions of the Interior Board of Land Appeals are indexed, digested, and available for public inspection pursuant to published Departmental regulations. They meet the requirements of the Administrative Procedure Act and serve as binding Departmental precedents. However, adjudicative decisions by local Bureau of Land Management offices do not meet requirements of the Administrative Procedure Act and are not binding precedents.

Cheyenne Resources, Inc., 46 IBLA 277 (Mar. 27, 1980) 87 I.D. 110

ADMINISTRATIVE PRACTICE--Continued

The procedures followed by the Department of the Interior in the initiation, prosecution, and deciding of mining contest cases are in full compliance with the Administrative Procedure Act.

United States v. Joseph J. Sousa et al., 49 IBLA 73 (July 22, 1980)

Where the Bureau of Land Management has rejected desert land entry applications because cultivation of the jojoba plant would not meet the requirements of the Desert Land Act, and where appellants submit extensive data and analysis in an attempt to rebut the BLM conclusion, the cases may be remanded to BLM for further consideration and development of the record.

Joseph F. Wright et al., 49 IBLA 237 (Aug. 18, 1980)

A final Departmental appellate decision construing a regulation will be applied with prospective effect only where it materially alters the interpretation given the regulation by earlier administrative decisions and where it would be unfair or prejudicial to apply such decision retroactively.

William L. Hoover, Jr., 52 IBLA 174 (Jan. 26, 1981)

Interpretation of the Alaska Native Claims Settlement Act by the Bureau of Indian Affairs contemporaneous with the enactment of the statute and continued over the succeeding 9 years is relevant to a determination of the application to be given to the statute. The Agency refusal to enroll persons who were not United States citizens on Dec. 18, 1971, the effective date of the Act, is a reasonable application of the Act and of Departmental regulations implementing the Act, and gives the language of the statute (43 U.S.C. § 1604 (1976)) its common and ordinary meaning.

United States v. Aimee Marion Bowen (Edenshaw) and Phyllis Josephine Kimball, 8 IBIA 218 (Feb. 12, 1981) 88 I.D. 261

The naming of an additional party in interest on the reverse side of the drawing entry card is prima facie evidence that the named person is in fact an interested party within the ambit of 43 CFR 3102.7. However, it is not within the province of the Department of the Interior to determine the unstated intentions of the offeror as to how and when the right of an interested party will vest.

William B. Price, 53 IBLA 174 (Mar. 16, 1981)

Under the "notation rule," where a reservoir right-of-way affecting certain land is noted on the official records of the Bureau of Land Management, that notation is effective to bar leasing of the oil and gas therein under the Mineral Leasing Act of 1920. This result follows even if the reservoir right-of-way should have been terminated.

BDN Interests, 57 IBLA 163 (Aug. 27, 1981)

Where, following the contest of a number of mining claims, a decision is rendered by an Administrative Law Judge holding certain claims and portions of claims to be valid and invalidating the remainder for lack of mineral or as embracing excess mineral reserves, and the Government appeals from that decision but the claimant does not, that decision will be set aside and the case remanded for rehearing on the basis of a judicial

ADMINISTRATIVE PRACTICE--Continued

decision in another case, made while the subject appeal was pending, that there can be no invalidation of mining claims by this Department on a finding that the claimant has acquired claims for far more mineral than the market can absorb within the foreseeable future.

United States v. Oasis Perlite Corp., 57 IBLA 167 (Aug. 27, 1981) 88 I.D. 772

Where an oil and gas lease offer, unaccompanied by statements as required by P. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978), was filed prior to Nov. 9, 1978, the Pack holding will not retroactively be applied to the offer.

Cleo Chorakis, 57 IBLA 398 (Sept. 14, 1981)

Patricia Ann DeSalvo, 58 IBLA 1 (Sept. 15, 1981)

Where a party, in the course of various proceedings before the Department, asserts facts that would, if proven, entitle him or her to obtain patent to land owned by the United States, and the litigation proceeds on the assumption that the facts are as stated, appellant will not be heard in a subsequent hearing to deny that those facts existed.

United States v. Richard P. Haskins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

The presumption of regularity supports the acts of public officers and, in the absence of clear evidence to the contrary, they are presumed to have properly discharged their official duties.

Don Cook, 60 IBLA 255 (Dec. 4, 1981)

When mail is properly addressed and deposited in the United States mails, with postage thereon duly prepaid, there is a rebuttable presumption that it was received by the addressee in the ordinary course of mail.

Delivery by post office of a document to a BLM state office by placement of such mail in the post office box where the state office customarily receives its mail, during the hours in which the state office is open to the public for the filing of documents, constitutes delivery to and receipt by the state office of the document.

Washington Chronicle Co., 60 IBLA 378 (Dec. 23, 1981)

Where an applicant for a noncompetitive oil and gas lease submits probative evidence opposing the determination by the Geological Survey that certain lands are within the known geologic structure, a hearing will be ordered so that a complete record may be developed.

Daniel A. Engelhardt, 61 IBLA 65 (Dec. 31, 1981)

Where a protestant against the issuance of an oil and gas lease supports his allegations that the lease offer is not qualified with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed for failure of the protestant to make positive proof of his allegations. Instead, the protest should be adjudicated on

ADMINISTRATIVE PRACTICE--Continued

its merits after all available information has been developed.

Patricia C. Alker, 62 IBLA 150 (Mar. 5, 1982)

Where a protest filed against the issuance of an oil and gas lease alleges several specific reasons why the lease should not issue, and BLM dismisses the protest after due consideration of the reasons recited, and on appeal from such dismissal the protestant raises additional arguments and issues, the Board of Land Appeals need not adjudicate the issues raised for the first time on appeal, but may confine its review to the merits of those matters addressed in the decision which is the subject of the appeal.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

Monty Cranston, 67 IBLA 364 (Oct. 7, 1982)

Where subsequent to the approval by the Department of an assignment of interests in an oil and gas lease at the request of the assignee it appears that there is such a dispute between the parties as to the intent and purpose of the assignment instrument that, had the Department known of the dispute it would not have acted on the purported assignment until the dispute between the parties had been resolved by the courts or the parties themselves, the Department will not rescind the approval but will not approve further assignments of rights stemming from the disputed assignment or permit drilling by any one claiming operating rights deriving from the disputed assignments for a period of time sufficient to permit the parties a chance to settle their dispute by agreement or litigation.

Utah Gas & Oil Corp., 64 IBLA 254 (June 2, 1982)

Where certain instruments are required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to be filed with the proper office of BLM prior to Dec. 31 of any year, and where the BLM office is not open on Dec. 30, the filing of the instruments on Jan. 2, the next date the BLM office is open, is deemed timely compliance with the filing requirements of FLPMA.

Buttes Resources Co., 65 IBLA 178 (June 29, 1982)

Upon assuming jurisdiction of an appeal, the Board of Land Appeals has full authority to consider the entire record in making a decision, and its review is not limited to the theories of law upon which the parties have proceeded.

R. Jay Kidd, 66 IBLA 71 (July 29, 1982)

Shiny Rock Mining Corp. (On Reconsideration), 77 IBLA 261 (Nov. 30, 1983)

Where a unit agreement approved by the Department provides that where a leased tract committed to the unit agreement is relinquished, unless the tract is included in a new lease within 6 months thereafter, the fee owner of the tract is deemed to have waived the right to lease such lands within a participating area in the unit and to have agreed, in consideration of compensation provided by the unit agreement, that operations under the unit agreement in the participating area shall not be affected by the relinquishment. The United States is considered to be the "fee owner" of unleased public domain in the context of the unit agreement.

ADMINISTRATIVE PRACTICE--Continued

Belco Development Corp., 66 IBLA 134 (Aug. 10, 1982)

The regulations governing procedures before the Board of Land Appeals provide for the filing of a statement of reasons for appeal by appellant and an answer by an adverse party within certain time limits (subject to extension). Proper practice requires that all issues deemed relevant by the parties be briefed at that time because, as a general rule, the Board does not issue interlocutory decisions on issues which are not dispositive of the appeal.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982) 89 I.D. 496

Established and longstanding Departmental interpretations relating to issuance of oil and gas leases are binding on all Departmental employees until such time as they are changed by competent authority.

Chaplin Petroleum Co., 68 IBLA 142 (Oct. 29, 1982) 89 I.D. 561

An acquired lands oil and gas lease offeror may properly be required to furnish the Bureau of Land Management with certain title information from the county recorder's offices as a precondition to lease issuance if the Bureau has insufficient title information. However, where the oil and gas plat bears the notation that the United States holds a 50 percent mineral interest, it is unreasonable for the Bureau to require the offeror to submit information from the county records to establish the 50 percent mineral interest in the United States without first attempting to verify its records.

James H. Chudnow, 70 IBLA 150 (Jan. 18, 1983)

The public is properly included in formulation of resource and land management plans under the directive of the Federal Land Policy and Management Act of 1976, but such public participation is not mandatory for the discretionary issuance of a special use permit which accords with the prevailing management plan for the public lands involved.

National Public Lands Task Force, Nevada Outdoor Recreation Ass'n., Inc., 70 IBLA 214 (Jan. 24, 1983)

An appeal brought by a person who does not fall within any of the categories of persons authorized by regulation to practice before the Department is subject to dismissal.

Thomas L. Tuttle, 71 IBLA 265 (Mar. 22, 1983)

William L. Rumney, 72 IBLA 62 (Apr. 12, 1983)

J. C. Trahan, 74 IBLA 15 (June 24, 1983)

Anthony O'Brien, 77 IBLA 154 (Nov. 16, 1983)

Where the lessee under a noncompetitive oil and gas lease, which is canceled to the extent it includes land which had been determined to be within a known geologic structure prior to issuance of the lease,

ADMINISTRATIVE PRACTICE--Continued

submits probative evidence contravening the determination by the Geological Survey, a hearing will be ordered so that a complete record may be developed. Only evidence pertaining to the period prior to lease issuance will be admissible.

Celeste C. Grynberg, 74 IBLA 180 (July 18, 1983)

A decision of the Board of Land Appeals holding that the signature requirement of 43 CFR 3111.1-1(a) is met when the offeror signs one offer form in ink and photocopies four exact reproductions of the front page of the offer form, including the signature, is not an abrupt departure from other Board rulings nor a retroactive application of a new rule, but is merely the initial interpretation and application of an existing regulation to this specific factual circumstance.

Richard F. Carroll (On Reconsideration), 76 IBLA 151 (Sept. 27, 1983) 90 I.D. 432

Where a simultaneous oil and gas lease application is submitted by a filing service on behalf of a client, and such application is subsequently rejected by the Bureau of Land Management for being improperly completed, the filing service is not authorized under 43 CFR 1.3 to represent the client in an appeal to the Board.

Donald E. Hook, 76 IBLA 367 (Oct. 25, 1983)

Where a group of simultaneous oil and gas lease applications was received in Nov. 1982 with a single check to cover the filing fees, it was error for the Bureau of Land Management to deposit the check without first examining the applications to ascertain the adequacy of the amount of the check as required by 43 CFR 3112.5(a)(3) (1982).

Where a check deposited improperly by the Bureau of Land Management was returned as uncollectible, it was not a debt due the United States under 43 CFR 3112.2-2(c) (1982), and its maker was improperly disqualified from future participation in the simultaneous oil and gas leasing program.

It was improper to disqualify a first-drawn applicant in the simultaneous oil and gas leasing program because his agent's check in a previous drawing was returned as uncollectible, since under the applicable regulations the check in question should not have been deposited by the Bureau of Land Management.

Charles Anderson, 76 IBLA 402 (Oct. 27, 1983)

Where BLM uses a computerized economic analysis to justify rejection of a desert land entry application, BLM must explain the basis of its analysis and data and the deficiencies of the applicant's proposal in its decision so that the applicant has some basis for understanding and accepting the rejection or appealing and disputing it.

Roger K. Ogden, 77 IBLA 4 (Oct. 31, 1983) 90 I.D. 481

Where there exist factual questions about the location of a subdivisional corner in a dependent resurvey, the Board of Land Appeals may order a hearing pursuant to 43 CFR 4.415 to resolve these questions.

Elmer A. Swan et ux., 77 IBLA 99 (Nov. 14, 1983)

ADMINISTRATIVE PRACTICE--Continued

In the absence of specific rules governing reevaluation of an Indian school construction funding application, the Bureau of Indian Affairs will be held to the rules governing the initial evaluation of such an application, in order to avoid the appearance and reality of arbitrary, ad hoc decisionmaking.

Although true ex parte communications are the antithesis of reasoned, informed, and objective decisionmaking, the circumstances of this case do not permit a finding that the proceeding before the Bureau of Indian Affairs was impermissibly tainted by ex parte communications.

Pueblo of Laguna v. Assistant Secretary for Indian Affairs, 12 IBIA 80 (Dec. 7, 1983) 90 I.D. 521

In a mining contest initiated by the United States, there is no requirement that the contestee offer evidence concerning matters not placed in issue by the United States. Where the Administrative Law Judge incorrectly states a contrary rule, but in practice applies the correct standard, his decision is affirmed.

In a mining contest initiated by the United States where the Government mineral examiners testify they have examined the mineral claims at issue and found no evidence of mineralization to support a discovery, a prima facie case for the Government is established. This showing is not overcome by evidence of ore sample values offered by contestee to show mineralization, where contestee fails to show from which, of 10 claims at issue, the samples were taken.

Cactus Mines Ltd., 79 IBLA 20 (Feb. 3, 1984)

Where BLM uses a computerized economic analysis to justify rejection of a desert land entry application, BLM must explain the basis of its analysis and the deficiencies of the applicant's proposal in its decision so that the applicant has some basis for understanding and accepting the rejection or appealing and disputing it. Sufficient facts and explanations to support the decision must be present before the Board will affirm such a decision on appeal.

David V. Ody, 81 IBLA 58 (May 22, 1984)

Where a simultaneous oil and gas lease applicant, whose application has been rejected because it covers land within a known geologic structure, submits probative evidence contravening the determination that the land is presumptively productive of oil and gas, which is not fully rebutted, but where, nonetheless, questions of fact remain unresolved by the record, a hearing is appropriate to establish a sufficient record to permit decision.

Lloyd Chemical Sales, Inc., 82 IBLA 182 (Aug. 13, 1984)

ADMINISTRATIVE PROCEDURE
(See also Appeals, Confidential Information, Contests & Protests, Hearings, Judicial Review, Public Records, Regulations, Rules of Practice--if included in this Index.)

GENERALLY

Where a Native corporation has pending an application to acquire land, which land was awarded to an Alaska Native by BLM pursuant to a Native allotment application, the Native corporation is a party adversely affected by the decision of BLM and therefore has a right to appeal pursuant to 43 CFR 4.410, from the BLM decision holding the Native allotment application for

ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

allowance and will be afforded the opportunity to contest the Native allotment application.

Ophiuhie Native Corp. v. Edward Ophein, Jr., 45 IBLA 198 (Jan. 30, 1980)

It is a proper exercise of discretionary authority for a Bureau of Land Management office to suspend action on an oil and gas lease offer pending resolution of similar cases on appeal to the Board of Land Appeals and a court proceeding. However, where the court case is remanded to the Department of the Interior for further consideration and the Board has resolved cases with substantive issues similar to those in the case under consideration, it will not set aside the Bureau's decision, and dismiss the protest and remand the case for action in accord with those rulings. Where there are no disputed factual issues controlling resolution of the case, the protestant's request for a hearing will be denied as well as his request for further suspension of the case.

Jack Zuckerman, 45 IBLA 337 (Feb. 7, 1980)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of an order issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department, and an appeal which is limited to those issues must be dismissed.

Texas Oil & Gas Corp., 46 IBLA 50 (Feb. 20, 1980)

Where Bureau of Land Management determines that an application for a Native allotment should be rejected for failure to establish use and occupancy of the land, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Estate of Guy C. Groat, Jr., Violet Buehl, 46 IBLA 165 (Mar. 21, 1980)

The effect of a timely filed notice of appeal is to suspend the authority of the deciding official to exercise jurisdiction relating to the subject of the appeal. It does not have the effect, however, of suspending the authority of BLM to act on matters which, while related to the subject of the appeal, are nevertheless functionally independent therefrom.

East Canyon Irrigation Co., 47 IBLA 155 (May 6, 1980)

Where Bureau of Land Management determines that an application for a Native allotment is invalid because the facts are not as stated in the application, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Evan Chukwak, 47 IBLA 241 (May 13, 1980)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of an order, which temporarily suspended oil and gas leasing, and was issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department. An appeal which is limited to those issues must be dismissed.

William E. Jeffers, Jr., William E. Jeffers, 49 IBLA 264 (Aug. 18, 1980)

ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of a policy directive issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department, and an appeal limited to those issues must be dismissed.

James R. Lorenz et al., 50 IBLA 416 (Oct. 24, 1980)

Any document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the post office of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

Lita Sabin, 51 IBLA 226 (Dec. 15, 1980) 87 I.D. 610

Betty Alexander, 53 IBLA 139 (Mar. 9, 1981)

"Service." Where BLM sends a copy of its decision to an adversely affected party at his address of record on Sept. 21; where additional information containing the party's more recent address is filed with BLM on Oct. 5; and where BLM receives the mailed copy back as undeliverable on Oct. 16 but does not mail another copy to the more recent address, BLM has not mailed a copy to the party's last address of record, and there is no "service" under 43 CFR 1810.2. Where BLM has never served a copy of its decision on an adversely affected party, the time for this party to appeal has never commenced, and the decision is not effective per 43 CFR 4.21(a).

Estate of Glenn F. Coy, Resource Service Co., Inc., 52 IBLA 182 (Jan. 26, 1981) 88 I.D. 238

Where a party holding an interest in property which may be adversely affected by the granting of a Native allotment points out facts of record indicating that the Native's use of the property may not have been continuous or exclusive for 5 years and that the claim may have been abandoned, the matter will be referred to the Hearings Division for a hearing before an Administrative Law Judge to inquire into the circumstances surrounding this occupancy.

Alyeska Pipeline Co., 52 IBLA 227 (Jan. 30, 1981)

In order to sustain a charge that land embraced within a mining claim is not held in good faith for mining purposes the evidence relating to the mineral claimant's lack of good faith must be clear.

United States v. Virgil Provoll and Melinda Provoll, 52 IBLA 256 (Feb. 6, 1981)

Pursuant to 43 CFR 2631.1, the Bureau of Land Management may properly require an applicant for patent under sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1976), to provide specific proofs of conveyances and transfers of title.

Southern Pacific Transportation Co., R. E. Herndon, 54 IBLA 174 (Apr. 21, 1981)

ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

Guidelines issued under BLM Manual sec. 1791 relating to preparation of an environmental analysis record with regard to a proposed timber sale are not the type of material required by 5 U.S.C. § 552(a)(1)(D) to be published in the Federal Register and as such are not binding on BLM.

Lane County Audubon Society, 55 IBLA 171 (June 11, 1981)

Under 43 CFR 4.410, a party must be adversely affected by a decision of an officer of the Bureau of Land Management in order to have the right to appeal to the Board of Land Appeals.

California State Lands Commission, 58 IBLA 213 (Sept. 29, 1981)

James H. Chadney et al., 70 IBLA 71 (Jan. 11, 1983)

Service of a BLM decision is accomplished when it is delivered to the addressee's last address of record by certified mail and such delivery is substantiated by postal authorities, regardless of whether it was in fact received by the person to whom it was addressed, and the prescribed period for initiating an appeal from such decision commences on the date of such delivery.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of that portion of a State Director's decision which implements an order issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department and the appeal will be dismissed insofar as it relates to this issue.

Cascade Holistic Economic Consultants et al., 60 IBLA 293 (Dec. 18, 1981)

Ultimate control of the disposition of public lands and resources belongs to Congress, and the responsibility of the Interior Department is to administer them in accordance with the dictates of the legislative branch. The Board is obliged to affirm BLM's declaration of mining claim abandonment and voidance, irrespective of appellant's argument that such result is contrary to other policies legislated by Congress, where appellant has not complied with the clear requirements of the FLPMA recordation provision.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

A decision of a district manager involving the exercise of administrative discretion in the fulfillment of the purposes of the Taylor Grazing Act, 43 U.S.C. § 315a (1976), will be affirmed where there is a rational basis for the action, and where appellant has not shown by a preponderance of the evidence that the action was arbitrary or capricious.

Arthur J. Cook (Appellant), Bureau of Land Management (Respondent), Daniel Russell (Intervenor), 64 IBLA 293 (June 7, 1982)

ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

A notice of appeal must be filed within 30 days after appellant is served with the decision from which he is appealing. When a party does not appeal, the doctrine of administrative finality, the administrative equivalent of res judicata, generally bars consideration of the same issue in a later appeal.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

Substitution of Administrative Law Judges after an administrative hearing does not render invalid a decision or order based on the hearing.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

When the Secretary changes his construction of an ambiguous statutory provision for reasons of policy and law, the new construction operates prospectively only, and does not operate to invalidate actions (issuance of leases and approval of lease transfers) previously taken.

Railroad Affiliates & Coal Leasing, M-36985 (Dec. 6, 1982) 89 I.D. 610

Any document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the Postal Service of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

Although the Postal Service is the agent of BLM to deliver written communications to the address of record of an applicant, where the applicant changes his address giving notice only to the Postal Service and not to BLM, the Postal Service then becomes the agent for the applicant who must bear the responsibility and consequence for failure of the Postal Service to properly deliver mail from BLM to the changed address, where the mail was originally properly dispatched to the address of record of the applicant.

Frank C. Lytle, III, 69 IBLA 210 (Dec. 16, 1982)

The Board of Indian Appeals will dismiss as moot any case in which no controversy remains between the parties.

Edmond H. Burns, Mark Hannons v. Anadarko Area Director, Bureau of Indian Affairs, 11 IBIA 40 (Jan. 14, 1983)

So long as a departure from prior practice is clearly explained and shown to be neither arbitrary nor capricious, the Department has full authority to correct prior erroneous interpretations of law.

United Indians of All Tribes Foundation v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 226 (July 5, 1983)

The Board of Land Appeals will not consider a general protest against a regulation where appellant has not shown how the appealed decision applied or implemented the regulation.

Doyon, Ltd., 74 IBLA 139 (July 6, 1983) 90 I.D. 289

ADMINISTRATIVE PROCEDURE--Continued

GENERALLY--Continued

Where documents sent to a prospective oil and gas lease offeror are returned because the addressee has moved, and, on appeal from a rejection of his application for failure to submit an offer and tender the first year's rental, the applicant establishes that he had left a current forwarding address with the postal authorities, the provisions of 43 CFR 1810.2(b) relating to constructive receipt do not apply, and the rejection of the application will be reversed.

L. Lee Horschman, 74 IBLA 360 (July 28, 1983)

When deciding whether issuance of a sodium prospecting permit is appropriate, the Bureau of Land Management, as the delegate of the Secretary, is entitled to rely on the reasoned opinion of Minerals Management Service as its technical expert. A mineral determination made by Minerals Management Service will not be disturbed in the absence of a clear and definite showing of error.

Delta Chemical Co., 76 IBLA 111 (Sept. 21, 1983)

An organization appealing a Bureau of Land Management decision will be considered a "party to a case" having standing to appeal an adverse decision of an officer of the Bureau of Land Management where the organization uses the lands in question and actively and extensively participates in the formulation of land use plans for the lands in question.

Desert Survivors, 80 IBLA 111 (Apr. 3, 1984)

Where a 1974 decision to issue a highway right-of-way is not challenged on appeal until 1980, the doctrine of administrative finality bars consideration of the legal basis for the 1974 right-of-way grant.

Bering Straits Native Corp., Council Native Corp., 83 IBLA 280 (Oct. 25, 1984)

ADJUDICATION

The Board of Land Appeals is obliged to consider everything contained in the record in determining all matters relevant to the disposition of an appeal.

M. S. Beck, 45 IBLA 99 (Jan. 17, 1980)

Where the holder of a coal prospecting permit completes his exploration and applies for a preference right coal lease in 1973, the application must be adjudicated on the basis of the applicant's subsequent conformity with regulations amended in 1976 with retroactive effect. However, where the application is summarily rejected solely for the reason that the applicant's supplemental submission is "inadequate," without identifying the deficiency, the decision will be vacated and the case remanded for readjudication.

Kin-Ark Corp., 45 IBLA 159 (Jan. 23, 1980) 87 I.D. 14

Where, in the hearing of a mining claim contest in which the presence of a mineral deposit within the limits of a claim is at issue and the claim is accessible, it is established that the Government mineral examiner made no professional examination of certain of the contested claims, the testimony of the Government mineral

ADMINISTRATIVE PROCEDURE--Continued

ADJUDICATION--Continued

examiner, without more, is insufficient to establish a prima facie case of invalidity.

United States v. Gerald Bean, 46 IBLA 1 (Feb. 13, 1980)

The BLM may not summarily reject a mineral patent application on the face of the record for reasons related to disputed issues of fact without notice and an opportunity for hearing.

Big Horn Limestone Co., 46 IBLA 98 (Feb. 28, 1980)

Where the Government contests the validity of a mining claim for nonperformance of annual assessment work, there is nothing inherent or implied in that action which requires a conclusion that the claim is valid in all other respects, nor may the bringing of such an action be treated as tantamount to an admission by the Government that "property rights in the claim have been established by the making of a valid location."

United States v. Catlin Bohne et al., United States v. Exxon Corp. et al., United States v. Aidabelle Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 348

Where the Bureau of Land Management rejects a competitive oil and gas lease offer as too low and provides no factual explanation to the offeror and where it appears from the record that the decision was not based on a reasoned evaluation of the facts, the offeror is entitled to readjudication of the bid. The case will be remanded to BLM for readjudication where subsequent justification for the rejection submitted to the Board of Land Appeals is insufficient to permit reevaluation of the bid by the Board on appeal.

Yates Petroleum Corp., 51 IBLA 181 (Dec. 2, 1980)

It is not necessary to make a separate ruling on each finding of fact and conclusion of law proposed by the parties to an administrative proceeding. It is sufficient if the decision summarizes the controlling principles of law and the facts relative thereto as established by the evidence adduced.

United States v. Graham R. Coxon, 53 IBLA 5 (Feb. 26, 1981)

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Lynn Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369

Robert E. Pennell, Clair E. Colburn, d.b.a. Colfensch Mining Ass'n, 56 IBLA 43 (July 8, 1981)

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

Fahey Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

Edgar W. Cook, Harlene Cook, 58 IBLA 358 (Oct. 20, 1981)

ADMINISTRATIVE PROCEDURE--Continued

ADJUDICATION--Continued

Jayne A. McMaster, 61 IBLA 163 (Jan. 25, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Armin P. Kenzler, 62 IBLA 224 (Mar. 10, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

Vienna Silver Mines Co., Inc., 67 IBLA 130 (Sept. 16, 1982)

John Heaton, 68 IBLA 206 (Nov. 10, 1982)

Melvin Bradshaw, 68 IBLA 390 (Nov. 23, 1982)

Estate of Woodie Nichols, 69 IBLA 382 (Jan. 4, 1983)

Inez McDorman, Audrey Pilger, 72 IBLA 383 (May 5, 1983)

James D. Hogg, Doris J. Hogg, 72 IBLA 395 (May 5, 1983)

George P. Newcomb, 73 IBLA 104 (May 23, 1983)

Humbug Mining Co., 73 IBLA 270 (June 7, 1983)

Harold L. Long, 73 IBLA 280 (June 7, 1983)

Rex Mining Co., 73 IBLA 284 (June 7, 1983)

Ray McKee, Cheryl McKee, 73 IBLA 311 (June 7, 1983)

Wayne B. Hunt, 73 IBLA 315 (June 7, 1983)

Paul P. Smith et al., 73 IBLA 336 (June 8, 1983)

Hugh Sprague, 73 IBLA 386 (June 15, 1983)

Page Investment Co., 74 IBLA 163 (July 12, 1983)

Bruce Naylor, Bill Barber, Darrell Taylor, 74 IBLA 201 (July 18, 1983)

Leonard E. Snider, Sr., 74 IBLA 213 (July 18, 1983)

Hughes Minerals, Inc., 74 IBLA 217 (July 18, 1983)

Frank Benson, 74 IBLA 367 (July 28, 1983)

Parke Potter, 74 IBLA 397 (Aug. 2, 1983)

Hackay Bar Corp., 75 IBLA 57 (Aug. 5, 1983)

Paul T. Bray, Melvin V. Lust, 75 IBLA 76 (Aug. 10, 1983)

Duron E. Hurst, 75 IBLA 149 (Aug. 18, 1983)

Dale Rossi, Judy Rossi, 75 IBLA 262 (Aug. 26, 1983)

Moonwalker, Inc., 76 IBLA 53 (Sept. 19, 1983)

Robert W. Hughes, 76 IBLA 99 (Sept. 21, 1983)

Charles Mayo, Marie G. Mayo, 76 IBLA 107 (Sept. 21, 1983)

Betty E. Baxter, 76 IBLA 188 (Oct. 6, 1983)

John V. Balding, 76 IBLA 210 (Oct. 17, 1983)

Cronnite Corp., American Pumice Products, Inc., 76 IBLA 236 (Oct. 17, 1983)

Adolf Dieckmann (Trust), 76 IBLA 357 (Oct. 24, 1983)

Homestake Mining Co., 77 IBLA 235 (Nov. 29, 1983)

ADMINISTRATIVE PROCEDURE--Continued

ADJUDICATION--Continued

Where the holder of a coal prospecting permit completes his exploration and applies for a preference right coal lease in 1971, the application must be adjudicated on the basis of the applicant's subsequent conformity with regulations, amended in 1976 and 1979, with retroactive effect.

Jesse H. Knight, 53 IBLA 300 (Mar. 24, 1981)

Where a Native allotment application declares that the applicant first initiated use and occupancy after the date that the land was segregated from appropriation by the filing of a selection application by the State of Alaska, allowance of the Native allotment application is precluded as a matter of law and may be properly rejected without a hearing.

Rosalyn Isaac (On Reconsideration), 53 IBLA 306 (Mar. 25, 1981)

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Richard J. Leaument, 54 IBLA 242 (Apr. 27, 1981)
88 I.D. 490

Oregon Wilderness Coalition, 71 IBLA 67 (Feb. 22, 1983)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

If BLM determines that a Native allotment application that conflicts with a state selection application may be allowed without a Government contest against the Native allotment applicant, it must notify the State of Alaska of this determination. Upon such notification, the State, if dissatisfied, has an election of remedies. It may initiate a private contest within the time period prescribed in the notice, or it may appeal the decision of BLM, after it becomes final, to this Board. If the Board concludes that the Native's application is deficient, it will order the initiation of a Government contest. But if it finds the allotment application acceptable, it will order the issuance of a patent, if all else be regular.

Daniel Johannes (On Reconsideration), 54 IBLA 295 (Apr. 29, 1981)

Mary A. A. Aspinall (On Reconsideration), 66 IBLA 367 (Aug. 27, 1982)

ADMINISTRATIVE PROCEDURE--Continued

ADJUDICATION--Continued

Where a Native allotment application declares that the applicant first initiated use and occupancy after the date that the land was withdrawn for lighthouse purposes, allowance of the Native allotment application is precluded as a matter of law and may be properly rejected without a hearing.

Stanislaus Mike, 56 IBLA 69 (July 10, 1981)

While the Board of Land Appeals will give "considerable deference" to Bureau of Land Management designations of Wilderness Study Areas if thorough investigation underlies the Bureau's decision, where an appellant can specifically and convincingly show that there is sufficient reason to change the Bureau's decision, the Board must resolve the issue in favor of appellant. Such is the case where appellant has convinced the Board that the designated Wilderness Study Area is not "wilderness," as that term is described in 16 U.S.C. § 1131(c) (1976), by submitting detailed maps and photographs showing the adverse impact of appellant's open-pit mining operation on the area.

Union Oil Co., 56 IBLA 206 (July 22, 1981)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Union Oil Co. (On Reconsideration), 58 IBLA 166 (Sept. 28, 1981)

Although BLM may properly reject a noncompetitive oil and gas lease offer for failure to disclose other parties in interest pursuant to 43 CFR 3102.7 (1979), or because of a multiple filing in violation of 43 CFR 3112.5-2 (1979), such a decision must be supported by facts of record. In the absence of such evidentiary support, the Board will set aside the decision and remand the case to BLM for further consideration and preparation of a proper record.

Tommy L. Lynn, 60 IBLA 47 (Nov. 17, 1981)

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Holter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

John H. Black et al., 63 IBLA 165 (Apr. 6, 1982)

ADMINISTRATIVE PROCEDURE--Continued

ADJUDICATION--Continued

Edward H. Bove, Fred Boff, Gerald A. Strauss, 76 IBLA 27 (Sept. 8, 1983)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land.

William H. Tennyson, Jr., 66 IBLA 38 (July 23, 1982)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

A decision becomes final when the appeal period has run and the Bureau of Land Management may reconsider and amend a decision pursuant to a petition for reconsideration filed during the appeal period.

Tommy L. Alford, 71 IBLA 29 (Feb. 16, 1983)

In the Department's appellate process involving review of decisions made by subordinate officers and employees, the Secretary, or an appeals board with authority to act as fully and finally as might the Secretary, is not so limited in the scope of review and decisionmaking as to be required to affirm such decisions as are supported merely by "substantial evidence" or which are perceived not to be arbitrary or capricious, unless such a limitation on the scope of appellate review has been imposed by the Secretary himself in a duly promulgated regulation or he has been so constrained by enacted law. Otherwise, the Secretary, as chief executive officer of the Department with full supervisory powers, has plenary authority to review de novo all official actions and to decide appeals on the basis of a preponderance of the evidence in cases involving substantive rights, or on the basis of public policy or public interest in cases involving the exercise of discretion.

United States Fish & Wildlife Service, 72 IBLA 218 (Apr. 25, 1983)

ADMINISTRATIVE PROCEDURE--Continued

ADJUDICATION--Continued

In a government contest of an association placer mining claim on a charge of nonperformance of annual labor as required by 30 U.S.C. § 28 (1976), each co-owner of the claim is an indispensable party to the proceeding, and a failure to properly serve and join each such party is fatal to the action, and a decision rendered therein purporting to void the fractional interests of those claimants who were properly served is a mere nullity and of no effect. Union Oil Co. of California (Supp.), 72 I.D. 313 (1965) is overruled and rescinded on this point.

United States v. Energy Resources Technology Land, Inc., et al., 74 IBLA 117 (June 30, 1983)

Where a Native allotment applicant alleges use and occupancy prior to the filing of a State selection application, it is improper to reject his application without affording him notice and opportunity for a hearing. The Bureau of Land Management must initiate contest proceedings against the application and give the State of Alaska an opportunity to participate as a party to such contest.

Walter Titus (On Reconsideration), 77 IBLA 321 (Dec. 1, 1983)

Although true ex parte communications are the antithesis of reasoned, informed, and objective decisionmaking, the circumstances of this case do not permit a finding that the proceeding before the Bureau of Indian Affairs was impermissibly tainted by ex parte communications.

Pueblo of Laguna v. Assistant Secretary for Indian Affairs, 12 IBIA 80 (Dec. 7, 1983) 90 I.D. 521

Under 5 U.S.C. § 504 (1982) and 43 CFR 4.603, 48 FR 17596 (Apr. 25, 1983), an adversary adjudication is one required by statute to be conducted by the Secretary under 5 U.S.C. § 554 (1982). Because there is no statutory requirement that a mining claim contest be conducted under 5 U.S.C. § 554 (1982), mining claim contests are not proceedings covered by Equal Access to Justice Act.

Kerr-Mcgee Bentonite Corp., 79 IBLA 182 (Feb. 28, 1984) 91 I.D. 138

Where an applicant for a trade and manufacturing site alleges that she timely mailed a notice of appeal of a decision setting forth estimated cost of survey but there is no evidence to indicate that it was ever received by the proper Bureau of Land Management office, the applicant must bear the consequences.

Donna J. Waidtlow, 82 IBLA 247 (Aug. 28, 1984)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a State selection application, it is improper, as a general matter, to reject the application without affording the applicant notice and opportunity for a hearing.

Oleanna Hanson, 84 IBLA 150 (Dec. 12, 1984)

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE LAW JUDGES

When a party to an Indian probate proceeding appears without an attorney, the Administrative Law Judge has a duty not to be a mere umpire, but to see that all relevant facts are developed.

Where a party to an Indian probate proceeding was not represented by counsel and was obviously unprepared for proper presentation of testimony and ignorant of significance of the facts, the Administrative Law Judge had the duty to see that all relevant facts and circumstances, both favorable and unfavorable to the parties, were brought out.

Estate of Cecelia Bunnybird French, 8 IBIA 102 (June 20, 1980)

In civil penalty proceeding concerning an alleged violation of the Eagle Protection Act, proof of conduct in violation of the Act must appear of record. Where the record fails to establish proof of an offer to sell an artifact agreed to be an eagle, there is no basis for assessment of a civil penalty.

Angel Ramey v. U. S. Fish & Wildlife Service, 4 OHA 25 (July 1, 1980)

On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision. The powers of an agency reviewing an initial or recommended decision of an Administrative Law Judge are greater than those of an appellate court reviewing the decision of a trial judge.

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

Substitution of Administrative Law Judges after an administrative hearing does not render invalid a decision or order based on the hearing.

In order to sustain a charge that an Administrative Law Judge should be disqualified or his decision set aside because of bias, a substantial showing of personal bias must be made. An assumption that he might be predisposed in favor of the Government is not sufficient.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

It is not reversible error for an Administrative Law Judge to supplement the record by receiving evidence after the close of the hearing in order to render a fully informed initial decision, where the party objecting to the admission of the additional evidence is given an opportunity to comment on and challenge such evidence.

United States v. Victor Material Co., 67 IBLA 274 (Sept. 28, 1982)

An Administrative Law Judge has the authority to permit the use of interrogatories and requests for production of documents in a Government mining contest.

United States v. Pittsburgh Pacific Co., 68 IBLA 342 (Nov. 22, 1982) 89 I.D. 586

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE LAW JUDGES--Continued

When the Board of Indian Appeals finds that the decision in an appeal requires further extensive analysis of Federal and state law, the case will be remanded or referred to an Administrative Law Judge familiar with the legal issues.

Estate of Jesse Henry Pekah, 11 IBIA 237 (July 6, 1983)

Where the Bureau of Land Management refers a complaint about the issuance of a crossing permit under 43 CFR 4130.4-3 directly to an Administrative Law Judge for hearing, without taking any action, the decision of the Administrative Law Judge must be vacated.

Jones & Sandy Livestock, Inc., 75 IBLA 40 (Aug. 5, 1983)

The failure of an Administrative Law Judge to give proper notice of an Indian probate hearing will be held to excuse a party's failure to attend the hearing and to present evidence.

Estate of Richard Evans Walker, 12 IBIA 44 (Oct. 28, 1983)

Although unorthodox methods of conducting hearings in Indian probate proceedings are not encouraged, when circumstances beyond the control of the parties or Judge necessitate unusual procedures, the Administrative Law Judge bears an additional responsibility to ensure that all parties are fully heard and that the Department's trust responsibility is properly discharged.

Estate of Jesse Parker, 12 IBIA 277 (June 11, 1984)

ADMINISTRATIVE PROCEDURE ACT

Approval of decedent's will which omits appellee from inheritance precludes consideration by the Department of appellee's tardy claim that decedent was her father, since 5 U.S.C. § 557(c) (1976) (Administrative Procedure Act) limits findings to those questions necessary to the disposition of the pending matter at issue.

Estate of Charles Hall, Sr., 8 IBIA 53 (Mar. 28, 1980)

The procedures followed by the Department of the Interior in the initiation, prosecution, and deciding of mining contest cases are in full compliance with the Administrative Procedure Act.

United States v. Joseph J. Segna et al., 49 IBLA 73 (July 22, 1980)

Due process consists of notice and an opportunity for hearing. Although the contestee in a Government contest proceeding under the Administrative Procedure Act has a right to be represented by counsel, due process does not require that the Department of the Interior hold a second hearing because appellant did not avail himself of that right at the first hearing.

United States v. Jack McLean, 50 IBLA 290 (Oct. 7, 1980)

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE PROCEDURE ACT--Continued

Sec. 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), does not require that the policy and procedures of the Wilderness Inventory Handbook be promulgated as rules and regulations pursuant to sec. 4 of the Administrative Procedure Act, 5 U.S.C. § 553 (1976).

Kenneott Corp., 66 IBLA 249 (Aug. 17, 1982)

Guidelines issued by Geological Survey, dated Apr. 23, 1980, fixing the amount of a coal lease bond at three times monthly production, are not subject to the notice and comment provisions of 5 U.S.C. § 553(b) (1976).

Cambridge Mining Co., 74 IBLA 26 (June 24, 1983)

Secs. 102(a)(5), 202(a), 202(f), and 309(e) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701(a)(5), 1712(a), 1712(f), and 1739(e) (1976), do not require that the policy and procedural clarifications of the Wilderness Inventory Handbook as expressed in OAD 78-61, Changes 2 and 3, be subject to public notice and review. OAD 78-61, Changes 2 and 3, are within the exception of sec. 4(a) of the Administrative Procedure Act, 5 U.S.C. § 553 (1976), providing that interpretative rules, general statements of policy, or rules of agency organization procedure, or practice are not required to be promulgated as formal regulations.

Red Rock 4-Wheelers, 75 IBLA 140 (Aug. 17, 1983)

Under 5 U.S.C. § 504 (1982) and 43 CFR 4.603, 48 FR 17596 (Apr. 25, 1983), an adversary adjudication is one required by statute to be conducted by the Secretary under 5 U.S.C. § 554 (1982). Because there is no statutory requirement that a mining claim contest be conducted under 5 U.S.C. § 554 (1982), mining claim contests are not proceedings covered by Equal Access to Justice Act.

Kaycee Bentonite Corp., 79 IBLA 182 (Feb. 28, 1984)
91 I.D. 138

ADMINISTRATIVE RECORD

When new procedural requirements are imposed during the pendency of an appeal which render the administrative record previously prepared by the Bureau of Indian Affairs insufficient for full administrative review, the Board of Indian Appeals will give the Bureau an opportunity to supplement the record and to demonstrate, if possible, that all substantive requirements were met.

Cheyenne & Arapaho Tribes of Western Oklahoma v. Deputy Ass't Secretary--Indian Affairs (Operations), Reading & Bates Petroleum Co., & Woods Petroleum Corp. (On Reconsideration), 12 IBIA 241 (May 10, 1984) 91 I.D. 229

ADMINISTRATIVE REVIEW

The right of appeal is limited to a party to a case adversely affected by a decision of the Bureau of Land Management, and an appeal from a timber sale notice will be remanded to the Bureau of Land Management for treatment as a protest. However, under the circumstances presented here, where the Bureau of Land Management has reviewed the protestant's reasons and, in effect, has made its decision communicating it to the protestant and this Board, no purpose would be served

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW--Continued

by remanding the case and the Board will consider the matter on its merits.

Julie Adams et al., 45 IBLA 252 (Feb. 4, 1980)

Where oil and gas lease offers have been rejected because of a moratorium on the leasing of the subject lands which was imposed by the direct order of the Secretary of the Interior, and the rejected applicant has filed suit, now pending, for judicial review of the legality of the Secretary's order, and also makes a contemporaneous appeal to the Board of Land Appeals, the Board will not await the outcome of the judicial proceedings, but will summarily dismiss the appeal.

Texas Oil & Gas Corp., 46 IBLA 50 (Feb. 20, 1980)

Where a mining claimant attempts to file notices of location for six claims pursuant to 43 CFR 3833.1-2 and tenders payment for filing costs in an amount sufficient to cover only four of such claims, BLM shall require the claimant to select four claims to which the money tendered shall be applied. The remaining two claims are properly declared abandoned and void in accordance with 43 CFR 3833.4.

Robert L. Steele, 46 IBLA 80 (Feb. 22, 1980)

Where facts and law are properly set forth and applied in Administrative Law Judge decision holding lode mining claims void for lack of discovery, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

United States v. Keith Lindsey, 49 IBLA 344 (Aug. 25, 1980)

United States v. Russell and Lena Journigan, 59 IBLA 393 (Nov. 10, 1981)

When a Bureau of Land Management decision declares mining claims abandoned and void for failure to timely file a copy of evidence of assessment work or notice of intention to hold as required by 43 U.S.C. § 1744 (1976) (FLPMA) and 43 CFR 3833.2-1(a), and on appeal an assertion is made that the material was properly submitted but under a different spelling of the name of the claims, the decision may be set aside and the case remanded for review.

Rudolph S. Dobnik, 50 IBLA 225 (Sept. 30, 1980)

Where an individual is named as an "adverse party" in a BLM decision which is favorable to that person, who then is duly served with copies of a notice of appeal and statement of reasons challenging the validity of BLM's decision before the Board of Land Appeals and seeking reversal of that decision, but decides not to participate in the appellate proceedings before the Board, the matter becomes res judicata upon the rendering of the Board's decision, and the party may not subsequently challenge this decision by filing a new appeal of his own before the Board for readjudication of the same matter.

Donald W. Coyer, Fred L. Boyle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondents) (On Judicial Remand), 50 IBLA 306 (Oct. 14, 1980)

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW--Continued

It is not necessary to make a separate ruling on each finding of fact and conclusion of law proposed by the parties to an administrative proceeding. It is sufficient if the decision summarizes the controlling principles of law and the facts relative thereto as established by the evidence adduced.

United States v. Graham R. Corns, 53 IBLA 5 (Feb. 26, 1981)

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Richard J. Leasnont, 54 IBLA 242 (Apr. 27, 1981) 88 I.D. 490

Oregon Wilderness Coalition, 71 IBLA 67 (Feb. 22, 1983)

On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision. The powers of an agency reviewing an initial or recommended decision of an Administrative Law Judge are greater than those of an appellate court reviewing the decision of a trial judge.

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

While the Board of Land Appeals will give "considerable deference" to Bureau of Land Management designations of Wilderness Study Areas if thorough investigation underlies the Bureau's decision, where an appellant can specifically and convincingly show that there is sufficient reason to change the Bureau's decision, the Board must resolve the issue in favor of appellant. Such is the case where appellant has convinced the Board that the designated Wilderness Study Area is not "wilderness," as that term is described in 16 U.S.C. § 1131(c) (1976), by submitting detailed maps and photographs showing the adverse impact of appellant's open-pit mining operation on the area.

Union Oil Co., 56 IBLA 206 (July 22, 1981)

Where appellant disagrees with BLM's decision to designate an area for limited use by off-road vehicles and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

John Schendzielos, 56 IBLA 284 (July 28, 1981)

Where, following the contest of a number of mining claims, a decision is rendered by an Administrative Law Judge holding certain claims and portions of claims to be valid and invalidating the remainder for lack of mineral or as embracing excess mineral reserves, and the Government appeals from that decision but the claimant does not, that decision will be set aside and the case remanded for rehearing on the basis of a judicial

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW--Continued

decision in another case, made while the subject appeal was pending, that there can be no invalidation of mining claims by this Department on a finding that the claimant has acquired claims for far more mineral than the market can absorb within the foreseeable future.

United States v. Oneida Perlite Corp., 57 IBLA 167 (Aug. 27, 1981) 88 I.D. 772

Where appellant disagrees with BLM's decision to designate an area as permanently closed for use by off-road vehicles and seeks to have its judgment substituted for that of the decisionmaker, the appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Magic Valley Trail Machine Ass'n, Inc., 57 IBLA 284 (Aug. 31, 1981)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Union Oil Co. (On Reconsideration), 58 IBLA 166 (Sept. 28, 1981)

A finding by BLM that some statutory mechanism has been triggered which automatically divests a right does not and cannot mean that the adversely affected party is denied recourse to the appellate process. The Board of Land Appeals is the exclusive arbiter of its jurisdiction, and neither employees of BLM nor attorneys of the Office of the Solicitor may create or deny the right of appeal to the Board.

Texas Oil and Gas Corp., 58 IBLA 175 (Sept. 28, 1981) 88 I.D. 879

Where the facts and the law are properly set forth and applied in an Administrative Law Judge's decision holding a placer mining claim null and void for a lack of discovery of a valuable mineral deposit, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

United States v. Scott Johnson, 59 IBLA 207 (Oct. 27, 1981)

United States v. Jack B. & Ruth V. Nisco, 77 IBLA 205 (Nov. 22, 1983)

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW--Continued

Although BLM may properly reject a noncompetitive oil and gas lease offer for failure to disclose other parties in interest pursuant to 43 CFR 3102.7 (1979), or because of a multiple filing in violation of 43 CFR 3112.5-2 (1979), such a decision must be supported by facts of record. In the absence of such evidentiary support, the Board will set aside the decision and remand the case to BLM for further consideration and preparation of a proper record.

Tommy L. Lynn, 60 IBLA 47 (Nov. 17, 1981)

Where after completion of a final environmental statement covering the Josephine Sustained Yield Unit 10-Year Timber Management Plan, the State Director issues a decision implementing one of the alternatives in the EIS, an appeal disagreeing with certain portions of the EIS will be duly considered with regard for the public interest. However, where appellants seek to have their judgment substituted for that of the decisionmaker, the decisionmaker's action will ordinarily be affirmed in the absence of a showing of compelling reason for modification or reversal.

Cascade Holistic Economic Consultants et al., 60 IBLA 293 (Dec. 18, 1981)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Holter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

Edward H. Howe, Fred Huff, Gerald A. Strauss, 76 IBLA 27 (Sept. 8, 1983)

The characterization of a decision as "discretionary" is a legal conclusion and the product of a legal analysis.

The Board of Indian Appeals is bound by statutes, regulations, case law, and principles of judicial self-restraint not to interfere with substantive decisions of the BIA issued under its discretionary authority.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

Where several BLM decisions declaring appellant's mining claims abandoned and void each stated "In reply refer to 3833 (M-952)," and appellant's notice of appeal specifically applied to BLM decisions bearing that reference number, the notice of appeal was effective, and BLM incorrectly and prematurely closed the file of one claim that BLM decided was not covered by the notice of appeal.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Where an individual, named as an adverse party in a proceeding before the Board of Land Appeals, is duly served with notice of that fact, and is given the opportunity to participate in the proceeding but fails to do so, the matter becomes res judicata upon the rendering of the Board's decision and the party may not subsequently challenge the decision in a new appeal

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW--Continued

before the Board from the Bureau of Land Management's ministerial action implementing the decision.

Ray Ray, Tackle Productions, Inc., 63 IBLA 357 (Apr. 29, 1982)

Where facts and law are properly set forth and applied in Administrative Law Judge's decision dismissing an appeal from the BLM District Manager's rejection of appellant's grazing application, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

John Rapil, 65 IBLA 231 (July 9, 1982)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

Where facts and law are properly set forth and applied in Administrative Law Judge's decision affirming the BLM District Manager's decision requiring appellant to maintain a drift fence on public land within his grazing area, and appellant has made no showing that the decision is in error, the decision will be affirmed.

John J. Casey, 66 IBLA 332 (Aug. 26, 1982)

As a general rule an appeal is subject to dismissal where either the appeal or the application which is the subject of the appeal is withdrawn by appellant. An appeal is properly dismissed where the application upon which it is based is withdrawn and the only error in the decision below is a misapplication of the regulations which only the appellant has standing to appeal.

Jerry M. Pritchard, 70 IBLA 154 (Jan. 18, 1983)

The issuance of special use permits is discretionary, and BLM may accept or reject a permit application depending upon its consistency with the objectives, responsibilities, or programs for the management of the public lands involved. Where a duly authorized officer has exercised this responsibility, his actions will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

National Public Lands Task Force, Nevada Outdoor Recreation Ass'n., Inc., 70 IBLA 214 (Jan. 24, 1983)

Decisions made by officials of the Bureau of Indian Affairs as supervisors of Indian leases will be upheld when they are reasonable and based upon substantial evidence in the record. Where the Board finds that BIA has calculated damages improperly or in violation of contractual or regulatory requirements, the agency's action will be set aside.

Walch Logging Co., Inc., Pam & Russell, Inc. v. Assistant Area Director (Economic Development), Portland Area Office, Bureau of Indian Affairs, 11 IBLA 85 (Mar. 18, 1983) 90 I.D. 88

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW--Continued

The characterization of a decision as discretionary rather than based upon an interpretation of law is a legal conclusion reached through legal analysis. The determination of whether a decision is properly characterized as discretionary is within the Board's review jurisdiction.

Billings American Indian Council v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBLA 142 (Apr. 1, 1983)

Unless or until the Office of Indian Education Programs promulgates regulations providing for administrative review of its decisions, the Office is adhering to the regulations in 25 CFR Part 2. These regulations include an appeal to the Board of Indian Appeals in those cases in which the decision being appealed is based on an interpretation of law.

Under 25 CFR 2.19, when a decision in an appeal is not issued by the Director of the Office of Indian Education Programs within 30 days from the expiration of the time for the filing of all pleadings, the Board of Indian Appeals acquires jurisdiction over the appeal.

Diane Barr v. Acting Deputy Director, Office of Indian Education Programs, 11 IBIA 174 (Apr. 21, 1983) 90 I.D. 172

In the Department's appellate process involving review of decisions made by subordinate officers and employees, the Secretary, or an appeals board with authority to act as fully and finally as might the Secretary, is not so limited in the scope of review and decisionmaking as to be required to affirm such decisions as are supported merely by "substantial evidence" or which are perceived not to be arbitrary or capricious, unless such a limitation on the scope of appellate review has been imposed by the Secretary himself in a duly promulgated regulation or he has been so constrained by enacted law. Otherwise, the Secretary, as chief executive officer of the Department with full supervisory powers, has plenary authority to review de novo all official actions and to decide appeals on the basis of a preponderance of the evidence in cases involving substantive rights, or on the basis of public policy or public interest in cases involving the exercise of discretion.

United States Fish & Wildlife Service, 72 IBLA 218 (Apr. 25, 1983)

The authority of BLM state directors to designate the boundaries of wilderness study areas derives from the Secretary, and their determinations are appealable to the Board of Land Appeals, which is empowered to decide such appeals as fully and finally as might the Secretary. The Board, therefore, may affirm, reverse or modify such boundary designations on appeal with finality, and BLM's ministerial implementation of such final decisions will not create a new right of appeal.

Phelps Dodge Corp. et al., 72 IBLA 226 (Apr. 26, 1983)

An appellant seeking reversal of a decision involving lands in a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

A determination that a proposed action will not have a significant impact on the environment will be affirmed on appeal where the record establishes that a hard look at environmental problems has been taken, relevant areas of environmental concern have been

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW--Continued

identified, and the determination is the reasonable result of the environmental analysis.

Southwest Resource Council, Inc., National & Arizona Wildlife Federations, 73 IBLA 39 (May 11, 1983)

In exercising the full review authority of the Secretary of the Interior, the Board of Indian Appeals is not required to uphold a decision of the Bureau of Indian Affairs merely because it is reasonable and based upon substantial evidence in the record, but has the authority to review the decision de novo.

Administrative review is intended to provide the reality as well as the appearance of an objective and impartial reexamination of the law and discretion applied initially by a subordinate agency official.

Without definite proof to the contrary, the Board of Indian Appeals must assume that, in affirming a decision of a Bureau of Indian Affairs field official, the Assistant Secretary for Indian Affairs made an objective and impartial review of the decision and was convinced of the correctness of that position.

A decision by the Bureau of Indian Affairs that is not supported by the record will not be upheld. In appropriate circumstances, the matter will be referred for an evidentiary hearing and recommended decision.

Pueblo of Laguna v. Assistant Secretary for Indian Affairs, 12 IBIA 80 (Dec. 7, 1983) 90 I.D. 521

BLM classifications of land as suitable for disposition by public sale are not subject to appeal to the Board of Land Appeals. Likewise, BLM's dismissal of a protest against a resource management plan is not appealable to the Board. In each instance, other provisions for agency review have been made by regulations.

Oregon Natural Resources Council, 78 IBLA 124 (Dec. 27, 1983)

The Board of Indian Appeals has jurisdiction under 25 CFR 2.19(c)(2) to review decisions of the Deputy Assistant Secretary--Indian Affairs (Operations) rendered under the administrative appeal regulations of 25 CFR Part 2 that are not based solely on the exercise of discretion. A decision that requires the application of general legal principles to a specific fact situation involves an interpretation of law and is not solely discretionary. Therefore, it can be reviewed by the Board.

The characterization of a decision rendered by the Deputy Assistant Secretary--Indian Affairs (Operations) under 25 CFR Part 2 as discretionary is a legal conclusion subject to review by the Board of Indian Appeals.

A decision by the Deputy Assistant Secretary--Indian Affairs (Operations) under 25 CFR Part 2 that is not timely appealed to the Board of Indian Appeals is final for the Department.

25 CFR 2.19 contemplates that, within 30 days after an appeal taken to the Deputy Assistant Secretary--Indian Affairs (Operations) under 25 CFR Part 2 becomes ripe for decision, the appeal will either be decided by a written decision or referred to the Board of Indian Appeals for decision.

Upon the expiration of the 30-day time period for decision established by 25 CFR 2.19(b), the Board of Indian Appeals has jurisdiction over an appeal filed with the Deputy Assistant Secretary--Indian Affairs (Operations). However, the Board will not act in the

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW--Continued

matter unless the appellant invokes the Board's jurisdiction by filing with the Board a separate notice of appeal, notice to assume jurisdiction, or other document alleging Board jurisdiction. The original filing under 25 CFR 2.11(a) is insufficient to invoke the Board's jurisdiction automatically after the expiration of the time period.

Clayton J. Wray v. Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 146 (Jan. 27, 1984) 91 I.D. 43

Where the Bureau of Land Management assesses the cumulative impacts of approving multiple permits to drill for oil and gas in a wilderness study area and wild horse range and makes an area-wide determination to permit such oil and gas development because it would have no significant effect on the area, an appeal of that determination challenging the adequacy of the environmental assessment of the cumulative impacts is not premature.

Animal Protection Institute of America, Sierra Club, Colorado Open Space Council, 79 IBLA 94 (Feb. 17, 1984) 91 I.D. 115

Where a counsel moves to reopen a Board decision and the motion is granted, and the parties are given a period substantially in excess of the time requested in which to submit additional evidence but both fail to do so, the Board is entitled to dispose of the case by a summary affirmation of the original decision.

Joan Rodgers et al. (On Reconsideration), 5 OHA 266 (Feb. 24, 1984)

If an assignment is approved by BLM after BLM has received notice that a private dispute exists as to the validity or effect of the assignment, but before resolution of the private dispute, fairness dictates that the assignment be vacated to restore status quo pending resolution of the dispute.

Charles H. Dorman et al. (Appellants), Robert L. Morse, Roger H. Massey (Appellees), 79 IBLA 209 (Feb. 28, 1984)

The Board of Indian Appeals has jurisdiction under 25 CFR 2.19(c)(2) to review decisions of the Deputy Assistant Secretary--Indian Affairs (Operations) rendered under the administrative appeal regulations of 25 CFR Part 2 that are not based solely on the exercise of discretion. A decision that requires the application of general legal principles to a specific fact situation involves an interpretation of law and is not solely discretionary. Therefore, it can be reviewed by the Board.

The characterization of a decision rendered by the Deputy Assistant Secretary--Indian Affairs (Operations) under 25 CFR Part 2 as discretionary is a legal conclusion subject to review by the Board of Indian Appeals.

Upon the expiration of the 30-day time period for decision established in 25 CFR 2.19(b), the Board of Indian Appeals has jurisdiction over an appeal filed with the Deputy Assistant Secretary--Indian Affairs (Operations). However, the Board will not act in the matter unless the appellant invokes the Board's jurisdiction by filing with the Board a separate notice of appeal, notice to assume jurisdiction, or other document alleging Board jurisdiction.

Oliver Redfield v. Deputy Ass't Secretary--Indian Affairs (Operations), 12 IBIA 190 (Mar. 2, 1984)

ADMINISTRATIVE PROCEDURE--Continued

ADMINISTRATIVE REVIEW--Continued

A decision by an officer of the BLM which does not fall within any of the enumerated exceptions in 43 CFR 4.410 is subject to appeal to the Board of Land Appeals and a BLM officer is without authority to state otherwise.

Utah Wilderness Ass'n, 80 IBLA 64 (Mar. 30, 1984) 91 I.D. 165

When the record accompanying a decision by the Office of Surface Mining Reclamation and Enforcement responding to a citizen complaint filed pursuant to 30 CFR 721.13 provides no information upon which an objective, independent review of the basis for the decision can be conducted by the Board, the decision will be set aside and the case remanded for further consideration.

Fred D. Zerfoss et ux., 81 IBLA 14 (May 14, 1984)

When new procedural requirements are imposed during the pendency of an appeal which render the administrative record previously prepared by the Bureau of Indian Affairs insufficient for full administrative review, the Board of Indian Appeals will give the Bureau an opportunity to supplement the record and to demonstrate, if possible, that all substantive requirements were met.

Cheyenne & Arapaho Tribes of Western Oklahoma v. Deputy Ass't Secretary--Indian Affairs (Operations), Reading & Bates Petroleum Co., & Woods Petroleum Corp. (On Reconsideration), 12 IBIA 241 (May 18, 1984) 91 I.D. 229

Where the resolution of an appeal depends on the determination of disputed issues of fact, the Board of Land Appeals will often refer the case for an evidentiary hearing on the record before an administrative law judge. However, when the administrative record appears to include nearly all of the available evidence, and affords an adequate basis for decision, and other circumstances indicate that an oral hearing would be unlikely to contribute substantially to the existing record, the Board may determine the facts and decide the appeal on the basis of the record before it.

State of Alaska, Mary Frances DeHart, 82 IBLA 165 (Aug. 6, 1984)

To the extent a management plan decision for the Yaquina Head Outstanding Natural Area is the final implementation decision on certain actions, it is a decision appealable to the Board of Land Appeals under 43 CFR Part 4.

Oregon Shores Conservation Coalition, Bruce Waugh, 83 IBLA 1 (Sept. 17, 1984)

The exercise of Secretarial discretion involved in the issuance of special use permits includes the authority to set permit conditions and establish penalties for violation of permit conditions. A temporary suspension of a permit imposed by the authorized officer for violations of permit conditions is found to be proper where it is shown the permit holder failed to make required reports and failed to mark boats to identify the permit holder as required by the permit conditions.

Osprey River Trips, Inc., 83 IBLA 98 (Oct. 1, 1984)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when such minerals were no longer subject to location, the claimant, as proponent of the rule, has the ultimate burden of proof as to validity of the claim. The Government, however, must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on each claim.

United States v. Clare Williamson and Lapine Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

When the Government contests a mining claim on a charge of lack of discovery, the Government has the burden of proving a prima facie case; the burden then shifts to the mining claimant to prove by a preponderance of the evidence that discovery exists.

United States v. Ludvig G. Rosenkranz, 46 IBLA 109 (Feb. 29, 1980)

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Joseph R. and Aletha Henri, 46 IBLA 221 (Mar. 27, 1980)

United States v. Roy Peterson & Charles R. Sweet, 47 IBLA 92 (Apr. 23, 1980)

In a contest proceeding the Government has the burden of establishing a prima facie case of noncompliance with the requirements for trade and manufacturing sites. The burden then shifts to the applicant to show by a preponderance of the evidence that he used, occupied, and improved the site for trade, manufacture, or other productive industry.

United States v. Viggo Thor Brandt-Erichsen, 46 IBLA 239 (Mar. 27, 1980)

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for claimants nor to explore beyond a claimant's workings.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

United States v. James S. Sette, 46 IBLA 335 (Apr. 4, 1980)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for claimants nor to explore beyond a claimant's workings.

United States v. Robert Chambers, 47 IBLA 102 (Apr. 23, 1980)

Where the current fair rental value of a small tract lease has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error.

Hyatt Lake Homeowners Ass'n, 48 IBLA 159 (June 9, 1980)

The assertion that annual assessment work has not been performed is the assertion of a negative fact. If an examination of the mining claims and the nearby lands does not reveal the accomplishment of the required work, and there is no record of any such work having been performed, then evidence to this effect would be sufficient to establish a prima facie case. It would then devolve upon the claimant to show by a preponderance of the countervailing evidence that he has substantially complied with the statute.

In a Government contest proceeding to determine the validity of a mining claim, the claimant is always the proponent of the rule or order, always the one claiming to have earned the benefit of the mining laws through his compliance therewith. Regardless of whether the issue on which the validity of the claim rests is discovery, mode of location, or performance of assessment work, the relative position and obligation of the contestant and the contestee remain the same.

United States v. Catlin Bohne et al., United States v. Exxon Corp. et al., United States v. Elizabelle Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 248

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bert W. Smith, Paul Smith v. Bureau of Land Management, 48 IBLA 385 (July 11, 1980)

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

Ruskin Lines, Jr. v. Bureau of Land Management, 76 IBLA 170 (Sept. 30, 1983)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

The Board adopts a decision of an Administrative Law Judge holding mining claims null and void for lack of discovery of a valuable deposit of an uncommon variety of limestone, where nondiscovery is established by the totality of the evidence.

United States v. Joseph J. Segna et al., 49 IBLA 73 (July 22, 1980)

The Board adopts a decision of an Administrative Law Judge holding a placer mining claim null and void for lack of discovery of a valuable mineral deposit within the limits of the claim, where nondiscovery clearly is established by the evidence of record.

United States v. Charles H. Ledford et al., 49 IBLA 353 (Aug. 29, 1980)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

United States v. Albert Martinez et al., 49 IBLA 360 (Aug. 29, 1980) 87 I.D. 386

In a Government contest of a mining claim for which an application for patent has been filed, the Government assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that the claims are valid. A claimant establishes the validity of his claims by a preponderance of the evidence where the claimant's witness, testifying to the validity of the contested claims, is found to be more credible.

United States v. Cornelius B. Hannis, 50 IBLA 110 (Sept. 24, 1980)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

United States v. E. D. MacLaughlin, Christine MacLaughlin, 50 IBLA 176 (Sept. 30, 1980)

United States v. Earl F. Fox, 53 IBLA 333 (Mar. 26, 1981)

United States v. J. L. Ross and Mary F. Ross, 54 IBLA 355 (May 12, 1981)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

United States v. Blanch P. Day, Wilma Jean Kendall, 56 IBLA 300 (July 29, 1981)

United States v. Verde Mining Co., Inc., et al., 57 IBLA 225 (Aug. 27, 1981)

In a contest proceeding to challenge a headquarters site entry, the Government has the burden of establishing a prima facie case of noncompliance with the requirements for headquarters sites. The headquarters site applicant then has the burden of establishing entitlement to the land by showing compliance with the law. 43 U.S.C. § 687a (1976). Where such an applicant asserts that he has operated a cabin and boat rental business on the site, yet fails to produce sufficient evidence to show that he was engaged in a trade, manufacture or other productive industry from which he reasonably hoped to derive a profit, the application to purchase must be rejected.

United States v. Jack McLean, 50 IBLA 290 (Oct. 7, 1980)

When the Government contests mining claims on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case. When it has done so, the burden shifts to the claimants to show, by a preponderance of the evidence, that a discovery of a valuable mineral deposit has been made and still exists within the limits of each claim under contest.

United States v. Leon S. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

When the United States contests a mining claim it has by practice assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case.

The United States has established a prima facie case of the invalidity of a mining claim when a qualified Government mining examiner testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable deposit.

United States v. W. S. Wood et al., 51 IBLA 301 (Dec. 18, 1980) 87 I.D. 628

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that an individual has committed a grazing trespass if that finding is in accordance with, and supported by, reliable, probative and substantial evidence.

Where the evidence as to specific trespass indicates that, of a number of cattle counted, some were located on intermingled private land, but there were no barriers, either natural or artificial, which would have prevented the cattle on private land from going onto the public land, it is proper to find that all cattle counted would tend to consume forage at a rate proportional to the ratio of forage available on private and public lands. The burden then shifts to the grazing licensee to rebut this presumption.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 (Feb. 19, 1981) 88 I.D. 275

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

When the Government contests a mining claim on a charge of no discovery of a valuable mineral deposit it assumes the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Graham E. Corns, 53 IBLA 5 (Feb. 26, 1981)

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence. Where the opinion of contestee's expert that discovery of gold was made is not supported by clear evidence that the claim holds sufficient quantities of gold to make mining profitable, the Board will affirm an Administrative Law Judge's finding of invalidity.

United States v. John McDowell, 53 IBLA 270 (Mar. 24, 1981)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

United States v. Ernest C. Downs and Goldfield Deer Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

The sufficiency of a Government's prima facie case is dependent upon the direct evidence presented by the Government together with the testimony of Government witnesses elicited in cross-examination.

United States v. Maurice Duval et al., 53 IBLA 341 (Mar. 26, 1981)

Where the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of establishing a discovery of a valuable mineral deposit by a preponderance of the evidence.

United States v. Jesse M. Taggart et al., 53 IBLA 353 (Mar. 30, 1981)

United States v. Norman Montgomery et al., 75 IBLA 358 (Aug. 31, 1983)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

Where the Bureau of Land Management's final initial inventory decision states that certain public land is eliminated from wilderness review is that it obviously lacks wilderness characteristics because it is too small to make practicable its preservation and use in an unimpaired condition, that decision will be affirmed in the absence of sufficient reasons to change the result.

Save the Gladys Committee, 54 IBLA 215 (Apr. 23, 1981)

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence.

Bureau of Land Management v. Holland Livestock Ranch and John J. Casey, 54 IBLA 247 (Apr. 27, 1981)

Where the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of establishing a discovery of a valuable mineral deposit by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of a discovery, the Government will have established a prima facie case of the lack of a discovery.

A mining claimant will not have satisfied his burden of proof with respect to marketability where the evidence indicates a superabundance of the mineral of commercial quality such that supply exceeds demand and the claimant fails to show that his mineral deposit possesses a unique advantage over other deposits from potentially competitive sources.

United States v. The Dredge Corp., 54 IBLA 281 (Apr. 28, 1981)

Where the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of establishing a discovery of a valuable mineral deposit by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of a discovery, the Government will have established a prima facie case of the lack of a discovery.

United States v. Alice M. Bouse et al., 56 IBLA 36 (July 8, 1981)

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

United States v. John McDevall and Miguel Ybarz, 56 IBLA 100 (July 15, 1981)

United States v. Robert B. Lake, 67 IBLA 48 (Sept. 9, 1982)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

In mining claim contests, the United States has assumed the burden of establishing a prima facie case that no discovery has been made on the mining claims by the contestee; the burden of proof then shifts to the contestee to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of each mining claim. Evidence which may justify further exploration is insufficient either to establish a discovery or to overcome a prima facie case of lack of discovery.

A prima facie case of lack of discovery of a valuable mineral deposit is established when a mineral examiner testifies for the United States that he examined each claim and could find no evidence showing the discovery of a valuable mineral deposit. Mineral examiners are not required to perform discovery work for claimants or to explore beyond a claimant's workings.

United States v. R. V. Polanski, 57 IBLA 104 (Aug. 25, 1981)

In a Government contest of a mining claim for which an application for patent has been filed, the Government assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that the claim is valid.

United States v. C. J. Anderson, C. Joseph Anderson, 57 IBLA 256 (Aug. 28, 1981)

A decision of the State Director designating an inventory unit as a wilderness study area will not be disturbed on appeal where the appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. More than mere disagreement with BLM's conclusion is required to reverse its decisions or place a factual matter at issue.

L. J. Cornelius, 61 IBLA 279 (Feb. 2, 1982)

A mining claimant appealing a BLM decision declaring his claims abandoned and void for failure to file annual proof of assessment work has the burden of showing that he had actually filed with BLM for the year in question. That burden of proof is increased by the established legal presumption that official acts of public officers are regular. If the burden of proof is not carried, the presumptions of FLPMA remain operative.

Ronald R. Atkins, 61 IBLA 364 (Feb. 16, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)

Robert J. King, L. E. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

B. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

United States v. Grosvenor P. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

Where the current fair rental value of a cabin site has been determined in accordance with accepted appraisal procedures and the permittee contends that the rental is excessive, the burden is upon the permittee to prove by positive, substantial evidence that the appraisal is in error.

Homer A. Stroud et al., 4 OHA 257 (Apr. 9, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

Herbert Clark, 73 IBLA 195 (May 26, 1983)

Wayne B. Hunt, 73 IBLA 315 (June 7, 1983)

Devon B. Hurst, 75 IBLA 149 (Aug. 18, 1983)

Dale Bossi, Judy Bossi, 75 IBLA 262 (Aug. 26, 1983)

Homer Owens, 75 IBLA 335 (Aug. 30, 1983)

Betty F. Baxter, 76 IBLA 198 (Oct. 6, 1983)

Ralph Kubinski, 76 IBLA 224 (Oct. 17, 1983)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Once a prima facie case is established, the burden shifts to the claimant to overcome that showing by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

United States v. Eugene Bovyer et al., 63 IBLA 308 (Apr. 30, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has rejected oil and gas lease applications because of alleged failure of applicant to have filed the proper and complete corporate qualifications, and appellant adduces evidence in support of its contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has carried its burden of proof of showing that BLM most probably received the documents.

Pennzoil Co., 64 IBLA 392 (June 17, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, received timely by BLM. Appellant in this case has not carried the burden of proof by showing that BLM received the documents.

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Richardson, 65 IBLA 6 (June 17, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where BLM states that it did not receive certain instruments, it is the responsibility of the appellant to show that they were, in fact, received.

Howard E. Thompson, 65 IBLA 79 (June 23, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was delivered to show that it was, in fact, timely received by BLM. Appellant in this case has not carried his burden of proof by showing that BLM received the documents.

Edwin P. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, timely received by BLM.

Fayn Rupp, 65 IBLA 277 (July 12, 1982)

Manuel R. Hernandez, 65 IBLA 281 (July 12, 1982)

Victor Hegsted, 66 IBLA 31 (July 23, 1982)

William R. Graehler et al., 66 IBLA 230 (Aug. 16, 1982)

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claims were withdrawn from mineral location, the claimant, as proponent of the claims' validity, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a qualifying discovery has been made on the claims.

Uncontradicted evidence of absence of production from mining claims over a period of 18 years prior to the withdrawal of the area from mineral location is sufficient, without more, to establish a prima facie case of invalidity of the claim. This evidence gives rise to a presumption that the mineral on the claims could not have been profitably marketed, but claimants may overcome this presumption by proving that they could have extracted and sold the mineral at a profit prior to the withdrawal date with convincing factual evidence of conditions actually prevailing at that time. Where the claimant presents only uncertain, speculative, and conjectural evidence suggesting that it could have sold the mineral at a profit if certain conditions had prevailed on the withdrawal date, it has not overcome the presumption of nonmarketability, and the claims are properly declared null and void.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

The purpose of the 2-acre exemption was to avoid the heavy burden on both the miner and the regulatory authority that would result from regulating small operations that cause very little environmental damage. The burden of proving entitlement to such an exemption is upon the person claiming it.

Mullins and Rolling Contractors, 4 IBSMA 138 (Sept. 21, 1982) 89 I.D. 475

In order to sustain a charge that an Administrative Law Judge should be disqualified or his decision set aside because of bias, a substantial showing of personal bias must be made. An assumption that he might be predisposed in favor of the Government is not sufficient.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

In an oil shale mining claim contest, the Government bears only the burden of going forward with sufficient evidence to establish a prima facie case of invalidity, and the burden then shifts to the claimant to overcome this showing by a preponderance of the evidence. However, since abandonment and lack of good faith are questions of intent, the Government bears the ultimate burden of proving these charges.

Where evidence creates only inferences of lack of good faith in the location and holding of mining claims and fails to show clearly that these claims were abandoned, these charges are not sustained.

United States v. Huber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

When the Government contests the mineral character of a 10-acre portion of a placer mining claim, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

United States v. Cecil Bell et al., 68 IBLA 367 (Nov. 22, 1982)

Where the reasonable rental value of Government-furnished quarters has been determined in accordance with accepted appraisal procedures pursuant to Departmental directives, and the occupant alleges that his rent is excessive in relation to rates prevailing in the local community, the burden is on the occupant to prove by positive, specific, and substantial evidence that the appraisal is in error.

Barry C. Wilson, 5 OHA 79 (Jan. 18, 1983)

The burden is on the applicant to prove entitlement to statutory or regulatory exemptions.

Urban Indian Council, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 146 (Apr. 4, 1983)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

When the United States contests a mining claim it has by practice assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case.

The United States has established a prima facie case of the invalidity of a mining claim when a qualified Government mining engineer testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable deposit.

United States v. William Lavon Chappell et al., 72 IBLA 88 (Apr. 13, 1983)

It is the obligation of the appellant to show error. Therefore, when a statement of reasons does not with some particularity show adequate reasons for appeal and support the allegations with evidence showing error, the appeal cannot be afforded favorable consideration.

United States v. Connor et al., 72 IBLA 254 (Apr. 27, 1983)

Bob G. Howell, 75 IBLA 113 (Aug. 12, 1983)

Under the provisions of 43 CFR 4.242(h), the burden of proving entitlement to reopening in Indian probate proceedings lies with the petitioner.

Estates of Edwin (Edward) J. Scarborough & Nora Scarborough Brignone, 11 IBIA 179 (May 10, 1983)

Estate of Louise Amiotte Lajtay, 12 IBIA 229 (Apr. 30, 1984)

When the Government contests the validity of a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case. If a prima facie case is presented, the mining claimant then has the burden of overcoming this showing by a preponderance of the evidence.

United States v. Eva E. Pool et al., 74 IBLA 37 (June 27, 1983)

The burden of proving the error of an initial Departmental Indian probate decision is on the party challenging the decision.

Larry E. Huff v. Area Director, Portland Area Office, Bureau of Indian Affairs, 11 IBIA 267 (Aug. 8, 1983)

Estate of Benjamin Kent, Sr. (Ben Navanovar), 13 IBIA 21 (Aug. 29, 1984)

When regulations provide that payment is based on total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision the applicant bears the burden of proof that an ambiguity exists which renders the total acreage unknown. Mere allegation of an ambiguity is not sufficient.

Thomas Connell, 75 IBLA 209 (Aug. 22, 1983)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

When a party appeals a BLM easement determination made pursuant to ANCSA and Department regulations, the burden of proof is on the party challenging the determination to show that the determination is erroneous.

Henry W. Waterfield, 77 IBLA 270 (Nov. 30, 1983)

When the Bureau of Indian Affairs seeks a determination that a prior decision of the Board of Indian Appeals is erroneous and should be overruled, it bears the burden of proving the error.

Seattle Indian Center v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 67 (Dec. 5, 1983) 90 I.D. 515

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

Speculation or presumptions concerning an individual's circumstances are insufficient to support a finding under 25 CFR 20.21(a) that the individual is not eligible for receipt of general assistance from the Bureau of Indian Affairs on the grounds that his or her needs are met by other resources.

Henry W. Begay v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 119 (Dec. 9, 1983) 90 I.D. 539

In an appeal from a timely protest to the acceptance of a dependent resurvey, the protestant has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey. Failure to meet that burden will result in the affirmation of the decision dismissing the protest.

Joan Eli, 78 IBLA 374 (Jan. 30, 1984)

When a party appeals a BLM easement determination made pursuant to ANCSA and Department regulations, the burden of proof is on the party challenging the determination to show that the determination is erroneous. Where BLM finds that site easements are not necessary to accommodate existing patterns of travel and an appealing party fails to show otherwise, the BLM decision will ordinarily be affirmed. Where BLM's decision rests on an assumption which is not supported by facts of record, it must be set aside for the record to be supplemented.

State of Alaska, 78 IBLA 390 (Jan. 31, 1984)

ADMINISTRATIVE PROCEDURE--Continued

BURDEN OF PROOF--Continued

A presumption of regularity supports the official acts of public officers and absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Suggestion that BLM may not have investigated a mining claimant's good faith in locating a claim which includes a water source is insufficient to rebut the presumption of regularity.

Desert Survivors, 80 IBLA 111 (Apr. 3, 1984)

When a party appeals a BLM decision, it is the obligation of the appellant to show that the determination is erroneous. Unless a statement of reasons shows adequate reasons for appeal and the allegations are supported with evidence showing error, the appeal cannot be afforded favorable consideration.

Howard J. Hunt, Howard B. Hunt, 80 IBLA 396 (May 14, 1984)

Where the United States contests a mining claim for lack of discovery of a valuable deposit, it has the burden of going forward to establish a prima facie case as to that charge; the mining claimant has the ultimate burden of overcoming, by a preponderance of the evidence, the Government's case. A prima facie case is established by the testimony of an expert witness who has examined the mineral deposits on the claim and the costs of mining those deposits, and concludes that the mineral deposits cannot be mined, removed, and marketed at a profit.

United States v. Albert G. Hussan et al., 81 IBLA 271 (June 8, 1984)

Implementation of the Taylor Grazing Act of 1934, as amended, is committed to the discretion of the Secretary of the Interior. An adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with the provisions of the Federal range code for grazing, 43 CFR Part 4100.

Clyde L. Dorius, Douglas L. Bown v. Bureau of Land Management, 83 IBLA 29 (Sept. 24, 1984)

The burden to prove a BLM decision erroneous is upon the appellant, where her appeal is based upon allegations that the first-drawn lease applicant is disqualified to hold a Federal lease.

Joan Lieberman, 84 IBLA 85 (Dec. 6, 1984)

DECISIONS

The right of appeal is limited to a party to a case adversely affected by a decision of the Bureau of Land Management, and an appeal from a timber sale notice will be remanded to the Bureau of Land Management for treatment as a protest. However, under the circumstances presented here, where the Bureau of Land Management has reviewed the protestant's reasons and, in effect, has made its decision communicating it to the protestant and this Board, no purpose would be served by remanding the case and the Board will consider the matter on its merits.

Julie Adams et al., 45 IBLA 252 (Feb. 4, 1980)

ADMINISTRATIVE PROCEDURE--Continued

DECISIONS--Continued

As precedents, decisions of the Board of Land Appeals should be cited by the volume and page number given on the bottom of the page of the decision and not to the IBLA docket number shown on the top of the decision.

Decisions of the Interior Board of Land Appeals are indexed, digested, and available for public inspection pursuant to published Departmental regulations. They meet the requirements of the Administrative Procedure Act and serve as binding Departmental precedents. However, adjudicative decisions by local Bureau of Land Management offices do not meet requirements of the Administrative Procedure Act and are not binding precedents.

Cheyenne Resources, Inc., 46 IBLA 277 (Mar. 27, 1980) 87 I.D. 110

Where BLM incorporates by reference a Geological Survey memorandum into its decision rejecting a competitive oil and gas lease offer and where such memorandum was the principal basis on which the decision rejecting the offer was made, the memorandum must be made available to the offeror.

Southern Union Exploration Co., 51 IBLA 89 (Nov. 5, 1980)

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that an individual has committed a grazing trespass if that finding is in accordance with, and supported by, reliable, probative and substantial evidence.

Where the evidence as to specific trespass indicates that, of a number of cattle counted, some were located on intermingled private land, but there were no barriers, either natural or artificial, which would have prevented the cattle on private land from going onto the public land, it is proper to find that all cattle counted would tend to consume forage at a rate proportional to the ratio of forage available on private and public lands. The burden then shifts to the grazing licensee to rebut this presumption.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 (Feb. 19, 1981) 88 I.D. 275

It is not necessary to make a separate ruling on each finding of fact and conclusion of law proposed by the parties to an administrative proceeding. It is sufficient if the decision summarizes the controlling principles of law and the facts relative thereto as established by the evidence adduced.

United States v. Graham R. Combs, 53 IBLA 5 (Feb. 26, 1981)

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence.

Bureau of Land Management v. Holland Livestock Ranch and John J. Casey, 54 IBLA 247 (Apr. 27, 1981)

ADMINISTRATIVE PROCEDURE--Continued

DECISIONS--Continued

The Board of Land Appeals will not dismiss or set aside a decision by the Bureau of Land Management holding an appellant liable for an innocent mineral trespass solely because a notice of trespass cited a criminal statute.

Texaco, Inc., 59 IBLA 155 (Oct. 26, 1981)

Although BLM may properly reject a noncompetitive oil and gas lease offer for failure to disclose other parties in interest pursuant to 43 CFR 3102.7 (1979), or because of a multiple filing in violation of 43 CFR 3112.5-2 (1979), such a decision must be supported by facts of record. In the absence of such evidentiary support, the Board will set aside the decision and remand the case to BLM for further consideration and preparation of a proper record.

Tommy L. Lynn, 60 IBLA 47 (Nov. 17, 1981)

Where, in a Bureau of Land Management decision to issue conveyance, a water body excluded from the selection application on the basis that it is navigable is expressly "considered" nonnavigable and the underlying submerged lands thus deemed selected by the applicant, the Bureau of Land Management has made a navigability determination with regard to the subject water body.

Doyon, Ltd., 6 ANCAB 219 (Dec. 14, 1981) 88 I.D. 1086

Doyon, Ltd., 6 ANCAB 242 (Dec. 16, 1981) 88 I.D. 1105

Where in a decision to issue conveyance the Bureau of Land Management lists a number of water bodies and declares them to be the only water bodies within the conveyance area which are considered to be navigable, the language indicates, and the Board will find, that the BLM has, within the meaning of 43 CFR 2650.5-1(b), determined the navigability or nonnavigability of every water body within the conveyance area.

Doyon, Ltd. and NINT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

While res judicata and collateral estoppel may be appropriately applied by the Board in its decisions, those doctrines need not be employed where the effect would be to impair the correctness and consistency of the Board's decisions and prevent the effectuation of statutory and regulatory policy. Where the Board has overruled part of an earlier Board decision that had reversed a BLM decision for invalidating appellants' mining claims upon an improper basis, res judicata will not protect appellants' claims from a subsequent BLM decision of invalidity grounded on a correct statement of appellants' violation of the recording laws.

Hollis McLaughlin, General Electric Co., 61 IBLA 347 (Feb. 11, 1982)

Where several BLM decisions declaring appellant's mining claims abandoned and void each stated "In reply refer to 3833 (M-952)," and appellant's notice of appeal specifically applied to BLM decisions bearing that reference number, the notice of appeal was effective, and BLM incorrectly and prematurely closed the file of one claim that BLM decided was not covered by the notice of appeal.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

ADMINISTRATIVE PROCEDURE--Continued

DECISIONS--Continued

Substitution of Administrative Law Judges after an administrative hearing does not render invalid a decision or order based on the hearing.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

Where the Board of Land Appeals has previously held that the record did not show that lands were ever open to the operation of the public land laws and concluded accordingly that they were not subject to color-of-title applications, and where the record is subsequently amended to show that the lands were, in fact, reopened to entry, the Board's previous decision will be vacated as will BLM's decision applying it as a basis for rejecting a color-of-title application.

Estate of John C. Brinton, 71 IBLA 160 (Mar. 10, 1983)

Final decisions and orders of the Department of the Interior made in the adjudication of cases, including Indian Child Welfare Act cases, are both available to the public and indexed in accordance with the requirements of 5 U.S.C. § 552(a)(2) (1976).

Native Americans for Community Action v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 214 (July 1, 1983) 90 I.D. 283

25 CFR 2.19 contemplates that, within 30 days after an appeal taken to the Deputy Assistant Secretary--Indian Affairs (Operations) under 25 CFR Part 2 becomes ripe for decision, the appeal will either be decided by a written decision or referred to the Board of Indian Appeals for decision.

Clayton J. Wray v. Deputy Assistant Secretary--Indian Indian Affairs (Operations), 12 IBIA 146 (Jan. 27, 1984) 91 I.D. 43

The characterization of a decision rendered by the Deputy Assistant Secretary--Indian Affairs (Operations) under 25 CFR Part 2 as discretionary is a legal conclusion subject to review by the Board of Indian Appeals.

Oliver Redfield v. Deputy Ass't Secretary--Indian Affairs (Operations), 12 IBIA 190 (Mar. 2, 1984)

HEARINGS

Where a mining claim contestee fails to appear at a contest hearing and merely sends a message stating that he will not appear, without stating the reasons for his absence, a subsequent motion to reschedule the hearing and reopen the record is properly denied, as the regulations provide that a postponement may be granted only pursuant to a request made no later than the hearing date and stating in detail the reasons why a postponement is necessary.

The asserted inability of a contestee to drive an automobile due to his taking medication is not an extreme emergency which justifies beyond question the granting of a postponement of the hearing where it is not impossible to get to a hearing site by public transportation. Nor is restricted mobility due to arthritis justification for a postponement where the record shows that it is an ongoing condition which could have been anticipated, and that transportation

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

to the hearing site could have been arranged by exercise of proper diligence.

Where a party fails to appear or participate in a hearing as scheduled even though no order postponing the hearing has been issued, the merits of the case may be reached and decided on the basis of the record as completed at the hearing, despite the absence of evidence in support of the party's case.

New evidence offered on appeal after an initial decision is rendered by an Administrative Law Judge may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. Richard H. Franklin, 45 IBLA 54 (Jan. 14, 1980)

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of the assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard G. Clemans et al., 45 IBLA 64 (Jan. 17, 1980)

Timely appeal to the Board of Land Appeals suspends the effect of a Bureau of Land Management decision pending outcome of the appeal. Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

State of Alaska, 46 IBLA 12 (Feb. 20, 1980)

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Where Bureau of Land Management determines that an application for a Native allotment should be rejected for failure to establish use and occupancy of the land, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Estate of Guy C. Groat, Jr., Violet Roehl, 46 IBLA 165 (Mar. 21, 1980)

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

United States v. Joseph B. and Aletha Henri, 46 IBLA 221 (Mar. 27, 1980)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

Where a corporate simultaneous oil and gas lease offeror alleges no facts which could disprove its failure to comply with 43 CFR 3102.4-1, no hearing will be granted as requested.

Cheyenne Resources, Inc., 46 IBLA 277 (Mar. 27, 1980) 87 I.D. 110

Where disputed issues of fact are raised by an Indian allotment applicant concerning whether (1) the applicant's occupancy qualifies her for an Indian allotment, (2) the applied for land taken together with other patented land would be enough to sustain a family of four through the grazing season, and (3) the public interest could best be served if the land were retained in Federal ownership, the applicant is entitled to notice and an opportunity for hearing before the application is rejected on the record.

Lorinda L. Hulsman, 46 IBLA 303 (Mar. 31, 1980)

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Where Bureau of Land Management determines that an application for a Native allotment is invalid because the facts are not as stated in the application, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Evan Chukwak, 47 IBLA 241 (May 13, 1980)

Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Alva F. Rockwell and Alva A. Rockwell, 47 IBLA 272 (May 13, 1980)

Max Weiss, 49 IBLA 332 (Aug. 25, 1980)

George B. Fessimore et al., 50 IBLA 280 (Oct. 6, 1980)

Wayne R. Hunt, 54 IBLA 8 (Apr. 6, 1981)

Earth Sciences, Inc., 80 IBLA 28 (Mar. 28, 1984)

Lamar Burnett et ux., 84 IBLA 166 (Dec. 19, 1984)

Where a question of fact exists as to when accreted land was formed in front of a patented upland lot along the Yellowstone River and whether title to the accreted land is in the United States and, therefore, subject to oil and gas leasing, a hearing may be ordered by this Board pursuant to 43 CFR 4.415.

Eldis L. B. Johnson, Marilyn Johnson, 47 IBLA 366 (May 21, 1980)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

United States v. George C. Hooker et al., 48 IBLA 22 (May 27, 1980)

In civil penalty proceeding concerning an alleged violation of the Eagle Protection Act, proof of conduct in violation of the Act must appear of record. Where the record fails to establish proof of an offer to sell an artifact agreed to be an eagle, there is no basis for assessment of a civil penalty.

Angel Hunes v. U. S. Fish & Wildlife Service, 4 CHA 25 (July 1, 1980)

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Mary Seegoo, 49 IBLA 213 (Aug. 11, 1980)

Natalia Kopuk et al., 51 IBLA 170 (Nov. 26, 1980)

Billy Morry, 72 IBLA 13 (Apr. 4, 1983)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

Where there is not sufficient reason shown to disturb an Administrative Law Judge's finding that the prudent man-marketability test was met as of July 23, 1955, and continuously thereafter by mining claimants who extracted and profitably sold sand and gravel from the claims prior to that date and continuously thereafter, the decision will be sustained on appeal.

The Board of Land Appeals will not order a further hearing in a mining claim contest case where a patent application has been filed merely because the evidentiary record is inadequate to invalidate the claims for lack of a discovery of a valuable mineral deposit, if the claimant is found to have met the discovery test.

United States v. Albert Martinez et al., 49 IBLA 360 (Aug. 29, 1980) 87 I.D. 386

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing is required only where there is a disputed question of fact. Where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

John J. Schnabel, 50 IBLA 201 (Sept. 30, 1980)

Hackay Bar Corp., 69 IBLA 108 (Dec. 13, 1982)

A second hearing of a Government mining contest will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, where he was actually present at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result. A petition to reopen a hearing of a Government mining contest will be denied when the contestee offers no valid justification for the neglect to offer evidence which was or could have been available at the original hearing. A further hearing will not be ordered merely to afford a claimant an additional opportunity to explore and make a discovery.

United States v. Leon H. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

Where issues of material fact are in dispute, due process requires that, before a decision is reached to reject an application for an allotment, the applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of witnesses may be submitted.

The Court of Appeals for the Ninth Circuit has held that application of the Departmental contest procedures to provide the allotment applicant with notice and an opportunity for a hearing prior to adverse action on the allotment application complies, at least facially, with the due process requirements set forth in the court's mandate in Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976). Pence v. Andrus, 586 F.2d 733 (9th Cir. 1978).

Mary DeVaney, 51 IBLA 165 (Nov. 26, 1980)

State of Alaska (Leland R. Estabrook), 54 IBLA 346 (May 12, 1981)

Where BLM issues a decision to cancel a mining claim occupancy lease, which decision is based on a Forest Service report showing that someone other than the lessee has occupied the leased premises and that lessee has admitted that she was away from them; where lessee asserts that the claim is nevertheless "a principal place of residence" and requests a hearing; and where the record is insufficient to resolve this question, the matter will be referred for a hearing.

Viola D. Le Master, 51 IBLA 291 (Dec. 17, 1980)

Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981) 88 I.D. 31

Pearl C. Barnett, 52 IBLA 273 (Feb. 6, 1981)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

Jesse G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

Robert J. King, L. E. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that an individual has committed a grazing trespass if that finding is in accordance with, and supported by, reliable, probative and substantial evidence.

Where the evidence as to specific trespass indicates that, of a number of cattle counted, some were located on intermingled private land, but there were no barriers, either natural or artificial, which would have prevented the cattle on private land from going onto the public land, it is proper to find that all cattle counted would tend to consume forage at a rate proportional to the ratio of forage available on private and public lands. The burden then shifts to the grazing licensee to rebut this presumption.

Settlement agreements compromising prior trespasses may be considered an admission of liability only where, by the terms of a settlement, liability is admitted. Where, however, liability has been initially determined in a Departmental adjudication, such a determination is properly considered in a subsequent hearing. As probative of the issue of "repeated" violations, absent a stipulated settlement which expressly vacates the factual determinations made in the prior adjudication.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 (Feb. 19, 1981) 88 I.D. 275

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Notice and an opportunity for a hearing is required only where there is a disputed question of fact and where validity of a millsite location turns on the legal effect to be given facts of record concerning the status of the land when the millsite was located, no hearing is required.

John C. and Martha W. Thomas d.b.a. Tungsten Mining Co., 53 IBLA 182 (Mar. 17, 1981)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

A coal prospecting permittee who applies for a coal lease is entitled to a hearing before an Administrative Law Judge before his application is rejected, where the permittee alleges that the application contains data that commercial quantities of coal exist on the lands; however, where the permittee alleges that there is coal in commercial quantities in certain lands as measured by the mining industry standard BLM and Survey should have the opportunity to consider whether commercial quantities as measured by the mining industry is sufficient to comply with commercial quantities as defined in 43 CFR 3430.1-2.

Jesse H. Knight, 53 IBLA 300 (Mar. 24, 1981)

Where a Native allotment application declares that the applicant first initiated use and occupancy after the date that the land was segregated from appropriation by the filing of a selection application by the State of Alaska, allowance of the Native allotment application is precluded as a matter of law and may be properly rejected without a hearing.

Roselyn Isaac (On Reconsideration), 53 IBLA 306 (Mar. 25, 1981)

The Board of Land Appeals has the discretion to grant a request for a hearing on issues of fact but, in order to warrant such a hearing, an appellant must at least allege facts which, if proved, would entitle him to the relief sought.

Stewart Capital Corp., 53 IBLA 369 (Mar. 30, 1981)

A second hearing will not be afforded where a mining claimant has been given notice and an opportunity to appear at a hearing and where nothing has been submitted to indicate that another hearing would produce a different result.

United States v. Michael Kuratich et al., 54 IBLA 124 (Apr. 17, 1981)

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Hugh A. Johnson, 54 IBLA 144 (Apr. 17, 1981)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

Anita Robinson, 71 IBLA 380 (Mar. 29, 1983)

Philip A. Craver, 74 IBLA 1 (June 21, 1983)

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence.

Bureau of Land Management v. Holland Livestock Ranch and John J. Casey, 54 IBLA 247 (Apr. 27, 1981)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

If BLM determines that a Native allotment application that conflicts with a state selection application may be allowed without a Government contest against the Native allotment applicant, it must notify the State of Alaska of this determination. Upon such notification, the State, if dissatisfied, has an election of remedies. It may initiate a private contest within the time period prescribed in the notice, or it may appeal the decision of BLM, after it becomes final, to this Board. If the Board concludes that the Native's application is deficient, it will order the initiation of a Government contest. But if it finds the allotment application acceptable, it will order the issuance of a patent, if all else be regular.

Daniel Johansen (On Reconsideration), 54 IBLA 295 (Apr. 29, 1981)

Mary A. A. Aspinwall (On Reconsideration), 66 IBLA 367 (Aug. 27, 1982)

A coal prospecting permittee who applies for a coal lease, alleging with supportive data that there is coal in commercial quantities within certain lands in its permit, is entitled to a hearing conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 554 (1976), before its application may be finally rejected because it has not shown coal in commercial quantities.

Mike Bell Mining and Oil Co., 55 IBLA 324 (June 26, 1981)

Where a Native allotment application declares that the applicant first initiated use and occupancy after the date that the land was withdrawn for lighthouse purposes, allowance of the Native allotment application is precluded as a matter of law and may be properly rejected without a hearing.

Stanislaus Mike, 56 IBLA 69 (July 10, 1981)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the initial Bureau of Land Management decision, adverse to him, becomes final. Appeal to this Board satisfies the due process requirements.

Gary Willis, 56 IBLA 217 (July 22, 1981)

Mining claims located on land previously withdrawn from mineral entry are null and void ab initio. However, where there are factual questions relating to whether action taken subsequent to a withdrawal is in the nature of an amendment to a previous location or whether it constitutes a relocation, the mineral claimant will be granted the opportunity to show that the subsequent action was a permissible amendment.

R. E. Polk, Gene L. Brown, 57 IBLA 117 (Aug. 25, 1981)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

American Telephone and Telegraph Co., 57 IBLA 215 (Aug. 27, 1981)

Where a party fails to appear or participate in a hearing as scheduled even though no order postponing the hearing has been issued, the merits of the case may be reached and decided on the basis of the record completed at the hearing, despite the absence of evidence in support of the party's case.

United States v. Claude T. and Sarah E. Orme, 57 IBLA 373 (Sept. 8, 1981)

Mining claimants who have not complied with the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976 have no due process right to an evidentiary hearing before the Department of the Interior to show that their actual intent not to abandon rebuts that section's conclusive presumption of abandonment, since the Department is duty-bound to enforce the conclusiveness of the statute's presumption whenever noncompliance has occurred, and any such hearing would be valueless.

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Faber Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

Rupert Thorne, 58 IBLA 319 (Oct. 16, 1981)

Enterprise Mines, Inc., 58 IBLA 372 (Oct. 20, 1981)

Major G. Atkins, 60 IBLA 284 (Dec. 17, 1981)

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

A mining claimant is not entitled to a hearing before his claim can be declared invalid for having been located on land which is segregated from location.

Sherman C. Smith, Michael Mitchell, Jr., 58 IBLA 188 (Sept. 28, 1981)

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

Absent a patent application, in a mining contest hearing where the Government's evidence of lack of discovery relates only to insufficient quality and quantity

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

of mineralization and the mining claimant produces evidence sufficient to preponderate on those issues, the contest complaint is properly dismissed.

United States v. Malin W. Lewis, 58 IBLA 262 (Oct. 8, 1981)

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required prelisinary to a decision holding that such claims are invalid.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

John A. Ross, Marine Lidke, 73 IBLA 16 (May 5, 1983)

B. W. Copeland, 75 IBLA 87 (Aug. 11, 1983)

Shiny Rock Mining Corp. (On Reconsideration), 77 IBLA 261 (Nov. 30, 1983)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

American Telephone and Telegraph Co. (On Reconsideration), 59 IBLA 343 (Nov. 5, 1981)

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

The Department of the Interior will not grant a hearing to examine a determination by the Forest Service that land is not chiefly valuable for agricultural or grazing uses where such determination is entrusted by statute to the Secretary of Agriculture.

Jimmie A. George, Sr., 60 IBLA 14 (Nov. 16, 1981)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Mountain States Telephone & Telegraph, 60 IBLA 221 (Nov. 30, 1981)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

A mining claim contest hearing will not be reopened to afford the claimants an opportunity to prove a discovery had been made on the claims in the absence of a tender of proof and evidence to show equitable justification for a further proceeding in the case. Also, the case will not be reopened where the Administrative Law Judge has ruled on the credibility of claimants' witnesses on issues going to their failure to present a case due to alleged Governmental interference, which is not supported by the record, and there is no persuasive showing of a denial of due process.

United States v. Ernest C. Doyne and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the adverse Bureau of Land Management decision becomes final. Appeal to this Board satisfies the due process requirements.

Francis Skay et al., 63 IBLA 235 (Apr. 19, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land.

William B. Tennyson, Jr., 66 IBLA 38 (July 23, 1982)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

An Administrative Law Judge has the authority to permit the use of interrogatories and requests for production of documents in a Government mining contest.

United States v. Pittsburgh Pacific Co., 68 IBLA 342 (Nov. 22, 1982) 89 I.D. 586

It is within the discretion of the Board of Land Appeals to grant a request for a hearing on an issue of fact. In order to warrant such a hearing, an appellant must at least allege facts which, if proved, would entitle him to the relief sought.

Paul W. Temple, 69 IBLA 54 (Nov. 29, 1982)

Where there are disputed facts determinative of the legal issues posed therefrom, this Board has the discretionary authority to order a hearing on the matter before an Administrative Law Judge pursuant to 43 CFR 4.415.

Patricia C. Alker, 70 IBLA 211 (Jan. 24, 1983)

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard S. Arbo, 70 IBLA 244 (Jan. 25, 1983)

A hearing before an Administrative Law Judge is necessary only where there is a material issue of fact requiring resolution through the introduction of testimony and other evidence. In the absence of such an issue, no hearing is required.

KernCo Drilling Co. et al., 71 IBLA 53 (Feb. 22, 1983)

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure. A BLM decision informing appellant of its right to file a request for a hearing with the Board of Land Appeals after BLM has determined the rental does not meet the requirements of 43 CFR 2802.1-7(e) (1979).

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

U.S. Steel Corp., 71 IBLA 88 (Feb. 24, 1983)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

A request for postponement made at a hearing is properly denied where there has been no showing of an extreme emergency which could not have been anticipated and which justifies beyond question the granting of a postponement. This standard is not met by a request to postpone a hearing to obtain the testimony of additional witnesses when the need for the testimony was anticipated more than 1 month prior to the hearing and the party seeking postponement failed to file a proper motion at that time.

Geosearch, Inc., Lloyd Chemical Sales, Inc. v. Resource Service Co., Inc., Bureau of Land Management, 71 IBLA 138 (Mar. 9, 1983)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Denver & Rio Grande Western Railroad Co., 71 IBLA 352 (Mar. 28, 1983)

Where the owner of an interest in a mining claim dies prior to the filing of a contest complaint against the claim, service of the complaint must be made on the claimant's heirs, or any adjudication following from the complaint does not affect the interest held by the heirs.

United States v. Joseph Laczkowski & Rula G. Jones (Montney), 71 IBLA 364 (Mar. 28, 1983)

Where the Bureau of Land Management refers a complaint about the issuance of a crossing permit under 43 CFR 4130.4-3 directly to an Administrative Law Judge for hearing, without taking any action, the decision of the Administrative Law Judge must be vacated.

Jones & Sandy Livestock, Inc., 75 IBLA 40 (Aug. 5, 1983)

Due process does not require notice of a right to a prior hearing in every case where an individual may be deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

John D. Archer et al., 75 IBLA 128 (Aug. 15, 1983)

If, prior to summary dismissal of a mining contest complaint, a contestee answers without questioning the service, any defect in service will be deemed waived as to such answering contestee.

United States v. Norman Montgomery et al., 75 IBLA 358 (Aug. 31, 1983)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

A sodium prospecting permittee who applies for a preference right sodium lease, alleging with supportive data that he has discovered a valuable deposit of sodium and that the land is chiefly valuable for sodium, as required by sec. 24 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 262 (1976), is entitled to a hearing conducted in accordance with sec. 5 of the Administrative Procedure Act, 5 U.S.C. § 554 (1976), before his lease application may be finally rejected for failure to prove such a discovery.

Marine Minerals Corp., 76 IBLA 68 (Sept. 21, 1983)

Notice of a hearing is not defective when notice was sent to the appellant at his last known address more than a month before the hearing, the letter was not returned, testimony of other individuals attending the hearing showed that appellant knew of the hearing, and appellant's notice of appeal shows on its face that he knew of the hearing.

Estate of Andrew Jackson, 12 IBIA 39 (Oct. 18, 1983)

No hearing is required to declare a mining claim invalid when it is shown that at the time of location of the claims the land was not open to location.

Larry McMaster et al., 76 IBLA 370 (Oct. 25, 1983)

The failure of an Administrative Law Judge to give proper notice of an Indian probate hearing will be held to excuse a party's failure to attend the hearing and to present evidence.

Estate of Richard Evans Walker, 12 IBIA 44 (Oct. 28, 1983)

Where there exist factual questions about the location of a subdivisional corner in a dependent resurvey, the Board of Land Appeals may order a hearing pursuant to 43 CFR 4.415 to resolve these questions.

Elmer A. Svan et ux., 77 IBLA 99 (Nov. 14, 1983)

In order to be entitled to an adjudicative hearing, as an adjunct of due process, a party must have a sufficient property interest in that which is the subject of the Government action.

Village & City Council of Alakanuk, Ray H. Olson, Lawrence Murphy, Sr., 77 IBLA 130 (Nov. 15, 1983)

Where a Native allotment applicant alleges use and occupancy prior to the filing of a State selection application, it is improper to reject his application without affording him notice and opportunity for a hearing. The Bureau of Land Management must initiate contest proceedings against the application and give the State of Alaska an opportunity to participate as a party to such contest.

Walter Titus (On Reconsideration), 77 IBLA 321 (Dec. 1, 1983)

ADMINISTRATIVE PROCEDURE--Continued

HEARINGS--Continued

The holder of a right-of-way issued pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), is required to pay annually, in advance, the fair market value of the grant. Appellant's contention that it should not pay annual rental is properly rejected where appellant's flood control project is completed but the right-of-way grant remains in effect and the land is being used for a dam, spillway, and reservoir.

Ranch Lake Irrigation Co., 78 IBLA 305 (Jan. 12, 1984)

Where one serving as the mayor of a city and village corporation president receives actual notice of and participates in a Native allotment contest proceeding in which the city and village assert an interest, there is no denial of due process as to appellant city and village.

Village & City Council of Alakanuk, Ray H. Olson, Lawrence Murphy, Sr. (On Reconsideration), 80 IBLA 221 (Apr. 30, 1984)

Under 43 CFR 2802.1-7(e) (1974), which provided that charges for use and occupancy of a right-of-way may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure where the right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and has not been conformed to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1982).

Cole Industries, Inc., 82 IBLA 289 (Aug. 31, 1984)

A hearing is not necessary in the absence of a material issue of fact, which, if proven, would alter the disposition of the matter. An oral hearing on a color-of-title application will be denied where there are no allegations of fact which would establish the color-of-title claim.

Kim C. Evans, 82 IBLA 319 (Sept. 6, 1984)

A second hearing will not be afforded to an Alaska Native allotment applicant where the applicant was afforded an initial hearing in accordance with due process, and where nothing has been submitted which suggests that an additional hearing would produce a different result. Where an applicant fails to introduce all relevant evidence at an initial hearing when such evidence was available and could have been submitted, he waives his right to introduce that evidence. A further hearing is not necessary in the absence of a material issue of fact which, if proven, would alter the disposition of the appeal.

Quinkie Native Corp. v. Edward B. Orbeis, 83 IBLA 225 (Oct. 19, 1984)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a State selection application, it is improper, as a general matter, to reject the application without affording the applicant notice and opportunity for a hearing.

Oleanna Hansen, 84 IBLA 150 (Dec. 12, 1984)

ADMINISTRATIVE PROCEDURE--Continued

JUDICIAL REVIEW

Where oil and gas lease offers have been rejected because of a moratorium on the leasing of the subject lands which was imposed by the direct order of the Secretary of the Interior, and the rejected applicant has filed suit, now pending, for judicial review of the legality of the Secretary's order, and also makes a contemporaneous appeal to the Board of Land Appeals, the Board will not await the outcome of the judicial proceedings, but will summarily dismiss the appeal.

Texas Oil & Gas Corp., 46 IBLA 50 (Feb. 20, 1980)

RULEMAKING

The rulemaking procedures in 5 U.S.C. § 553 (1976) do not apply to administrative interpretations which conclude that the amount of the reclamation fee imposed by the Surface Mining Control and Reclamation Act of 1977 is to be included as part of the royalty base under Indian coal leases.

Peabody Coal Co., 53 IBLA 261 (Mar. 23, 1981)

Under 5 U.S.C. § 552(a)(1) (1976) and the Supreme Court's holding in Morton v. Ruiz, 415 U.S. 199 (1974), an individual may not be deprived of benefits solely on the basis of an eligibility standard published only in the BIA manual.

Matthew Allen v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 146 (Oct. 15, 1982) 89 I.D. 508

Wilbur Burton v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 173 (Oct. 15, 1982)

Henry W. Begay v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 189 (Oct. 15, 1982)

Johnny Begay v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 205 (Oct. 15, 1982)

Bessie Benally v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 221 (Oct. 15, 1982)

Arletta Bischoff v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 237 (Oct. 15, 1982)

Irving Clark v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 253 (Oct. 15, 1982)

Pearlene Dayzie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 269 (Oct. 15, 1982)

Janet Gordon v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 285 (Oct. 15, 1982)

Leo Green v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 301 (Oct. 15, 1982)

Francis Harvey v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 318 (Oct. 15, 1982)

June Jones v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 334 (Oct. 15, 1982)

Thomas Kee v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 350 (Oct. 15, 1982)

Lester Kelwood v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 366 (Oct. 15, 1982)

Juanita Paddock v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 382 (Oct. 15, 1982)

ADMINISTRATIVE PROCEDURE--Continued

RULEMAKING--Continued

Irma Shirley v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 399 (Oct. 15, 1982)

Charity Tapaie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 416 (Oct. 15, 1982)

Leo Willie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 432 (Oct. 15, 1982)

Francis Yazzie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 448 (Oct. 15, 1982)

Guidelines issued by Geological Survey, dated Apr. 23, 1980, fixing the amount of a coal lease bond at three times monthly production, are not subject to the notice and comment provisions of 5 U.S.C. § 553(b) (1976).

Cambridge Mining Co., 74 IBLA 26 (June 24, 1983)

In deciding whether to adopt a newly enunciated rule retroactively the Board of Land Appeals has adopted the balance test which essentially rests on balancing the adverse effects of retroactivity with any statutory interest in applying the rule.

Victor H. Opet, Jr. (On Reconsideration), 82 IBLA 241 (Aug. 27, 1984)

BLM may approve a petition for reinstatement, filed under sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 188(d), (e) (1982), for a noncompetitive oil and gas lease, which terminated automatically prior to Jan. 12, 1983, for failure to pay the annual rental on or before the lease anniversary date where the lessee has complied with the statutory requirements for reinstatement. In cases where petitions have been filed prior to publication of the requirement to pay back rentals at the new rate of $5 per acre, or notification of that requirement by BLM, petitioner is properly given an opportunity to tender the additional amount required.

Robert P. Cresson, 83 IBLA 362 (Nov. 15, 1984)

SUBSTANTIAL EVIDENCE

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence.

Bureau of Land Management v. Holland Livestock Ranch and John J. Casey, 54 IBLA 247 (Apr. 27, 1981)

On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision. The powers of an agency reviewing an initial or recommended decision of an Administrative Law Judge are greater than those of an appellate court reviewing the decision of a trial judge.

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

ADMINISTRATIVE PROCEDURE--Continued

SUBSTANTIAL EVIDENCE--Continued

In order to sustain a charge that an Administrative Law Judge should be disqualified or his decision set aside because of bias, a substantial showing of personal bias must be made. An assumption that he might be predisposed in favor of the Government is not sufficient.

United States v. Perry L. Jones, Chet L. Smith, 67 IBLA 225 (Sept. 23, 1982)

In the Department's appellate process involving review of decisions made by subordinate officers and employees, the Secretary, or an appeals board with authority to act as fully and finally as might the Secretary, is not so limited in the scope of review and decisionmaking as to be required to affirm such decisions as are supported merely by "substantial evidence" or which are perceived not to be arbitrary or capricious, unless such a limitation on the scope of appellate review has been imposed by the Secretary himself in a duly promulgated regulation or he has been so constrained by enacted law. Otherwise, the Secretary, as chief executive officer of the Department with full supervisory powers, has plenary authority to review de novo all official actions and to decide appeals on the basis of a preponderance of the evidence in cases involving substantive rights, or on the basis of public policy or public interest in cases involving the exercise of discretion.

United States Fish & Wildlife Service, 72 IBLA 218 (Apr. 25, 1983)

Where in a government contest of certain association placer mining claims the contestant charges and proves prima facie that specific 10-acre tracts are nonmineral in character and thus subject to exclusion from the claims, a finding by the Administrative Law Judge that such tracts are mineral in character will be reversed on appeal where the basis for that finding was mere unsupported conjecture by an expert witness that there is "a strong possibility" that beds of rich oil shale underlie those tracts. Such evidence is insufficient to rebut the prima facie showing by a preponderance of evidence.

United States v. Energy Resources Technology Land, Inc., et al., 74 IBLA 117 (June 30, 1983)

The Board of Indian Appeals will not disturb an Administrative Law Judge's finding of fact that is supported by substantial evidence in the record.

San Day IV v. Area Director, Navajo Area Office, Bureau of Indian Affairs & Window Rock Mall, Ltd. v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 9 (Oct. 6, 1983)

In exercising the full review authority of the Secretary of the Interior, the Board of Indian Appeals is not required to uphold a decision of the Bureau of Indian Affairs merely because it is reasonable and based upon substantial evidence in the record, but has the authority to review the decision de novo.

Pueblo of Laguna v. Assistant Secretary for Indian Affairs, 12 IBIA 80 (Dec. 7, 1983) 90 I.D. 521

AGENCY

Where a majority of the Board of Land Appeals has ruled that an agreement between a filing service company and its clientele create no interest in the company and its president which would violate the regulations requiring disclosure of other interests in the lease offers and which preclude multiple filings in simultaneous filing-drawing procedures and that the president's filing an offer in his own name competing with the clientele of the company does not violate the regulations, a case involving similar factual and legal issues will follow the Board's majority position.

Jack Buckeraan, 45 IBLA 337 (Feb. 7, 1980)

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

James B. Pasley, 53 IBLA 1 (Feb. 26, 1981)

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

Carl B. Anderson, 61 IBLA 4 (Dec. 29, 1981)

Under the doctrine of respondeat superior a corporation is liable for the wrongful acts or omissions of its officers, agents, or employees acting within the scope of their authority or in the course of their employment.

The master/servant relationship and the liability of the master for the acts of the servant are determined by the law of the state in which the act took place. In Idaho, a principal or master can be held liable for exemplary or punitive damages based on the wrongful acts of its agent only when the agent's acts were authorized, requested, commanded, performed or recklessly tolerated by the board of directors or by a high managerial agent acting in behalf of the corporation within the scope of his office or employment, or when the acts have subsequently been ratified with full knowledge of the facts.

Houghland Farms, Inc. v. Bureau of Land Management, 77 IBLA 285 (Nov. 30, 1983)

AIRPORTS

An airport lease issued under the Act of May 24, 1928, is properly canceled where the lessee fails to use the leased land as a public airport. It is irrelevant that the lessee has been unable to arrange financing for reinitiation of airport service, as the terms of the Act, regulations, and lease require that the lands be used as an airport and provide for no dispensation of this requirement.

Jose Rodriguez, 49 IBLA 258 (Aug. 18, 1980)

It is proper to reject an application for conveyance of Government-owned lands for airport development under 49 U.S.C. § 1723 (1976), where the land has been withdrawn for military purposes, is currently used as an Army air field, and where Army officials object to the conveyance.

State of Alaska, 61 IBLA 68 (Dec. 31, 1981)

AIRPORTS--Continued

BLM may properly cancel a public airport lease issued pursuant to the Act of May 24, 1928, as amended, 49 U.S.C. §§ 211-214 (1982), where the lessee fails to complete construction of airport facilities within 6 months of the date of the lease, as required by the terms of the lease.

Alfred Gerstler, 84 IBLA 155 (Dec. 13, 1984)

ALASKA

GENERALLY

Where a Native corporation has pending an application to acquire land, which land was awarded to an Alaska Native by BLM pursuant to a Native allotment application, the Native corporation is a party adversely affected by the decision of BLM and therefore has a right to appeal pursuant to 43 CFR 4.410, from the BLM decision holding the Native allotment application for allowance and will be afforded the opportunity to contest the Native allotment application.

Ouzinkie Native Corp. v. Edward Ophein, Sr., 45 IBLA 198 (Jan. 30, 1980)

A claimant's occupancy of a trade and manufacturing site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice and did not file a notice of location or purchase application prior to the withdrawal.

Equitable adjudication of an application to purchase a trade manufacturing site claim filed at least 12 years after the land has been withdrawn must be denied as substantial compliance with the law has not been made where neither occupancy of the site prior to the withdrawal nor after the withdrawal could validly be considered under the law.

Stuart Grant Ranstad, 55 IBLA 223 (June 18, 1981)

Formal ceremonial transfer of Alaska to the United States took place, pursuant to the treaty of Mar. 30, 1867, on Oct. 18, 1867, and accordingly certificates issued in 1868 by the "Late Governor--Russian Colonies in America" were ineffective to pass title to land since that title had already vested in the United States.

Pan Alaska Fisheries, Inc., 74 IBLA 295 (July 27, 1983)

A claimant's occupancy of a trade and manufacturing site prior to a withdrawal does not establish a "valid existing right" excepted from Native village selection where credit for his occupancy prior to the selection cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice with BLM and did not file a notice of location with BLM prior to the selection.

Thomas Johnson, 77 IBLA 20 (Oct. 31, 1983)

ALASKA--Continued

GENERALLY--Continued

One who settles on withdrawn land in Alaska acquires no rights to or title interest in the land which is superior to a conveyance of the land to a Native village corporation pursuant to sec. 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1611 (1976), and the appeal against the conveyance must be dismissed.

L. Joe McVay, 77 IBLA 374 (Dec. 7, 1983)

Where a pending application for a trade and manufacturing site became approved by passage of sec. 1328 of the Alaska National Interest Lands Conservation Act, 16 U.S.C. § 3215 (1982), other sections of the Act of May 14, 1898, as amended, 43 U.S.C. §§ 687a-687a-6 (1982), relating to payment of survey costs and purchase price remained in effect as to the application and satisfaction of these requirements is necessary before the land embraced by such an application can be patented.

Donna J. Waidtlow, 82 IBLA 247 (Aug. 28, 1984)

ALASKA NATIVE CLAIMS SETTLEMENT ACT

The Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (1976), extinguished aboriginal occupancy claims of Alaska Natives effective Dec. 18, 1971, and a Native allotment application then pending in the Bureau of Land Management and purportedly "amended" after that date to include an additional 100 acres cannot be granted for the additional acreage unless it be shown that the amendment was pending in the Department prior to the repeal of the Act.

Ouzinkie Native Corp. v. Edward Ophein, Sr., 45 IBLA 198 (Jan. 30, 1980)

Alaskan Native aboriginal occupancy claims, or claims under the organic Act of Alaska of May 17, 1884, and the Act of June 6, 1900, were extinguished by the Alaska Native Claims Settlement Act. A Native applicant's rights under the 1906 Native Allotment Act are based upon his or her individual compliance with that Act and not upon any ancestral use of the land.

William Bouwens et al., 46 IBLA 366 (Apr. 8, 1980)

Land withdrawn for an air navigation site is public land within the context of 43 U.S.C. § 1613 (1976 and Supp. IV 1980), and is proper for selection by a Native village.

Land withdrawn by Executive Order for use as an air navigation site by the Alaska Road Commission was not thereby severed from the public domain and under the terms of the order remained under the jurisdiction of the Secretary of the Interior. No interest, legal or equitable, could be conveyed to the Territory of Alaska by a withdrawal for an air navigation site. Interests in the public lands of the United States can be conveyed only pursuant to an Act of Congress.

Land used for an airport site which is conveyed to a Native village must be subsequently conveyed to the State of Alaska pursuant to 43 U.S.C. § 1613(c)(4) (Supp. IV 1980).

State of Alaska, Dept. of Transportation and Public Facilities, 67 IBLA 380 (Oct. 8, 1982)

ALASKA--Continued

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

The Alaska Native Claims Settlement Act provides that a Native village corporation shall select all of the township or townships in which the village is located. The language is imperative, not permissive. If land within the "core" township is available for selection, it must be selected.

Land used for an airport site which is conveyed to a Native village must be subsequently conveyed to the State of Alaska pursuant to 43 U.S.C. § 1613(c)(4) (Supp. V 1981).

Chefornak, Inc., 75 IBLA 242 (Aug. 24, 1983)

Withdrawals remain in force until specifically revoked or modified by competent authority. The Alaska National Interest Lands Conservation Act, P.L. 96-478 (94 Stat. 2371), does not affect the existence or validity of Public Land Order No. 5250.

Larry McMaster et al., 76 IBLA 370 (Oct. 25, 1983)

An Alaska Native allotment application is deemed pending before the Department of the Interior on Dec. 18, 1971, if it was filed in any bureau, division, or agency of the Department on or before Dec. 18, 1971. Evidence of pendency before the Department on or before Dec. 18, 1971, shall be satisfied by any bureau, division, or agency time stamp, or by affidavit of any bureau, division, or agency officer that the application was received on or before Dec. 18, 1971.

An applicant for an Alaska Native allotment must prove with clear and credible evidence that he has been in substantially continuous use and occupancy of the land for a period of 5 years. Such use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not mere intermittent use. Substantially continuous use and occupancy, at least potentially exclusive of others, is not established where others have regularly used the subject land for grazing, hunting, trapping, and berrypicking, and where the applicant has never notoriously possessed the land in a manner affording notice to others that he claims the land.

Ouzinkie Native Corp. v. Edward W. Ophein, 83 IBLA 225 (Oct. 19, 1984)

COAL LEASES AND PERMITS

Pursuant to 43 CFR 3410.2-1(d) an applicant for a coal exploration license is required to provide an opportunity for other parties to participate in exploration under the license on a pro rata cost sharing basis. Where a party seeks to participate, it is required to submit information about its exploration plans such that BLM can determine whether such a party has legitimate exploration needs that must be accommodated. Thus, BLM determines whether to allow participation; arrangements concerning participation are then left to the parties.

James W. Taylor & Associates, Inc., 69 IBLA 1 (Nov. 24, 1982)

The Bureau of Land Management may properly decline a request to participate in coal exploration licenses where the licenses are close to expiration; the land in question is selected by a Native corporation; and publication of a proposed withdrawal segregating the land and conveyance of the land to the Native corporation is imminent.

James W. Taylor & Associates, Inc., 76 IBLA 103 (Sept. 21, 1983)

GRAZING

Where BLM renewed an Alaska grazing lease on lands for which the State of Alaska had previously filed a selection application, and where it first expressly advised the lessee that his lease would be subject to cancellation when the State's application was resolved, BLM may cancel the lease following tentative approval of the State selection application preparatory to transferring control over the lands to the State, as 43 CFR 4230.1 gives it the authority to cancel Alaska grazing leases to permit utilization of the land for other purposes in the public interest.

Estate of C. Walter Koester, 67 IBLA 363 (May 21, 1980)

Where land is within a grazing lease issued pursuant to the Act of Mar. 4, 1927, as amended, 43 U.S.C.A. § 316 (West Supp. 1982), and that fact is properly noted on the public land records, the land is segregated from entry as a trade and manufacturing site under sec. 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1976). Where, however, the record indicates that the Bureau of Land Management treated the entryman's notice of location of a settlement claim as a petition for determination under 43 CFR 4230.1 and approved it to the extent of any conflict with the grazing lease, the lease will not be a bar to the initiation of that settlement claim.

Henriette Roberts Yaden, 70 IBLA 171 (Jan. 20, 1983)

A grazing lease, issued after the lessee's daughter initiated her qualifying use and occupancy of a portion of the leased premises as a Native allotment claim, cannot bar the approval of the allotment. Moreover, a formal relinquishment by the lessee of the portion of the lease so occupied by his daughter was effective to terminate the grazing lease as to the relinquished land, so that upon his death two years later the lease, which passed to his widow, did not include the land within the allotment.

State of Alaska, Mary Frances DeHart, 82 IBLA 165 (Aug. 6, 1984)

HEADQUARTERS SITES

A headquarters site application which states that trapping, hunting, fishing, and renting cabins to hunters, fishermen, and snowmobiles is the commercial operation engaged in on the site is properly rejected when the applicant submits no evidence that he is engaged in a commercially productive industry there, or that he actually received substantial income from guests who used the site in connection with such purposes.

"Headquarters." A headquarters site application is properly rejected when the applicant has failed to sustain his burden of showing that the site has been used as a headquarters, i.e., as the usual place of business, principal office, or administrative center of his snowmobile camp. The term "headquarters" will not be construed so broadly as to include within its meaning use of a site for recreational purposes with occasional payment of use of the facilities occurring

ALASKA--Continued

HEADQUARTERS SITES--Continued

via rendering of services and helping transport building materials to the cabin sites, or by meager and incidental payments of cash.

United States v. Floyd R. Ehmann, 50 IBLA 69 (Sept. 17, 1980)

In a contest proceeding to challenge a headquarters site entry, the Government has the burden of establishing a prima facie case of noncompliance with the requirements for headquarters sites. The headquarters site applicant then has the burden of establishing entitlement to the land by showing compliance with the law. 43 U.S.C. § 687a (1976). Where such an applicant asserts that he has operated a cabin and boat rental business on the site, yet fails to produce sufficient evidence to show that he was engaged in a trade, manufacture or other productive industry from which he reasonably hoped to derive a profit, the application to purchase must be rejected.

United States v. Jack McLean, 50 IBLA 290 (Oct. 7, 1980)

HOMESITES

Where a homesite entryman files a notice of location, stakes out his site, and offers convincing evidence on appeal that he cut timber on the site prior to a withdrawal of the subject lands from all forms of appropriation, sufficient occupation has taken place to establish in the entryman valid existing rights prior to withdrawal.

Where a homesite entryman dwells in a log and visquine tepee with wooden floor and wood stove for a period not less than 5 months per year for 3 years, and such residency is completed within 5 years of the filing of a notice of location, the residence requirements imposed by 43 U.S.C. § 687a (1976) have been met.

Equitable adjudication may be invoked to permit consideration of a homesite purchase application that was not filed within the time required, where substantial compliance with the law has been made and valid existing rights were established before the land was withdrawn by Public Land Order 5418.

Larry L. Lowenstein, 57 IBLA 95 (Aug. 25, 1981)

Pursuant to the Act of May 26, 1934, 43 U.S.C. § 687a (1976), a homesite claimant must show that at the time of filing an application to purchase he had occupied his claim in a habitable house for the required length of time. Construction of a cabin and uncorroborated statements regarding occupancy will not suffice to establish occupancy where there are substantial indications that the claimant did not intend to make the claim his home.

United States v. Gerald H. Braniff, 59 IBLA 337 (Nov. 5, 1981)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a

ALASKA--Continued

HOMESITES--Continued

homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald H. Braniff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

HOMESTEADS

An application to make homestead entry on land previously classified for selection by the State of Alaska is properly rejected.

Deborah Lowenstein, 52 IBLA 198 (Jan. 26, 1981)

Under the decision in Reeves v. Andrus, 465 F. Supp. 1065 (D. Alaska 1979), upon a determination of the Federal Power Commission that the value of land withdrawn for power purposes would not be injured by the allowance of entries under the public land laws, the Secretary of the Interior is required to restore the land to entry, at least insofar as the powersite withdrawal is concerned, within a reasonable time thereafter. Such land, however, does not become available until an order of restoration is issued. No rights may be acquired by a settler on the public land who initiates settlement at a time when the records of the Department indicate that the land is not open to entry.

Where the Department issues a decision finally adjudicating rights to the public land adverse to an appellant and the appellant does not seek judicial review of that decision, the Department will bar reconsideration of that decision, even if arguably erroneous, where a third party has initiated adverse rights to the land originally sought.

Carmel J. McIntyre (On Judicial Remand), 67 IBLA 317 (Oct. 1, 1982)

Sec. 1328(b) of the Alaska National Interest Lands Conservation Act provides that an applicant for a homestead may amend the land description contained in his application if said description designates land other than that which the applicant intended to claim at the time of application and if the description as amended describes the land originally intended to be claimed. If, following notice to the State of Alaska and all interested parties, a protest meeting the requirements of sec. 1328(a)(3) is timely filed against the application as amended, the legislative approval provided by sec. 1328(a)(1) shall not apply.

Richard L. Devitt, 78 IBLA 380 (Jan. 10, 1984)

A homestead application segregates land from subsequent entry by a Native seeking to establish use and occupancy under the Native Allotment Act until the homestead entry is canceled on the official records of the Bureau of Land Management.

Where land included in a homestead entry is described among lands withdrawn subject to valid existing rights, the withdrawal attaches to the land upon cancellation of the entry.

Nick P. Demientieff, State of Alaska, 81 IBLA 303 (June 15, 1984)

ALASKA--Continued

HOMESTEADS--Continued

An application for reduction in cultivation requirements pursuant to 43 CFR 2511.4-3(b)(1) will be subject to rejection if it appears at the date of initiation of the claim the conditions were such as to indicate to a prudent person that cultivation of the required acreage was not reasonably practicable.

A decision rejecting an application for reduction of cultivation requirements will ordinarily be affirmed where it appears that the entry contains sufficient cultivatable acreage, but that the applicant has not succeeded in reducing the required acreage to cultivation.

Richard L. Hewitt (On Judicial Remand), 84 IBLA 192 (Dec. 21, 1984)

IRRIGATION AND POWER

"Federal installation." The Beaver Falls Hydroelectric Power Project, which is operated by Ketchikan Public Utilities, a nonprofit division of the municipality of Ketchikan, pursuant to a license issued by the Federal Power Commission, is not a "Federal installation" and, therefore, the land occupied by the project is not being used in connection with the administration of any "Federal installation" within the meaning of 43 U.S.C. § 1602(e) (1976).

A licensee of the Federal Power Commission, or its successor, the Federal Energy Regulatory Commission, is not an agent of the licenser so as to qualify the licenser as a "holding agency" within the meaning of 43 CFR 2655.0-5(a).

Where Congress has provided in 16 U.S.C. § 818 (1982) that lands sought for a proposed power project shall from the date of the filing of an application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Federal Power Commission or by Congress, and thereafter has further withdrawn these same lands for selection pursuant to sec. 16 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1615 (1976), BLM may properly convey such lands to a Native corporation selecting same, all else being regular.

Federal land occupied by a municipally operated utility pursuant to a license from the Federal Power Commission may be conveyed to a Native corporation selecting such land, subject to such license. Lands occupied by the utility are not excluded from the interim conveyance describing them.

Ketchikan Public Utilities, 79 IBLA 286 (Mar. 20, 1984)

LAND GRANTS AND SELECTIONS

Generally

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

Generally--Continued

acceptable, it will order the allotment issued, if all else be regular.

Where it appears that a party did not realize that an election of remedies was mandated by Departmental procedures, a decision requiring the initiation of a private contest will be set aside, and the party will be permitted a period of time in which to initiate a private contest or alternatively, waive such private contest and pursue a direct appeal on the question of whether a Government contest should issue.

State of Alaska v. Earl G. Patterson, 46 IBLA 56 (Feb. 22, 1980)

State of Alaska, 48 IBLA 229 (June 17, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from an interlocutory decision which authorizes the State to initiate private contest proceedings to prove lack of qualification on the part of the Native. Rather, it may initiate the private contest within the time period prescribed, or it may appeal the decision of BLM, after it becomes final, to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, all else being regular.

State of Alaska v. Elsie John, 46 IBLA 137 (Mar. 19, 1980)

State of Alaska v. Daniel Jimmie, Doris A. Williams, 48 IBLA 370 (July 11, 1980)

State of Alaska v. Cora John Smith, 50 IBLA 6 (Sept. 5, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to the Bureau of Land Management that the Native applicant has met the requirements for patent, upon notification to the State, it has an election. The State may initiate a private contest proceeding during the time prescribed to prove lack of qualification of the Native, or the State may await final decision from BLM and then appeal to this Board.

State of Alaska v. Dora David and Cathy Dick, 46 IBLA 177 (Mar. 21, 1980)

In treating cases similar in all respects to those encountered by the court in Aguilar v. United States, 474 F. Supp. 840 (1979), the Board will conform to the District Court's directions in that case. Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for an allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements under the Native Allotment Act, BLM must notify the State of

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

Generally--Continued

Alaska. The State, if dissatisfied, may either initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Appeals.

Rena Jonathan Northway, 46 IBLA 326 (Apr. 4, 1980)

When there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, BLM must notify the State that, if dissatisfied, it has an election of remedies. The State may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska v. Joan S. Newhall, 47 IBLA 85 (Apr. 21, 1980)

State of Alaska v. Moses Chythlook, 47 IBLA 249 (May 13, 1980)

A selection by the State of Alaska under sec. 6(b) of the Alaska Statehood Act is limited to public lands which are "vacant, unappropriated, and unreserved." A right-of-way for the Alaska Railroad across the public lands constitutes an easement which does not separate the servient estate from the public domain with the result that the land may be available for selection subject to reservation of a railroad right-of-way in any patent issued to the State.

The Alaska Railroad, 65 IBLA 376 (July 20, 1982)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of an application by the State of Alaska to select lands segregates those lands from all subsequent appropriations, including locations under the mining law. A mining claim located on land which has been segregated and closed to mineral entry is properly declared null and void ab initio.

Fred Thompson, 74 IBLA 231 (July 19, 1983)

MINING CLAIMS

Where an application for a regional land selection does not exclude unpatented mining claims as provided in 43 CFR 2651.4(e), the Bureau of Land Management is not required to identify or to adjudicate unpatented mining claims on the lands to be conveyed if no contest has been filed by the applicant pursuant to 43 CFR 4.450 as provided in 43 CFR 2650.3-2(a).

The Bureau of Land Management is not required to search state record offices for mining claims which have not been recorded with the Bureau of Land Management on behalf of an applicant for an Alaska regional conveyance. Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), failure to record such a claim shall be deemed conclusively to constitute abandonment of the claim, and

ALASKA--Continued

MINING CLAIMS--Continued

obviates the need for the Bureau of Land Management to search state records.

Doyon, Ltd., 74 IBLA 139 (July 6, 1983) 90 I.D. 289

Where selection of lands for conveyance to a Native Alaska corporation includes unpatented mining claims, the Bureau of Land Management is not required to identify or to adjudicate unpatented mining claims on the lands to be conveyed, nor is it required to search state records to ascertain the existence of such claims.

Doyon, Ltd., 74 IBLA 281 (July 25, 1983)

Doyon, Ltd., NTNT, Ltd., 75 IBLA 65 (Aug. 10, 1983)

Where selection of lands for conveyance to a Native Alaska corporation includes unpatented mining claims, the Bureau of Land Management is not required to identify unpatented mining claims on the lands to be conveyed.

Doyon, Ltd. (On Reconsideration), 77 IBLA 219 (Nov. 28, 1983)

Under 43 CFR 2650.3-2(c), mineral patent applications may continue to be filed after Dec. 18, 1976, on land selected by village or regional corporations until such land is actually conveyed. Sec. 22(c) of Alaska Native Claims Settlement Act, 43 U.S.C. § 1621(c) (1976), prohibits the filing of such an application after Dec. 18, 1976, only if the land had been conveyed before the patent application was filed.

Doyon, Ltd., NTNT, Ltd. (On Reconsideration), 78 IBLA 327 (Jan. 24, 1984)

NATIVE ALLOTMENTS

Where BLM classifies a 40-acre tract as suitable for disposal under the Small Tract Act, thereby segregating it from acquisition under other public land laws, then grants an individual a lease thereon with option to purchase, pursuant to which the lessee constructs buildings and occupies the tract, the protest and application of an Alaska Native, made for the first time 12 years later, will be rejected, as a matter of law and equity where the Native was claiming 160 acres of different land during the preceding 6 years, and had made no assertion of interest in the small tract, but rather had expressly acknowledged the existence of the leasehold.

Evelyn Alexander, 45 IBLA 28 (Jan. 14, 1980)

Where a State Office rejects a Native allotment application because it was not timely filed and did not have the required certification and land description, and where it is shown such deficiencies were beyond applicant's control, the case will be remanded to the State Office to allow 60 days for the deficiencies to be cured, and for the State Office, if it finds substantial compliance with the law, to apply doctrine of equitable adjudication and then to accept the application with the late filing, proper certification, and amended land description, all else being regular.

Herbert Herrmann, 45 IBLA 43 (Jan. 14, 1980)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

The Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (1976), extinguished aboriginal occupancy claims of Alaska Natives effective Dec. 18, 1971, and a Native allotment application then pending in the Bureau of Land Management and purportedly "amended" after that date to include an additional 100 acres cannot be granted for the additional acreage unless it be shown that the amendment was pending in the Department prior to the repeal of the Act.

Where a Native corporation has pending an application to acquire land, which land was awarded to an Alaska Native by BLM pursuant to a Native allotment application, the Native corporation is a party adversely affected by the decision of BLM and therefore has a right to appeal pursuant to 43 CFR 4.410, from the BLM decision holding the Native allotment application for allowance and will be afforded the opportunity to contest the Native allotment application.

Quzinkie Native Corp. v. Edward Ophein, Sr., 45 IBLA 198 (Jan. 30, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, all else be regular.

Where, in a decision holding a Native allotment for approval and a State selection for rejection to the extent of a conflict, the Bureau of Land Management grants the State 30 days to initiate a private contest challenging the Native allotment, the 30-day appeal period will commence upon expiration of the 30 days accorded the State for initiation of a private contest and not with receipt of the decision.

Where it appears that a party did not realize that an election of remedies was mandated by Departmental procedures, a decision requiring the initiation of a private contest will be set aside, and the party will be permitted a period of time in which to initiate a private contest or alternatively, waive such private contest and pursue a direct appeal on the question of whether a Government contest should issue.

State of Alaska v. Earl G. Patterson, 46 IBLA 56 (Feb. 22, 1980)

State of Alaska, 48 IBLA 229 (June 17, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from an interlocutory decision which authorizes the State to initiate private contest proceedings to prove lack of qualification on the part of the Native. Rather, it may initiate the private contest within the time period prescribed, or it may appeal the decision of BLM, after it becomes final, to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, all else being regular.

State of Alaska v. Elsie John, 46 IBLA 137 (Mar. 19, 1980)

State of Alaska v. Daniel Jimmie, Bertha A. Williams, 48 IBLA 370 (July 11, 1980)

State of Alaska v. Cora John Smith, 50 IBLA 6 (Sept. 5, 1980)

An inheritable property right in an allotment is created only if an applicant fully complies with all of the application requirements before his or her death. This right arises even though the applicant's evidence of use and occupancy has not been filed so long as the applicant has fulfilled all other requirements, because BIA may file such evidence on behalf of the applicant's heirs.

In order for an heir to relinquish an allotment application, he or she must be the sole heir or have the authority to act on behalf of all heirs. Where, as in this case, the widow of a Native allotment applicant, who is not the sole heir, acting on her own behalf relinquishes his application and refiles for the same allotment; the relinquishment is ineffective.

Upon the death of a Native allotment applicant, BIA may file evidence of use and occupancy for the benefit of the applicant's heirs so long as the applicant has fulfilled all other requirements for allotment. However, BIA has no authority to relinquish the applicant's allotment during the period for filing evidence of use and occupancy.

The filing of an acceptable application for a Native allotment segregates the lands from appropriation and subsequent conflicting applications must be rejected. An erroneous notation on the tract books of relinquishment of an allotment, although it appears to reopen the land for allotment, does not cut off the rights of the first applicant as against subsequent applicants. The notation rule expressed in 43 CFR 1825.1 serves to fix the point in time when previously segregated land is returned to the public domain and is designed to give all persons wishing to apply for the land an equal chance to do so. It does not necessarily establish when a prior applicant's rights in the land have terminated.

Where a person files a Native allotment application for lands segregated from appropriation, the application is null and void ab initio and does not give rise to any equitable interest.

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Where Bureau of Land Management determines that an application for a Native allotment should be rejected for failure to establish use and occupancy of the land, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Estate of Guy C. Frost, Jr., Violet Boehl, 46 IBLA 165 (Mar. 21, 1980)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to the Bureau of Land Management that the Native applicant has met the requirements for patent, upon notification to the State, it has an election. The State may initiate a private contest proceeding during the time prescribed to prove lack of qualification of the Native, or the State may await final decision from BLM and then appeal to this Board.

State of Alaska v. Dora David and Cathy Dick, 46 IBLA 177 (Mar. 21, 1980)

In treating cases similar in all respects to those encountered by the court in Aguilar v. United States, 474 F. Supp. 840 (1979), the Board will conform to the District Court's directions in that case. Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for an allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements under the Native Allotment Act, BLM must notify the State of Alaska. The State, if dissatisfied, may either initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Appeals.

Anna Jonathan Northway, 46 IBLA 326 (Apr. 4, 1980)

Alaskan Native aboriginal occupancy claims, or claims under the organic Act of Alaska of May 17, 1884, and the Act of June 6, 1900, were extinguished by the Alaska Native Claims Settlement Act. A Native applicant's rights under the 1906 Native Allotment Act are based upon his or her individual compliance with that Act and not upon any ancestral use of the land.

The requirement that a Native allotment applicant show 5 years' use and occupancy is applicable to all public land and not just to national forest land.

Where Native allotment applicants who were 8 years and older at the date land was segregated from entry assert independent use and occupancy of the land then, the Bureau of Land Management should contest their applications, affording them notice and an opportunity for a hearing to prove the adequacy and independence of their use and occupancy, rather than reject the applications without a hearing simply because of the applicant's age on the segregative date.

William Bouvens et al., 46 IBLA 366 (Apr. 8, 1980)

A Native allotment application filed pursuant to the Alaska Native Allotment Act of 1906 must be rejected if it was not pending before the Department of the Interior on Dec. 18, 1971. Where there are factual questions concerning the pendency of an application they can best be resolved at a hearing pursuant to a Government contest.

A Native allotment applicant who is a minor is not precluded from establishing use and occupancy of the land applied for. However, such use and occupancy must be achieved as an independent citizen in his own right and must be potentially exclusive. The question of a 14-year old's independent use and occupancy is best addressed at a contest proceeding.

Eleanor M. Wood, 46 IBLA 373 (Apr. 8, 1980)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

A request, filed in 1975, to reopen a Native allotment application, which had been finally rejected in 1967, is barred by the 1971 repeal of the Native Allotment Act, since no application was "pending" on the date of the repeal.

The Alaska Native Allotment Act gives a qualified person the right to select land. This inchoate right is nonalienable, nontransferable, and noninheritable, and it terminates with death. But where an allotment selection has been made and the applicant fully complies with the law and regulations and accomplishes all that is required to be done, the right to allotment is earned and becomes a property right which is inheritable. No rights inure to the heirs of the deceased applicant where BLM was unable to verify use and occupancy for the lands described in the application and the applicant did not correct the application to reflect the lands actually used.

Where a Native allotment applicant has not established use and occupancy of the lands identified in his or her allotment application, the applicant has not substantially complied with the Alaska Native Allotment Act and equitable adjudication under 43 CFR 1871.1-1 cannot be properly invoked.

Mary Olympic, 47 IBLA 58 (Apr. 14, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaskan Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient, it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska v. Joan H. Newhall, 47 IBLA 85 (Apr. 21, 1980)

State of Alaska v. Moses Chythlook, 47 IBLA 249 (May 13, 1980)

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Where Bureau of Land Management determines that an application for a Native allotment is invalid because the facts are not as stated in the application, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Evan Chukwak, 47 IBLA 241 (May 13, 1980)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Mary Semone, 49 IBLA 213 (Aug. 11, 1980)

Natalia Kapuk et al., 51 IBLA 170 (Nov. 26, 1980)

Where lands sought in a Native allotment application are described by metes and bounds despite their having been previously surveyed, and thereafter an amended application is filed subsequent to Dec. 18, 1971, seeking lands in a different township, the amended application is properly rejected as untimely.

To establish the mineral character of lands, it must be shown that the known conditions are such as to engender the belief that the lands contain mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end. The mineral character of land may be established by inference without the exposure of the mineral deposit for which the land is supposed to be valuable. Lands containing mineral of such quantity and value as to warrant a prudent man in the expenditure of his time and money with a reasonable expectation of developing a paying mine are disposable only under the mining laws.

Edith Szerd, Beulah Noth, 50 IBLA 61 (Sept. 15, 1980)

Where the State of Alaska lacks a cognizable interest in the specific land being sought by a Native allotment applicant because that land is either within the core township of a Native village or the Native village has received tentative approval for its selection, the State does not have standing to initiate a private contest under 43 CFR 4.450-1. It may, however, protest against the allowance of the allotment and appeal from an adverse decision under 43 CFR 4.410.

State of Alaska v. Steve Sarakovikoff et al., 50 IBLA 284 (Oct. 6, 1980)

The Act of May 17, 1906, 34 Stat. 197, as amended, 43 U.S.C. § 270-1 (1970), repealed subject to pending applications, 43 U.S.C. § 1617 (1976), authorized the Secretary to allot not to exceed 160 acres of vacant, unappropriated, and unreserved nonmineral land in Alaska to any Indian, Aleut, or Eskimo who resides in and is a Native of Alaska. No allotment shall be made to any person until said person has made proof satisfactory to the Secretary of substantially continuous use and occupancy of the land for a period of 5 years.

Where issues of material fact are in dispute, due process requires that, before a decision is reached to reject an application for an allotment, the applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of witnesses may be submitted.

The Court of Appeals for the Ninth Circuit has held that application of the Departmental contest procedures to provide the allotment applicant with notice and an opportunity for a hearing prior to adverse action on the allotment application complies, at least facially, with the due process requirements set forth in the court's mandate in Pence v. Kleppe, 529 F.2d

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

135 (9th Cir. 1976). Pence v. Andrus, 586 F.2d 733 (9th Cir. 1979).

Mary DeLaney, 51 IBLA 165 (Nov. 26, 1980)

State of Alaska (Leland R. Katakpoki), 50 IBLA 348 (May 12, 1981)

Where a party holding an interest in property which may be adversely affected by the granting of a Native allotment points out facts of record indicating that the Native's use of the property may not have been continuous or exclusive for 5 years and that the claim may have been abandoned, the matter will be referred to the Hearings Division for a hearing before an Administrative Law Judge to inquire into the circumstances surrounding this occupancy.

Alyeska Pipeline Co., 52 IBLA 222 (Jan. 30, 1981)

When a Native allotment application has been rejected because the applicant failed to complete 5 years of qualifying use and occupancy prior to the filing of an application for withdrawal for powersite purposes, the case will be remanded for readjudication under sec. 905 of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435-37 (1980), unless the described land is included as part of a project licensed under part I of the Federal Power Act of June 10, 1920 (41 Stat. 24), as amended, or is presently utilized for purposes of generating or transmitting electrical power or for any other project authorized by act of Congress. If the allotment applicant commenced the qualifying use of the land after its withdrawal or classification, the allotment shall be made subject to the right of reentry provided the United States.

William Carlo, Sr. (On Reconsideration), 53 IBLA 168 (Mar. 12, 1981)

An Alaskan Native allotment applicant is required to make satisfactory proof of substantially continuous use and occupancy of the land for a minimum period of 5 years. Such use and occupancy contemplates substantial actual possession or use of the land, at least potentially exclusive of others, and not merely intermittent use. While qualifying use must be substantially continuous, there is no requirement that the 5-year use be in a consecutive 5-year period.

The right to a Native allotment vests only upon the completion of 5 years' use or occupancy of land and the filing of an application therefor. Absent the timely filing of an allotment application, where a Native, who has completed the requisite 5 years' use, ceases to use or occupy the land and permits the land to return to an unoccupied state, the right to an allotment of that land also terminates, regardless of the subjective intent of the Native. In a similar fashion, all possessory rights afforded by the Act of May 17, 1884, 23 Stat. 24, 26, and other similar Acts, terminate upon the cessation of actual use or occupancy. Such lands then become open to the initiation of rights by others.

The provisions of 25 U.S.C. § 194 (1976) relating to the placing of the burden of proof do not apply where the Government contests the qualifications of an allotment applicant. An allotment applicant in such a situation is the proponent of the rule and must show his or her entitlement to the land sought.

United States v. Donald E. Flynn and Heirs of Henry Orock (Deceased), 53 IBLA 208 (Mar. 18, 1981)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), if the land is included in a State selection application but is not within a core township of a Native village. Under subsec. (a)(4) of that section, such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970).

Where a Native allotment application declares that the applicant first initiated use and occupancy after the date that the land was segregated from appropriation by the filing of a selection application by the State of Alaska, allowance of the Native allotment application is precluded as a matter of law and may be properly rejected without a hearing.

Roselyn Isaac (On Reconsideration), 53 IBLA 306 (Mar. 25, 1981)

A Native allotment application for withdrawn lands may be granted when the applicant has commenced the required use and occupancy prior to the withdrawal, if all other requirements have been met. The substantial use and occupancy required by the Native Allotment Act must be achieved by the Native as an independent citizen acting for herself, and not as a dependent child visiting and using the land in the company of her parents. Native allotment applicants who were 8 years old and older at the date the land was withdrawn and who assert independent use and occupancy of the land should be afforded notice and opportunity for a hearing to prove the adequacy and independence of their use and occupancy.

Sarah F. Lindgren (On Reconsideration), 54 IBLA 181 (Apr. 22, 1981)

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), if the land is included in a State selection application but is not within a core township of a Native village. Under subsec. (a)(4) of that section, such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970).

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

If BLM determines that a Native allotment application that conflicts with a state selection application may be allowed without a Government contest against the Native allotment applicant, it must notify the State of Alaska of this determination. Upon such notification, the State, if dissatisfied, has an election of remedies. It may initiate a private contest within the time period prescribed in the notice, or it may appeal the decision of BLM, after it becomes final, to this Board. If the Board concludes that the Native's application is deficient, it will order the initiation of a Government contest. But if it finds the allotment application acceptable, it will order the issuance of a patent, if all else be regular.

Daniel Johansen (On Reconsideration), 54 IBLA 295 (Apr. 29, 1981)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

Mary A. A. Aspinwall (On Reconsideration), 66 IBLA 367 (Aug. 27, 1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

Jack Gosuk (On Reconsideration), 54 IBLA 306 (Apr. 29, 1981)

Anuska Tugatuk (On Reconsideration), 59 IBLA 345 (Nov. 5, 1981)

Elia Wassillie (On Reconsideration), 59 IBLA 361 (Nov. 9, 1981)

Mary Aroiiak (On Reconsideration), 59 IBLA 384 (Nov. 9, 1981)

Warner Bergman (On Reconsideration), 60 IBLA 214 (Nov. 27, 1981)

Beulah Morse (On Reconsideration), 60 IBLA 252 (Dec. 4, 1981)

Nora E. Konukreok (On Reconsideration), 60 IBLA 394 (Dec. 23, 1981)

Louise Luke (On Reconsideration), 60 IBLA 399 (Dec. 28, 1981)

Evan Chiskok, Alex Hunt, Angela Odinzoff, Antonia Raymond (On Reconsideration), 61 IBLA 1 (Dec. 28, 1981)

Steven Bergman (On Reconsideration), 61 IBLA 399 (Feb. 22, 1982)

Heirs of Macauley Alakayak (On Reconsideration), 62 IBLA 90 (Feb. 25, 1982)

Heirs of Pete Olson, 63 IBLA 64 (Mar. 30, 1982)

Nina Harris, 63 IBLA 74 (Mar. 30, 1982)

Heirs of Hadrona Wassillie (On Reconsideration), 64 IBLA 167 (May 25, 1982)

Elsie Bergman (On Reconsideration), 64 IBLA 180 (May 26, 1982)

John A. Paine, 66 IBLA 77 (July 29, 1982)

Where a Native allotment application filed in 1961 is rejected, more than 13 years after applicant has submitted acceptable evidence of his use and occupancy of the land for more than the required 5-year period set out in the appropriate statute, solely on the basis of a Geological Survey report in 1974 that the land was believed to be prospectively valuable for phosphate, the decision rejecting the application will be set aside and the matter remanded to BLM to proceed to issuance of patent as land must be considered to be nonmineral in character absent a showing that minerals are present in such quantities and such qualities as

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

would induce a person of ordinary prudence to expend time and money with a reasonable prospect of success in developing a paying mine thereon.

Heirs of Simon Panook, 55 IBLA 305 (June 25, 1981)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which described either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, were approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to resolution of any protest filed before the end of the 180-day period.

Where a Native allotment application declares that the applicant first initiated use and occupancy after the date that the land was withdrawn for lighthouse purposes, allowance of the Native allotment application is precluded as a matter of law and may be properly rejected without a hearing.

Stanislaus Mike, 56 IBLA 69 (July 10, 1981)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Although only nonmineral land may be allotted, Congress has defined that term as used in the Native Allotment Act to include land valuable for deposits of sand and gravel.

Applications for Alaska Native allotments in "core" townships of Native villages are subject to the statutory approval contained in sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, notwithstanding a State selection or tentative approval thereof for the same lands prior to Dec. 18, 1971.

Agnes S. Samuelson, 56 IBLA 242 (July 22, 1981)
88 I.D. 663

Native allotment applications for lands in the Tongass National Forest may be allowed only if (1) the application is founded on occupancy prior to the inclusion of the lands within the forest or (2) an authorized officer of the Department of Agriculture certifies that the land in the application is chiefly valuable for agricultural or grazing purposes.

Secretarial guidelines of Oct. 18, 1973, interpreted the provisions of 43 U.S.C. § 270-3 (1970) to require an applicant for a Native allotment to complete 5 years use and occupancy prior to any withdrawal of the lands sought. Secretarial Order No. 3040 of May 25, 1979, rescinded these guidelines in favor of an interpretation requiring the commencement of use and occupancy or the filing of a Native allotment application prior to a withdrawal of the land.

The substantial use and occupancy contemplated by the Native Allotment Act must be by the Native as an independent citizen for himself or as head of a family, and not as a minor child occupying or using the land in company with his parents. An applicant's use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittent use.

The Department of the Interior will not grant a hearing to examine a determination by the Forest Service that land is not chiefly valuable for agricultural or grazing uses where such determination is entrusted by statute to the Secretary of Agriculture.

Jimmie A. George, Sr., 60 IBLA 14 (Nov. 16, 1981)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (Dec. 2, 1980), Congress provided that all Native allotment applications pending before the Department on Dec. 18, 1971, which described either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, were to be approved on the 180th day following the effective date of that Act, subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, unless one of that statute's exceptions applies to require further adjudication of the case.

Gregory Anelon, Sr. (On Reconsideration), 60 IBLA 101 (Nov. 19, 1981)

Emily B. Hunt (On Reconsideration), 64 IBLA 304 (June 8, 1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected without finality, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

In sec. 905(A) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that where the land described in an allotment application pending before the Department of the Interior on or before Dec. 18, 1971 (or such an application as adjusted or amended pursuant to subsec. (b) or (c) of this section), was on that date withdrawn, reserved, or classified for powersite or power project purposes, notwithstanding such withdrawal, reservation, or classification, the described land shall be deemed vacant, unappropriated, and unreserved within the meaning of the Act of May 17,

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

1906, as amended, and, as such, shall be subject to adjudication or approval pursuant to the terms of this section, provided, however, that if the described land is included as part of a project licensed under part I of the Federal Power Act of June 10, 1920 (41 Stat. 24), as amended, or is presently utilized for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress, the foregoing provision shall not apply and the allotment application shall be adjudicated pursuant to the Act of May 17, 1906, as amended.

Wayne C. Williams (On Reconsideration), 61 IBLA 181 (Jan. 26, 1982)

David E. Stevens, 64 IBLA 72 (May 10, 1982)

Where the State Office rejects a Native allotment application because it was deficient in form and untimely filed and the applicant argues that he timely and properly filed the application, and where the factual record does not clearly support either view, the case will be remanded for a hearing.

Charlie B. Biederman, 61 IBLA 189 (Jan. 26, 1982)

Native allotment applications for lands in the Tongass National Forest may be allowed only if (1) the application is founded on occupancy prior to the inclusion of the lands within the forest or (2) an authorized officer of the Department of Agriculture certifies that the land in the application is chiefly valuable for agricultural or grazing purposes.

Secretarial guidelines of Oct. 18, 1973, interpreted the provisions of 43 U.S.C. § 270-3 (1970) to require an applicant for a Native allotment to complete 5 years use and occupancy prior to any withdrawal of the lands sought. Secretarial Order No. 3040 of May 25, 1979, rescinded these guidelines in favor of an interpretation requiring the commencement of use and occupancy or the filing of a Native allotment application prior to a withdrawal of the land.

The substantial use and occupancy contemplated by the Native Allotment Act must be by the Native as an independent citizen for himself or as head of a family, and not as a minor child occupying or using the land in company with his parents. An applicant's use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittant use.

Andrew Gordon McKinley, Annie Bennett (On Reconsideration), 61 IBLA 282 (Feb. 2, 1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

In sec. 905(a)(5)(A), (B), and (C) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that paragraph (1) of this subsection and subsec. (d) shall not apply and the Native allotment application shall be adjudicated pursuant to the requirements of the Act of May 17, 1906, as amended, if on or before the 180th day following the effective date of this Act the State of Alaska files a protest with the Secretary stating that the land described in the allotment application is necessary for access to lands owned by the United States, the State of Alaska, or a political subdivision of the State of Alaska, to resources located thereon, or to a public body of water regularly employed for transportation purposes, and the protest states with specificity the facts upon which the conclusions concerning access are based and that no reasonable alternatives for access exist. However, where the State's protest describes land which is clearly different from the land claimed by the Native applicant, the Board will instruct BLM to grant the allotment, provided all else is regular.

United States v. Mary S. Marouk, 61 IBLA 316 (Feb. 8, 1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

Where an Alaska Native has applied for allotment of two parcels, and conveyance of one of those parcels has been timely protested by persons who dispute the applicant's entitlement thereto and assert claims to the improvements thereon, the case must be adjudicated pursuant to the requirements of the Act of May 17, 1906, and other applicable law, necessitating, inter alia, notice and an opportunity for a hearing.

Bill Nokeforeff, 62 IBLA 170 (Mar. 8, 1982)

The Department of the Interior is authorized to approve only Native allotment applications which were pending before the Department on Dec. 18, 1971. If an applicant provides satisfactory evidence that she had delivered her application before that time to the agency office of the Bureau of Indian Affairs which held it past the time when it should have been filed with the Bureau of Land Management, the application may be adjudicated as having been timely filed.

Where conflicting evidence contained in a file raises factual issues, BLM should initiate a Government contest so that the factual issues can be resolved at a hearing.

Nora L. Sanford (On Reconsideration), 63 IBLA 335 (Apr. 28, 1982)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), if the land is included in a State selection application but is not within a core township of a Native village. Under subsec. (a)(4) of that section, such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1--270-3 (1970) (repealed 1971).

No rights inure to the estate of a deceased Native allotment applicant where the application does not show prima facie entitlement because the land was segregated by a State selection at the asserted time when use and occupancy commenced. A request for a hearing on appeal is properly denied in the absence of any evidence or allegation of use and occupancy predating the State selection.

Heirs of Howard Isaac, 63 IBLA 343 (Apr. 28, 1982)

A Native allotment application describing land within a powersite withdrawal may be approved pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435-37 (1980), subject to protests filed within 180 days of enactment of the statute, where the land is not part of a project licensed under the Federal Power Act of June 10, 1920, as amended, or presently used for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress. Where the allotment applicant's use of the land commenced after the withdrawal, the allotment shall be subject to the right or reentry provided the United States by sec. 24 of the Federal Power Act, as amended.

Marion Stevens, 64 IBLA 69 (May 10, 1982)

Where a Native allotment application has been rejected for failure to provide adequate evidence of use and occupancy, the case will be remanded to BLM to be held for approval pursuant to sec. 905(a) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2435 (1980), subject to the restrictions of sec. 905(d) on allotments of land withdrawn or classified for powersite purposes, in the absence of the filing of a protest prior to the 180th day following the effective date of the Act.

Myrtle Joycox, Serafina Apolon, Nilsa C. Eakon (On Reconsideration), 64 IBLA 97 (May 17, 1982)

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), if the land is included in a State selection application but is not within a core township of a Native village. Under subsec. (a)(4) of that section, such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1--270-3 (1970).

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a State selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

Where an application for an allotment describes specific land for which an allotment is sought, but on which land the applicant cannot show the requisite use and occupancy, the death of the allotment applicant terminates all right of reselection by the applicant, and his heirs or his estate may not seek to amend the land description to embrace other land.

"Pending." Where a Native allotment application was rejected in 1967, and no action seeking review or appeal of that decision was filed until 1975, the application was not "pending" on Dec. 18, 1971, and, therefore, BLM lacks the statutory authority to "reopen" the case.

Mary Olympic (On Reconsideration), 65 IBLA 26 (June 22, 1982)

A Native allotment application for withdrawn lands may be granted when the applicant has commenced the required use and occupancy prior to the withdrawal, if all other requirements have been met. The substantial use and occupancy required by the Native Allotment Act must be achieved by the Native as an independent citizen acting for herself, and not as a dependent child visiting and using the land in the company of her parents. Native allotment applicant's minority on the date the land was withdrawn does not automatically disqualify the applicant from being able to show independent use and occupancy of the land and applicant should be afforded notice and opportunity for a hearing to prove the adequacy and independence of her use and occupancy.

Catherine Angaiak (On Reconsideration), 65 IBLA 317 (July 15, 1982)

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), where the land is included in a State selection application filed by Dec. 18, 1971, and is not within a core township of a Native village. Under subsec. (a)(4) of that section, such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1--270-3 (1970).

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land.

William H. Tennyson, Jr., 66 IBLA 38 (July 23, 1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Termination after Dec. 18, 1971, of an otherwise acceptable allotment application filed before that date for failure to submit evidence of use and occupancy does not bar approval of the application under that provision. Where such an application was pending on Dec. 18, 1971, and BLM has refused to reinstate and approve the application, the case will be remanded to the Alaska State Office to be held for

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act.

Frederick Howard, 67 IBLA 157 (Sept. 20, 1982)

An Alaska Native allotment application qualifies for approval under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(a)(1) (Supp. IV 1980), where it was pending before the Department on or before Dec. 18, 1971, and described unreserved land. Subsec. (a)(4) of that section requiring adjudication of such application pursuant to the Alaska Native Allotment Act, 43 U.S.C. § 270-1 through 270-3 (1970) if the land in the application is included in a state selection, does not apply where the state selection was not filed on or before Dec. 18, 1971.

State of Alaska, Natrona Johnson, 71 IBLA 63 (Feb. 22, 1983)

The filing of an acceptable application for a Native allotment segregates the lands from appropriation and subsequent conflicting applications must be rejected.

State of Alaska, 71 IBLA 394 (Mar. 30, 1983)

Lands are known to be valuable for mineral when known conditions are such as reasonably to engender the belief that the lands contain mineral of such quality and in such quantity as would render its extraction profitable and justify expenditures to that end.

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Billy Morry, 72 IBLA 13 (Apr. 4, 1983)

The Department of the Interior retains jurisdiction to hear a contest brought by the State of Alaska against an applicant for a Native allotment where the lands sought by the Native were tentatively approved to the State following the commencement of the Native's use and occupancy. Sec. 906(c) of the Alaska National Interest Lands Conservation Act, providing for confirmation of all tentative approvals of State land selections subject to valid existing rights, does not convey the lands in dispute out of Federal ownership so as to remove the contest from the Department's jurisdiction.

State of Alaska v. Marcia K. Thorson, State of Alaska v. Phyllis Westcoast, 76 IBLA 264 (Oct. 18, 1983)

The Alaska Native Allotment Act, 43 U.S.C. § 270-1 (1970), granted to qualified applicants a preference right to the land occupied which gives the applicant first choice in the land.

Village & City Council of Aleknagik, May S. Olson, Lawrence Murphy, Sr., 77 IBLA 130 (Nov. 15, 1983)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

The Department lacks jurisdiction to adjudicate the rights of claimants to land after it is patented. Although a hearing in the Department may be required where land is patented in derogation of the rights of a conflicting applicant, no hearing is appropriate where at the time of patent the conflicting application has been relinquished and the statutory authority for such applications has been repealed.

Peter Andrews, Sr., 77 IBLA 316 (Nov. 30, 1983)

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(a)(1) (Supp. IV 1980), if the land is included in a State selection application but is not within a core township of a Native village. Under subsec. (a)(4) of that section, such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, as amended, 43 U.S.C. §§ 270-1 through 270-3 (1970).

Where a Native allotment applicant alleges use and occupancy prior to the filing of a State selection application, it is improper to reject his application without affording him notice and opportunity for a hearing. The Bureau of Land Management must initiate contest proceedings against the application and give the State of Alaska an opportunity to participate as a party to such contest.

Walter Titus (On Reconsideration), 77 IBLA 321 (Dec. 1, 1983)

Where conflicting evidence existing in the case file and submitted on appeal concerning a Native allotment applicant's use and occupancy of the land raises factual issues, the Bureau of Land Management should initiate a Government contest so that the factual issues can be resolved at a hearing.

The Department of the Interior is authorized to approve only Native allotment applications that were pending before the Department on or before Dec. 18, 1971. Where the evidence shows that an application was delivered to the Bureau of Indian Affairs before that date but was not transmitted to the Bureau of Land Management until after that date, the application was timely. Where there are factual questions concerning the pendency of an application they must be resolved at a hearing.

A Native allotment application was pending before the Department of the Interior on Dec. 18, 1971, if it was filed in any bureau, division, or agency of the Department on or before that date. The Bureau of Land Management is the proper agency to adjudicate all Native allotment applications, however.

An inheritable property right in an allotment is created only if an applicant fully complies with the requirements of the Native Allotment Act before his or her death. When an applicant has submitted evidence of the required use and occupancy of the allotment that is disputed during adjudication of the application, the applicant's heirs may properly submit additional evidence to support the applicant's claims.

Under 43 CFR 2561.1(b), an application for a Native allotment that extends more than 160 rods along the shore of any navigable waters shall be considered a request for a waiver of the 160-rod limitation on such allotment. Upon a determination that such an allotment meets the requirements of the Native Allotment Act, BLM may either waive the limitation as provided by 43 CFR

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

2094.2(a) or decrease the size of the approved allotment.

Katsailand, Inc., et al., 77 IBLA 347 (Dec. 5, 1983)

Under sec. 905 of the Alaska National Interest Lands Conservation Act, a Native allotment applicant may amend the land description contained in the application if the description designates land other than that which the applicant intended to claim and the new description describes the land originally intended to be claimed. The Bureau of Land Management properly allows amendment of a description based on an old protraction diagram of the unsurveyed township, where necessary to locate the allotment on the same land based on a later plat of the surveyed township showing a change in the location of the area platted.

A Native allotment applicant is required to make satisfactory proof of substantially continuous use and occupancy of the land for a minimum period of 5 years. Such use and occupancy contemplates substantial actual possession or use of the land at least potentially exclusive of others. Where the evidence in the record does not establish applicant's potentially exclusive use of an allotment, and a Native corporation asserts that the land was in general use by the Native community, the Bureau of Land Management shall institute contest proceedings so that evidence as to applicant's entitlement to the allotment may be presented.

The right to a Native allotment vests only upon the completion of 5 years' use or occupancy of land and the filing of an application therefor. Where a Native files an application that BLM rejects before completion of the 5-year period, the Native has not acquired a vested right and maintains subsequent right to the land only by continuing possession of the land sufficient to put others on notice of his claim. If the Native does so, upon later reinstatement of the rejected application he or she will acquire a vested right to the application.

Pedro Bay Co., 78 IBLA 196 (Jan. 5, 1984)

Sec. 1328(b) of the Alaska National Interest Lands Conservation Act provides that an applicant for a homestead may amend the land description contained in his application if said description designates land other than that which the applicant intended to claim at the time of application and if the description as amended describes the land originally intended to be claimed. If, following notice to the State of Alaska and all interested parties, a protest meeting the requirements of sec. 1328(a)(3) is timely filed against the application as amended, the legislative approval provided by sec. 1328(a)(1) shall not apply.

Richard L. Hewitt, 78 IBLA 300 (Jan. 10, 1984)

Where a Native allotment application was approved after a Government contest and prior to the passage of sec. 905 of ANILCA, which legislatively approved pending allotment applications, sec. 905's 180-day protest rights providing for a hearing do not apply to this already adjudicated and approved application.

Village & City Council of Aleknagik, Mar B. Olson, Lawrence Murphy, Sr. (On Reconsideration), 80 IBLA 221 (Apr. 30, 1984)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

A homestead application segregates land from subsequent entry by a Native seeking to establish use and occupancy under the Native Allotment Act until the homestead entry is canceled on the official records of the Bureau of Land Management.

Nick K. Dapcntioff, State of Alaska, 81 IBLA 303 (June 15, 1984)

Where a trail was cut across a tract of land by the father of a Native allotment applicant a few years prior to her occupancy of the tract, but was used only by her father's hunting clients and perhaps one or two other hunting parties each hunting season, such use does not constitute either occupancy or appropriation of the land such as would bar the applicant's claim to it as "vacant and unappropriated land."

A grazing lease, issued after the lessee's daughter initiated her qualifying use and occupancy of a portion of the leased premises as a Native allotment claim, cannot bar the approval of the allotment. Moreover, a formal relinquishment by the lessee of the portion of the lease so occupied by his daughter was effective to terminate the grazing lease as to the relinquished land, so that upon his death two years later the lease, which passed to his widow, did not include the land within the allotment.

State of Alaska, Mary Frances DeHart, 82 IBLA 165 (Aug. 6, 1984)

An Alaska Native allotment application is deemed pending before the Department of the Interior on Dec. 18, 1971, if it was filed in any bureau, division, or agency of the Department on or before Dec. 18, 1971. Evidence of pendency before the Department on or before Dec. 18, 1971, shall be satisfied by any bureau, division, or agency time stamp, or by affidavit of any bureau, division, or agency officer that the application was received on or before Dec. 18, 1971.

An applicant for an Alaska Native allotment must prove with clear and credible evidence that he has been in substantially continuous use and occupancy of the land for a period of 5 years. Such use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not mere intermittent use. Substantially continuous use and occupancy, at least potentially exclusive of others, is not established where others have regularly used the subject land for grazing, hunting, trapping, and berrypicking, and where the applicant has never notoriously possessed the land in a manner affording notice to others that he claims the land.

A second hearing will not be afforded to an Alaska Native allotment applicant where the applicant was afforded an initial hearing in accordance with due process, and where nothing has been submitted which suggests that an additional hearing would produce a different result. Where an applicant fails to introduce all relevant evidence at an initial hearing when such evidence was available and could have been submitted, he waives his right to introduce that evidence. A further hearing is not necessary in the absence of a material issue of fact which, if proven, would alter the disposition of the appeal.

Ouzinkie Native Corp. v. Edward E. Ophelm, 83 IBLA 225 (Oct. 19, 1984)

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

An applicant for a Native allotment who has satisfied the requirements of the Alaska Native Allotment Act of 1906 possesses a valid existing right.

The Department of the Interior does not retain jurisdiction to hear a contest brought by the State of Alaska against an applicant for a Native allotment where the lands sought by the Native were tentatively approved to the State following commencement of the Native's use and occupancy. Subsec. 906(c)(1) of the Alaska National Interest Lands Conservation Act, confirming all tentative approvals of State land selections subject to valid existing rights, conveyed the lands in dispute out of Federal ownership so as to remove the contest from the Department's jurisdiction.

Where title to lands tentatively approved to the State of Alaska is conveyed to the State pursuant to the Alaska National Interest Lands Conservation Act, the Department of the Interior, although it loses jurisdiction over said lands, has a duty to Native allotment applicants whose claims lie within such tentatively approved lands to make a preliminary validity determination as to such applications and to pursue recovery of such lands where appropriate.

State of Alaska v. Marcia E. Thorson, State of Alaska v. Phyllis Westcoast (On Reconsideration), 83 IBLA 237 (Oct. 22, 1984) 91 I.D. 331

The Department lacks jurisdiction to adjudicate the rights of claimants to land after it is patented. Although a hearing in the Department may be required where land is patented in derogation of the rights of a conflicting applicant, a hearing is inappropriate where at the time of patent the conflicting application has been relinquished and the statutory authority for such applications has been repealed.

Peter Andrews, Sr. (On Reconsideration), 83 IBLA 344 (Nov. 7, 1984)

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (1980), if the land is included in a State selection application but is not within a core township of a Native village. Under sec. 905(a)(4), such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 - 270-3 (1970).

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a State selection application, it is improper, as a general matter, to reject the application without affording the applicant notice and opportunity for a hearing.

The Department of the Interior does not retain jurisdiction to hear a contest brought by the State of Alaska against an applicant for a Native allotment where the lands sought by the Native were tentatively approved to the State following commencement of the Native's use and occupancy. Subsec. 906(c)(1) of the Alaska National Interest Lands Conservation Act, confirming all tentative approvals of State land selections subject to valid existing rights, conveyed the lands in dispute out of Federal ownership so as to remove the contest from the Department's jurisdiction.

Where title to lands tentatively approved to the State of Alaska is conveyed to the State pursuant to the Alaska National Interest Lands Conservation Act, the Department of the Interior, although it loses jurisdiction over said lands, has a duty to Native

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

allotment applicants whose claims lie within such tentatively approved lands to make a preliminary validity determination as to such applications and to pursue recovery of such lands where appropriate.

Olganna Hanson, 84 IBLA 150 (Dec. 12, 1984)

NAVIGABLE WATERS

Generally

Where the Bureau of Land Management has redetermined that water bodies which are the subject of an appeal are navigable, and where the Board finds that the facts in the record upon which the Bureau of Land Management made its redetermination meet the essential elements of navigability, and where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable.

Appeal of Bristol Bay Native Corp., 4 ANCAB 355 (July 31, 1980) 87 I.D. 341

Appeal of Kuspuk Ltd., 5 ANCAB 139 (Dec. 18, 1980)

Doyon, Ltd., 5 ANCAB 354 (July 24, 1981)

Northway Natives, Inc., 6 ANCAB 1 (Aug. 5, 1981) 88 I.D. 711

Doyon, Ltd., 6 ANCAB 138 (Oct. 30, 1981)

Doyon, Ltd. and NTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

Under sec. 901(b) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1631(b) (Supp. IV 1980), no appeals board of the Department of the Interior has the authority to determine the navigability of water covering a parcel of submerged land selected by a Native corporation unless a determination by the Bureau of Land Management that the water covering a parcel of submerged land is not navigable was validly appealed to such a board prior to Dec. 2, 1980. A premature appeal does not constitute a valid appeal within the meaning of this provision.

Bristol Bay Native Corp., 71 IBLA 318 (Mar. 23, 1983)

OIL AND GAS LEASES

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

"Leasing." The word "leasing" in the phrase "no leasing * * * leading to production of oil and gas" in sec. 1003 of the Alaska National Interest Lands Conservation Act includes leasing for the purpose of exploratory activities.

Robert W. Covington et al., 55 IBLA 232 (June 22, 1981) 88 I.D. 601

Dome Petroleum Corp. et al., 57 IBLA 310 (Aug. 31, 1981)

ALASKA--Continued

OIL AND GAS LEASES--Continued

Kenneth Nayakko, 64 IBLA 357 (June 15, 1982)

The DOI Fiscal 1981 Appropriations Act authority to lease oil and gas in the National Petroleum Reserve--Alaska (NPR-A) is authority independent of the Mineral Lands Leasing Act of 1920 and applicable to all lands within the boundaries of the NPR-A. The Department sought such authority and the two Appropriations Committees worked to establish such independent authority.

Authorization for Oil and Gas Leasing on the National Petroleum Reserve--Alaska, M-36940 (Oct. 15, 1981) 91 I.D. 1

Under sec. 1008 of the Alaska National Interest Lands Conservation Act, the identification of areas in Alaska for possible designation as favorable petroleum geological provinces may be reasonably based on the known geologic provinces or sedimentary basins notwithstanding the large areas of land encompassed by such provinces or basins.

Where the designation of the Cape Lisburne Favorable Petroleum Geological Province (FPGP) is attacked as not being supported by the direct evidence criteria announced in the Dec. 4, 1981, Federal Register notice, that designation will be upheld where, on appeal, the rationale for that designation is supplied indicating that direct evidence supports the designation of the entire Arctic Slope Province as an FPGP and that the Cape Lisburne area is the only part of that larger area available for leasing, since both the other parts of the Arctic Slope Province--the National Petroleum Reserve--Alaska and the area north of 68 degrees N. latitude and east of the western boundary of the National Petroleum Reserve--Alaska--are excluded from leasing under sec. 1008 of the Alaska National Interest Lands Conservation Act.

Aguerre Oil, Inc., Kenneth J. Gain, 77 IBLA 181 (Nov. 18, 1983)

POSSESSORY RIGHTS

The right to a Native allotment vests only upon the completion of 5 years' use or occupancy of land and the filing of an application therefor. Absent the timely filing of an allotment application, where a Native, who has completed the requisite 5 years' use, ceases to use or occupy the land and permits the land to return to an unoccupied state, the right to an allotment of that land also terminates, regardless of the subjective intent of the Native. In a similar fashion, all possessory rights afforded by the Act of May 17, 1884, 23 Stat. 24, 26, and other similar Acts, terminate upon the cessation of actual use or occupancy. Such lands then become open to the initiation of rights by others.

United States v. Donald E. Flynn and Heirs of Henry Orock (Deceased), 53 IBLA 208 (Mar. 18, 1981) 88 I.D. 373

A claimant's occupancy of a trade and manufacturing site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice and did not file a notice of location or purchase application prior to the withdrawal.

ALASKA--Continued

POSSESSORY RIGHTS--Continued

Stuart Grant Ragstad, 55 IBLA 223 (June 18, 1981)

Under sec. 8 of the Organic Act of May 17, 1884, 23 Stat. 24, settlement on the public lands of Alaska vested in the settler possessory rights in that land that could be asserted against every one except the Government. Such occupancy was inoperative to prevent the United States from reserving the land for its own uses. However, where it is established that the Government intended to except those in possession from the scope of a reservation, the reservation shall not be construed as cutting off those possessory rights.

Pan Alaska Fisheries, Inc., 74 IBLA 295 (July 27, 1983)

A claimant's occupancy of a trade and manufacturing site prior to a withdrawal does not establish a "valid existing right" excepted from Native village selection where credit for his occupancy prior to the selection cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice with BLM and did not file a notice of location with BLM prior to the selection.

Thomas Johnson, 77 IBLA 20 (Oct. 31, 1983)

The right to a Native allotment vests only upon the completion of 5 years' use or occupancy of land and the filing of an application therefor. Where a Native files an application that BLM rejects before completion of the 5-year period, the Native has not acquired a vested right and maintains subsequent right to the land only by continuing possession of the land sufficient to put others on notice of his claim. If the Native does so, upon later reinstatement of the rejected application he or she will acquire a vested right to the application.

Pedro Bay Co., 78 IBLA 196 (Jan. 5, 1984)

Where a pending application for a trade and manufacturing site became approved by passage of sec. 1328 of the Alaska National Interest Lands Conservation Act, 16 U.S.C. § 3215 (1982), other sections of the Act of May 14, 1898, as amended, 43 U.S.C. §§ 687a-687a-6 (1982), relating to payment of survey costs and purchase price remained in effect as to the application and satisfaction of these requirements is necessary before the land embraced by such an application can be patented.

Donna J. Waidlow, 82 IBLA 247 (Aug. 28, 1984)

SHORE SPACE RESERVES AND RESTRICTIONS

Under 43 CFR 2561.1(b), an application for a Native allotment that extends more than 160 rods along the shore of any navigable waters shall be considered a request for a waiver of the 160-rod limitation on such allotment. Upon a determination that such an allotment meets the requirements of the Native Allotment Act, BLM may either waive the limitation as provided by 43 CFR 2094.2(a) or decrease the size of the approved allotment.

Fatsailand, Inc., et al., 77 IBLA 347 (Dec. 5, 1983)

ALASKA--Continued

STATEHOOD ACT

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

If BLM determines that a Native allotment application that conflicts with a state selection application may be allowed without a Government contest against the Native allotment applicant, it must notify the State of Alaska of this determination. Upon such notification, the State, if dissatisfied, has an election of remedies. It may initiate a private contest within the time period prescribed in the notice, or it may appeal the decision of BLM, after it becomes final, to this Board. If the Board concludes that the Native's application is deficient, it will order the initiation of a Government contest. But if it finds the allotment application acceptable, it will order the issuance of a patent, if all else be regular.

Daniel Johansen (On Reconsideration), 54 IBLA 295 (Apr. 29, 1981)

Mary A. A. Aspinwall (On Reconsideration), 66 IBLA 367 (Aug. 27, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording his notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

A selection by the State of Alaska under sec. 6(b) of the Alaska Statehood Act is limited to public lands which are "vacant, unappropriated, and unreserved." A right-of-way for the Alaska Railroad across the public lands constitutes an easement which does not separate the servient estate from the public domain with the result that the land may be available for selection subject to reservation of a railroad right-of-way in any patent issued to the State.

The Alaska Railroad, 65 IBLA 376 (July 20, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land.

William M. Tennyson, Jr., 66 IBLA 38 (July 23, 1982)

Where a Native allotment applicant alleges use and occupancy prior to the filing of a State selection application, it is improper to reject his application without affording him notice and opportunity for a hearing. The Bureau of Land Management must initiate contest proceedings against the application and give

ALASKA--Continued

STATEHOOD ACT--Continued

the State of Alaska an opportunity to participate as a party to such contest.

Walter Titus (On Reconsideration), 77 IBLA 321 (Dec. 1, 1983)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a State selection application, it is improper, as a general matter, to reject the application without affording the applicant notice and opportunity for a hearing.

Oleanna Hansen, 84 IBLA 150 (Dec. 12, 1984)

TOWNSITES

The Alaska townsite laws, 43 U.S.C. §§ 732-736 (1970), were repealed by the Federal Land Policy and Management Act of 1976, sec. 703(a), 90 Stat. 2789. The initiation of an occupancy claim, pursuant to the townsite laws, after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right.

Marko and Yarrow Lewis, 46 IBLA 257 (Mar. 27, 1980)

Where lands have been identified as being within a townsite by inclusion in an approved U.S. survey of the exterior boundaries of the townsite; where the townsite trustee duly receives title to these lands by patent and opens the area to settlement under the townsite laws; and where individuals, acting in reliance on explicit statements by the trustee that it is legal to do so, timely initiate settlement under governing Departmental regulations, a decision by the trustee to cancel the settlers' claims in order to reduce the size of the townsite to conform with the statutory limit will be vacated, and he will be directed instead to correct the patent by eliminating lands other than those occupied by the settlers.

A Native village corporation has no interest in lands included in a townsite prior to the enactment of the Alaska Native Claims Settlement Act, as the lands were segregated prior to this date so that ANCSA did not withdraw the lands for selection by the corporation. Accordingly, the rights of settlers and of the municipality which derive from an entitlement created prior to the Alaska Native Claims Settlement Act, are superior to the corporation's rights.

The townsite laws were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790, and the initiation of an occupancy claim pursuant to any of the repealed laws after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right which would survive FLPMA.

Stephen Kenyon et al., 51 IBLA 368 (Dec. 30, 1980)

Where the descriptive language accompanying a United States survey of the exterior of an Alaskan townsite notes expressly that the "townsite" of Ouzinkie is comprised of three tracts ("A, B, and C") and mentions elsewhere a fourth tract ("D") as being part of the "village" of Ouzinkie, Tract "D" is not properly regarded as being within the "townsite" under

ALASKA--Continued

TOWNSITES--Continued

the regulations, and approval of the survey does not segregate it as part of the townsite.

Where a tract of land (Tract "D") was included in a patent to a townsite trustee of four tracts (Tracts "A, B, C, and D"), but the trustee had not applied for or entered Tract "D," and where the inclusion and patenting of Tract "D" resulted in the transfer of acreage in excess of the maximum allowed by statute to be included in the townsite, the patent was erroneous insofar as it included Tract "D" and should be corrected by eliminating that tract.

Stephen Kenyon et al. (On Reconsideration), 65 IBLA 48 (June 23, 1982)

The Alaska townsite laws, 43 U.S.C. §§ 732-736 (1970), were repealed by the Federal Land Policy and Management Act of 1976, sec. 703(a), 90 Stat. 2789. The initiation of an occupancy claim, pursuant to the townsite laws, after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right. No right was established where the only "improvement" prior to repeal consisted of clearing an area for site preparation in 1969, which clearing had thereafter revegetated with brush, and there was no other occupancy, use, or possession of the land until 1980.

Roland F. & Jackie H. Moody (Appellants), Alakanuk Village, Alaska (Respondent), 67 IBLA 121 (Sept. 14, 1982)

The repeal of 43 U.S.C. § 733 (1970) (formerly 48 U.S.C. § 355a (1952)) by sec. 703(a) of the Federal Land Policy and Management Act of 1976 was intended to have future effect and not to alter rights or restrictions that had accrued under the provisions of the Alaska Native Townsite Act.

There is no indication of congressional intention that the restrictions upon land acquired under the Alaska Native Townsite Act be terminated upon a gift of that land from one Alaska Native to another.

Juanita Belsheimer v. Assistant Secretary for Indian Affairs, 11 IBIA 155 (Apr. 14, 1983) 90 I.D. 165

TRADE AND MANUFACTURING SITES

In a contest proceeding the Government has the burden of establishing a prima facie case of noncompliance with the requirements for trade and manufacturing sites. The burden then shifts to the applicant to show by a preponderance of the evidence that he used, occupied, and improved the site for trade, manufacture, or other productive industry.

A claimant of a trade and manufacturing site must show that at the time of filing his application to purchase he was engaged in trade, manufacture, or other productive industry in connection with the site. While it is not necessary for the claimant to show that all functions of the business were carried on at the site, he must show a bona fide commercial enterprise from which he reasonably hoped to derive a profit; mere preparation for a prospective business is not sufficient under the statute.

United States v. Viggo Thor Brandt-Erichsen, 46 IBLA 239 (Mar. 27, 1980)

ALASKA--Continued

TRADE AND MANUFACTURING SITES--Continued

A claimant's occupancy of a trade and manufacturing site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice and did not file a notice of location or purchase application prior to the withdrawal.

Equitable adjudication of an application to purchase a trade manufacturing site claim filed at least 12 years after the land has been withdrawn must be denied as substantial compliance with the law has not been made where neither occupancy of the site prior to the withdrawal nor after the withdrawal could validly be considered under the law.

Stuart Grant Ranstad, 55 IBLA 223 (June 18, 1981)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

The use and improvement of land in a trade and manufacturing site for the pasturing of horses, the placement of advertising signs for off-site businesses, or the presence of roads which merely cross the land to give access to other property, cannot serve to qualify the claimant to receive title to the site, as all those uses are controlled by other provisions of law and regulation, and are not cognizable as the conduct of "trade, manufacture, or other productive industry" on the site.

Where the claimant to a trade and manufacturing site, which was located for the benefit of businesses being conducted on her husband's adjacent unpatented homestead, relinquishes approximately half the land and the primary improvements on the site so that those lands may be included in the survey of the homestead, her trade and manufacturing site purchase application must be rejected if the remaining lands are not actually occupied by improvements and used and needed in the prosecution of the businesses.

One who is not the owner of the business enterprise which is to be served by activities conducted on a trade and manufacturing site is not a qualified claimant of the site.

United States v. Evelyn M. Bunch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

Where lands embraced by a pending application for a trade and manufacturing site were included in a unit of the National Park System by sec. 201 of the Alaska National Interest Lands Conservation Act (ANILCA), 94 Stat. 2377, 16 U.S.C. § 410hh (Supp. V 1981), the trade and manufacturing site application was not legislatively approved by sec. 1320(a)(1) of ANILCA, 94 Stat. 2489, 16 U.S.C. § 3215(a)(1) (Supp. V 1981), but, rather, must be adjudicated under the laws pursuant to which it was initiated.

ALASKA--Continued

TRADE AND MANUFACTURING SITES--Continued

Where land is within a grazing lease issued pursuant to the Act of Mar. 4, 1927, as amended, 43 U.S.C.A. § 316 (West Supp. 1982), and that fact is properly noted on the public land records, the land is segregated from entry as a trade and manufacturing site under sec. 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1976). Where, however, the record indicates that the Bureau of Land Management treated the entryman's notice of location of a settlement claim as a petition for determination under 43 CFR 4230.1 and approved it to the extent of any conflict with the grazing lease, the lease will not be a bar to the initiation of that settlement claim.

Where a husband and wife are engaged in the same productive industry, they are properly treated as an "association of citizens" for the purposes of sec. 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1976), and, as such, are limited to a single trade and manufacturing site. However, where an applicant asserts otherwise, it is improper, to reject an application on this ground without affording the applicant an opportunity for a hearing to show that the spouses were, in fact, engaged in conducting separate productive enterprises.

Henriette Roberts Yaden, 70 IBLA 171 (Jan. 20, 1983)

The Act of Apr. 29, 1950, 43 U.S.C. § 687a-1 (1976), requires a notice of location to be filed with BLM within 90 days from initiation of a trade and manufacturing site claim. Unless such notice is filed in the proper BLM office within the time prescribed, no credit may be given for occupancy before such filing.

Pan Alaska Fisheries, Inc., 74 IBLA 295 (July 27, 1983)

A claimant's occupancy of a trade and manufacturing site prior to a withdrawal does not establish a "valid existing right" excepted from Native village selection where credit for his occupancy prior to the selection cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice with BLM and did not file a notice of location with BLM prior to the selection.

Thomas Johnson, 77 IBLA 20 (Oct. 31, 1983)

Where a pending application for a trade and manufacturing site became approved by passage of sec. 1328 of the Alaska National Interest Lands Conservation Act, 16 U.S.C. § 3215 (1982), other sections of the Act of May 14, 1898, as amended, 43 U.S.C. §§ 687a-687a-6 (1982), relating to payment of survey costs and purchase price remained in effect as to the application and satisfaction of these requirements is necessary before the land embraced by such an application can be patented.

Where an applicant for a trade and manufacturing site alleges that she timely mailed a notice of appeal of a decision setting forth estimated cost of survey but there is no evidence to indicate that it was ever received by the proper Bureau of Land Management office, the applicant must bear the consequences.

Donna J. Waidtlow, 82 IBLA 247 (Aug. 28, 1984)

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

GENERALLY

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

Robert B. Covington et al., 55 IBLA 232 (June 22, 1981) 88 I.D. 601

Dome Petroleum Corp. et al., 57 IBLA 310 (Aug. 31, 1981)

Kenneth Navarro, 64 IBLA 357 (June 15, 1982)

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2485 (1980), Congress provided that all Native allotment applications which were pending before the Department on Dec. 18, 1971, which describe either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve--Alaska, are approved on the 180th day following the effective date of that Act subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office to be held for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, subject to the filing of a protest before the end of the 180-day period.

Where an Alaska Native has applied for allotment of two parcels, and conveyance of one of those parcels has been timely protested by persons who dispute the applicant's entitlement thereto and assert claims to the improvements thereon, the case must be adjudicated pursuant to the requirements of the Act of May 17, 1906, and other applicable law, necessitating, inter alia, notice and an opportunity for a hearing.

Bill Nakeferoff, 62 IBLA 170 (Mar. 8, 1982)

Where lands embraced by a pending application for a trade and manufacturing site were included in a unit of the National Park System by sec. 201 of the Alaska National Interest Lands Conservation Act (ANILCA), 94 Stat. 2377, 16 U.S.C. § 410hh (Supp. V 1981), the trade and manufacturing site application was not legislatively approved by sec. 1328(a)(1) of ANILCA, 94 Stat. 2489, 16 U.S.C. § 3215(a)(1) (Supp. V 1981), but, rather, must be adjudicated under the laws pursuant to which it was initiated.

Henriette Roberts Yaden, 70 IBLA 171 (Jan. 20, 1983)

Although sec. 901 of the Alaska National Interest Lands Conservation Act provides that the Bureau of Land Management is the only agency in the Department of the Interior with authority to determine navigability of waters covering a parcel of submerged land selected by a Native corporation, and such determination is final unless it is validly challenged, on appeal, prior to Dec. 2, 1980, where an appeal was filed in 1979 challenging the determination of navigability of certain waters, the matter will be referred to the

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT--Continued

GENERALLY--Continued

Hearings Division for a hearing before an Administrative Law Judge on the question of the navigability of the waters in question.

Doyon Ltd., 70 IBLA 302 (Jan. 28, 1983)

The Department of the Interior retains jurisdiction to hear a contest brought by the State of Alaska against an applicant for a Native allotment where the lands sought by the Native were tentatively approved to the State following the commencement of the Native's use and occupancy. Sec. 906(c) of the Alaska National Interest Lands Conservation Act, providing for confirmation of all tentative approvals of State land selections subject to valid existing rights, does not convey the lands in dispute out of Federal ownership so as to remove the contest from the Department's jurisdiction.

State of Alaska v. Marcia K. Thorson, State of Alaska v. Phyllis Westcoast, 76 IBLA 264 (Oct. 18, 1983)

A conveyance of land to a Native village corporation under an exchange pursuant to sec. 1431(g)(2) of the Alaska National Interest Lands Conservation Act, 94 Stat. 2539 (1980), may proceed despite the objection of a member of an Indian tribe organized pursuant to sec. 16 of the Indian Reorganization Act, 25 U.S.C. § 476 (1976), where the appellant does not establish that the conveyance is subject to the consent of the tribe and that consent has been withdrawn or that the tribe has an interest in the land, amounting to a valid existing right, which would preclude the conveyance.

Charles Edwardsen, Jr., 77 IBLA 228 (Nov. 28, 1983)

Sec. 1328(b) of the Alaska National Interest Lands Conservation Act provides that an applicant for a homestead may amend the land description contained in his application if said description designates land other than that which the applicant intended to claim at the time of application and if the description as amended describes the land originally intended to be claimed. If, following notice to the State of Alaska and all interested parties, a protest meeting the requirements of sec. 1328(a)(3) is timely filed against the application as amended, the legislative approval provided by sec. 1328(a)(1) shall not apply.

Richard L. Merritt, 78 IBLA 300 (Jan. 10, 1984)

Where a pending application for a trade and manufacturing site became approved by passage of sec. 1328 of the Alaska National Interest Lands Conservation Act, 16 U.S.C. § 3215 (1982), other sections of the Act of May 14, 1898, as amended, 43 U.S.C. §§ 687a-687a-6 (1982), relating to payment of survey costs and purchase price remained in effect as to the application and satisfaction of these requirements is necessary before the land embraced by such an application can be patented.

Donna J. Waidtlow, 82 IBLA 247 (Aug. 28, 1984)

The Department of the Interior does not retain jurisdiction to hear a contest brought by the State of Alaska against an applicant for a Native allotment where the lands sought by the Native were tentatively approved to the State following commencement of the Native's use and occupancy. Subsec. 906(c)(1) of the Alaska National Interest Lands Conservation Act, confirming all tentative approvals of State land selections subject to valid existing rights, conveyed the

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT--Continued

GENERALLY--Continued

lands in dispute out of Federal ownership so as to remove the contest from the Department's jurisdiction.

State of Alaska v. Marcia K. Thorson, State of Alaska v. Phyllis Westcoast (On Reconsideration), 91 I.D. 331 83 IBLA 237 (Oct. 22, 1984)

Oleanna Hansen, 84 IBLA 150 (Dec. 12, 1984)

The Department lacks jurisdiction to adjudicate the rights of claimants to land after it is patented. Although a hearing in the Department may be required where land is patented in derogation of the rights of a conflicting applicant, a hearing is inappropriate where at the time of patent the conflicting application has been relinquished and the statutory authority for such applications has been repealed.

Peter Andrews, Sr. (On Reconsideration), 83 IBLA 344 (Nov. 7, 1984)

DUTY OF DEPARTMENT OF THE INTERIOR TO NATIVE ALLOTMENT APPLICANTS

Where title to lands tentatively approved to the State of Alaska is conveyed to the State pursuant to the Alaska National Interest Lands Conservation Act, the Department of the Interior, although it loses jurisdiction over said lands, has a duty to Native allotment applicants whose claims lie within such tentatively approved lands to make a preliminary validity determination as to such applications and to pursue recovery of such lands where appropriate.

State of Alaska v. Marcia K. Thorson, State of Alaska v. Phyllis Westcoast (On Reconsideration), 91 I.D. 331 83 IBLA 237 (Oct. 22, 1984)

Oleanna Hansen, 84 IBLA 150 (Dec. 12, 1984)

OIL AND GAS LEASES

Favorable Petroleum Geological Provinces

Under sec. 1008 of the Alaska National Interest Lands Conservation Act, the identification of areas in Alaska for possible designation as favorable petroleum geological provinces may be reasonably based on the known geologic provinces or sedimentary basins notwithstanding the large areas of land encompassed by such provinces or basins.

Where the designation of the Cape Lisburne Favorable Petroleum Geological Province (FPGP) is attacked as not being supported by the direct evidence criteria announced in the Dec. 4, 1981, Federal Register notice, that designation will be upheld where, on appeal, the rationale for that designation is supplied indicating that direct evidence supports the designation of the entire Arctic Slope Province as an FPGP and that the Cape Lisburne area is the only part of that larger area available for leasing, since both the other parts of the Arctic Slope Province--the National Petroleum Reserve--Alaska and the area north of 68 degrees N. latitude and east of the western boundary of the National Petroleum Reserve--Alaska--are excluded from leasing under sec. 1008 of the Alaska National Interest Lands Conservation Act.

Aaggera Oil, Inc., Kenneth J. Gais, 77 IBLA 101 (Nov. 16, 1983)

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT--Continued

SPECIAL LAND SETTLEMENTS

Under sec. 1427(e)(3)(A) of the Alaska National Interest Lands Conservation Act, 94 Stat. 2525, Ayakulik, Inc., a village corporation, is entitled only to the available lands within the "one mile square" exclusion of Public Land Order No. 1634.

Ayakulik, Inc., 82 IBLA 80 (July 17, 1984)

VALID EXISTING RIGHTS

An applicant for a Native allotment who has satisfied the requirements of the Alaska Native Allotment Act of 1906 possesses a valid existing right.

State of Alaska v. Marcia E. Thorson, State of Alaska v. Phyllis Westcoast (On Reconsideration), 83 IBLA 237 (Oct. 22, 1984) 91 I.D. 331

ALASKA NATIVE CLAIMS SETTLEMENT ACT

GENERALLY

The Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (1976), extinguished aboriginal occupancy claims of Alaska Natives effective Dec. 18, 1971, and a Native allotment application then pending in the Bureau of Land Management and purportedly "amended" after that date to include an additional 100 acres cannot be granted for the additional acreage unless it be shown that the amendment was pending in the Department prior to the repeal of the Act.

Ouzinkie Native Corp. v. Edvard Ophein, Sr., 65 IBLA 198 (Jan. 30, 1980)

A Native village corporation has no interest in lands included in a townsite prior to the enactment of the Alaska Native Claims Settlement Act, as the lands were segregated prior to this date so that ANCSA did not withdraw the lands for selection by the corporation. Accordingly, the rights of settlers and of the municipality which derive from an entitlement created prior to the Alaska Native Claims Settlement Act, are superior to the corporation's rights.

Stephen Kenyon et al., 51 IBLA 368 (Dec. 30, 1980)

Where a portion of the regional boundary between Ahtna and Doyon Regions has been described by the Secretary as following the Tetlin Reserve boundary, but the location of the Tetlin Reserve was and remains in dispute, Tetlin Native Corp. cannot now be held to a boundary which delineates their entire land entitlement and sole benefit under ANCSA when such boundary was determined by an agreement to which Tetlin was not a party.

Insofar as a segment of the Doyon-Ahtna boundary was located in 1972 along a portion of the Tetlin Reserve boundary which was unadjudicated, and which is now disputed by Tetlin, the Ahtna-Doyon boundary remains the boundary of Tetlin Reserve but is subject to resolution of the issues raised by Tetlin. If Tetlin prevails and the boundary as delineated by BLM is found to be in error, the regional boundary will continue to be the Reserve boundary, wherever the latter is found to be correctly located.

Where there appears from the appeal record to have been an ongoing boundary dispute, culminating in this appeal, between Tetlin Native Corp. and Departmental officials, and where election to take Reserve lands did

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

GENERALLY--Continued

not require boundary description, the Board cannot conclude that at the time of such election, Tetlin acquiesced by silence in the Reserve boundary as depicted on survey plats still current.

Tetlin Native Corp., 7 ANCAB 132 (June 18, 1982) 89 I.D. 303

Land withdrawn for an air navigation site is public land within the context of 43 U.S.C. § 1613 (1976 and Supp. IV 1980), and is proper for selection by a Native village.

Land withdrawn by Executive Order for use as an air navigation site by the Alaska Road Commission was not thereby severed from the public domain and under the terms of the order remained under the jurisdiction of the Secretary of the Interior. No interest, legal or equitable, could be conveyed to the Territory of Alaska by a withdrawal for an air navigation site. Interests in the public lands of the United States can be conveyed only pursuant to an Act of Congress.

Land used for an airport site which is conveyed to a Native village must be subsequently conveyed to the State of Alaska pursuant to 43 U.S.C. § 1613(c)(4) (Supp. IV 1980).

State of Alaska, Dept. of Transportation and Public Facilities, 67 IBLA 380 (Oct. 8, 1982)

While an Alaska Native village corporation, organized for profit under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (1976), does not qualify for a free-use exemption under the Materials Disposal Act of 1947, as amended, 30 U.S.C. § 601 (1976), it may apply to purchase sand and gravel under that Act and the mineral sales regulations at 43 CFR Part 3610.

Ukpeagvik Inupiat Corp., 68 IBLA 359 (Nov. 22, 1982)

The Alaska Native Claims Settlement Act provides that a Native village corporation shall select all of the township or townships in which the village is located. The language is imperative, not permissive. If land within the "core" township is available for selection, it must be selected.

Chefornak, Inc., 75 IBLA 242 (Aug. 24, 1983)

Withdrawals remain in force until specifically revoked or modified by competent authority. The Alaska National Interest Lands Conservation Act, P.L. 96-478 (94 Stat. 2371), does not affect the existence or validity of Public Land Order No. 5250.

Larry McMaster et al., 76 IBLA 370 (Oct. 25, 1983)

The Department lacks jurisdiction to adjudicate the rights of claimants to land after it is patented. Although a hearing in the Department may be required where land is patented in derogation of the rights of a conflicting applicant, no hearing is appropriate where at the time of patent the conflicting application has been relinquished and the statutory authority for such applications has been repealed.

Peter Andrews, Sr., 77 IBLA 316 (Nov. 30, 1983)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

GENERALLY--Continued

An Alaska Native allotment application is deemed pending before the Department of the Interior on Dec. 18, 1971, if it was filed in any bureau, division, or agency of the Department on or before Dec. 18, 1971. Evidence of pendency before the Department on or before Dec. 18, 1971, shall be satisfied by any bureau, division, or agency time stamp, or by affidavit of any bureau, division, or agency officer that the application was received on or before Dec. 18, 1971.

An applicant for an Alaska Native allotment must prove with clear and credible evidence that he has been in substantially continuous use and occupancy of the land for a period of 5 years. Such use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not mere intermittent use. Substantially continuous use and occupancy, at least potentially exclusive of others, is not established where others have regularly used the subject land for grazing, hunting, trapping, and berrypicking, and where the applicant has never notoriously possessed the land in a manner affording notice to others that he claims the land.

Ouzinkie Native Corp. v. Edward M. Ophein, 83 IBLA 225 (Oct. 19, 1984)

The Department lacks jurisdiction to adjudicate the rights of claimants to land after it is patented. Although a hearing in the Department may be required where land is patented in derogation of the rights of a conflicting applicant, a hearing is inappropriate where at the time of patent the conflicting application has been relinquished and the statutory authority for such applications has been repealed.

Peter Andrews, Sr. (On Reconsideration), 83 IBLA 344 (Nov. 7, 1984)

ABORIGINAL CLAIMS

The provisions of the Alaska Native Claims Settlement Act defining the class of persons entitled to share in benefits under the Act are not ambiguous so as to require reference to the legislative history to determine whether persons becoming United States citizens after Dec. 18, 1971, the effective date of the Act, are entitled to be enrolled.

United States v. Alice Marion Bowen (Edenshaw) and Phyllis Josephine Kimball, 8 IBLA 218 (Feb. 12, 1981) 88 I.D. 261

A regional corporation filing an application under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (1976), may not rely upon aboriginal right as a basis for conveyance of title to the bed of the lake, since the act under which the application was filed extinguishes all such rights. A regional selection application for land beneath a navigable lake is properly rejected, since title to the bed passed to the State of Alaska under the Statehood Act.

Bristol Bay Native Corp., 71 IBLA 318 (Mar. 23, 1983)

ADMINISTRATIVE PROCEDURE

Generally

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Generally--Continued

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant before the Board withdraws its appeal.

Appeal of Elizabeth Gardner, 4 ANCAB 215 (Apr. 23, 1980)

43 CFR 4.913(b) provides:

Where an appeal is before the Alaska Native Claims Appeal Board, and no unit of the Department of the Interior is a party to the appeal, no agreement between parties which may require future action or forbearance from action by the Department of the Interior shall bind the Department unless such agreement is approved by the Alaska Native Claims Appeal Board, or the Secretary, or his delegate.

Appeal of Northway Natives, Inc., 4 ANCAB 350 (July 30, (1980)

State of Alaska, 7 ANCAB 203 (June 25, 1982)

An agreement between selecting Native corporations and a Federal agency, on lands actually used by the Federal agency, cannot be enforced in lieu of a § 3(e) determination by the Bureau of Land Management to compel conveyance to the Native corporations in accord with the agreement. ANCSA by clear language in § 3(e) mandates a Secretarial determination. While the Secretary may delegate, he may not be compelled to relinquish his statutory duty to third parties.

Where the required § 3(e) determination is crucial to conveyance, where the affected Federal agency and all affected Native corporations agree on the identification of lands actually used by the agency, where the record discloses no inconsistency between the agreement and § 3(e), where the determination has already been delayed for a significant period of time by the lack of implementing regulations and the date of publication of final regulations cannot be ascertained, the Bureau of Land Management may make a § 3(e) determination, relying on the parties' agreement for factual data, in the absence of final regulatory guidelines.

Appeal of Paug-Vik, Inc., Ltd., 5 ANCAB 59 (Sept. 24, 1980) 87 I.D. 422

Absent reasons justifying continuance as to a specific issue therein, the appeal will be dismissed as to this issue when a stipulation includes a voluntary withdrawal of this issue by the appellant before the Board.

Yak-Tat Kwaan, Inc., 5 ANCAB 172 (Feb. 27, 1981)

Pursuant to the Departmental Manual 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to ANCSA and Secretary's Order No. 3029, as amended, lands selected by a Native corporation must be conveyed by the Bureau of Land Management notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

Oregon Portland Cement Co., 6 ANCAB 65 (Aug. 25, 1981) 88 I.D. 760

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Generally--Continued

Albert Hanan et al; J. A. Jack and Sons, Inc.; and Heaphill Brothers, Inc., 6 ANCAB 111 (Sept. 29, 1981)

In the absence of allegation of error in the decision itself, an allegation that an internal unpublished agency practice regarding predecision procedure was violated does not provide a basis for appeal to this Board.

The general language of 43 CFR 2650.0-2 and § 2(b) of the Alaska Native Claims Settlement Act that the settlement of claims of Alaska Natives be accomplished with maximum participation by Natives in decisions affecting their rights and property does not establish an appealable right to predecision notice of Departmental intent to reject a selection.

Departmental regulations at 43 CFR 2653.5, insofar as they prescribe a specified course of action including publication, referral, investigation, conferring, reporting, etc., by the Department with regard to selections of public lands made pursuant to § 14(h)(1) of the Alaska Native Claims Settlement Act, cannot apply when the selected lands are not public lands and the selection applications must be rejected at the outset.

Doyon, Ltd., 6 ANCAB 95 (Sept. 28, 1981) 88 I.D. 886

Doyon, Ltd., 6 ANCAB 129 (Oct. 22, 1981)

Where, in a Bureau of Land Management decision to issue conveyance, a water body excluded from the selection application on the basis that it is navigable is expressly "considered" nonnavigable and the underlying submerged lands thus deemed selected by the applicant, the Bureau of Land Management has made a navigability determination with regard to the subject water body.

In the absence of an issue regarding error in the decision itself, allegations of irregularities or deficiencies in the predecision procedure, such as noncompliance with the pertinent section of ANCSA and its implementing regulations, do not provide a basis for appeal to this Board.

Doyon, Ltd., 6 ANCAB 219 (Dec. 14, 1981) 88 I.D. 1086

Doyon, Ltd., 6 ANCAB 242 (Dec. 16, 1981) 88 I.D. 1105

Where in a decision to issue conveyance the Bureau of Land Management lists a number of water bodies and declares them to be the only water bodies within the conveyance area which are considered to be navigable, the language indicates, and the Board will find, that the BLM has, within the meaning of 43 CFR 2650.5-1(b), determined the navigability or nonnavigability of every water body within the conveyance area.

Doyon, Ltd. and NINT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

In the absence of an issue regarding error in the decision itself, allegations of irregularities or deficiencies in the predecision procedure, such as noncompliance with the pertinent section of ANCSA and its implementing regulations, do not provide a basis for appeal to this Board.

Doyon, Ltd. and NINT, Ltd., 6 ANCAB 359 (Feb. 18, 1982)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Generally--Continued

Thus, pursuant to 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to ANCSA and Secretary's Order No. 3029, as amended, lands selected by a Native corporation must be conveyed by BLM notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D. 293

Although sec. 901 of the Alaska National Interest Lands Conservation Act provides that the Bureau of Land Management is the only agency in the Department of the Interior with authority to determine navigability of waters covering a parcel of submerged land selected by a Native corporation, and such determination is final unless it is validly challenged, on appeal, prior to Dec. 2, 1980, where an appeal was filed in 1979 challenging the determination of navigability of certain waters, the matter will be referred to the Hearings Division for a hearing before an Administrative Law Judge on the question of the navigability of the waters in question.

Pursuant to the Departmental Manual, 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to the ANCSA and Secretary's Order No. 3029, as amended, lands selected by a Native corporation must be conveyed by the Bureau of Land Management notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

Doyon Ltd., 70 IBLA 302 (Jan. 28, 1983)

The Board of Land Appeals will not consider a general protest against a regulation where appellant has not shown how the appealed decision applied or implemented the regulation.

Doyon, Ltd., 74 IBLA 139 (July 6, 1983) 90 I.D. 289

Prior to the conveyance of public lands subject to valid existing rights not leading to acquisition of title, but recognized under the Alaska Native Claims Settlement Act, there is no basis for an administrative appeal to enforce the valid existing rights claimed.

Manley Hot Springs Community Ass'n, 80 IBLA 313 (May 4, 1984)

Applications

Where conveyance of land to a Native corporation under ANCSA would effectively deny a pending application for a right-of-way across such land, the applicant is entitled to a decision expressly granting or denying the right-of-way and stating the reasons therefor.

Helbro Packing Co., 5 ANCAB 174 (Mar. 9, 1981) 88 I.D. 352

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Conveyances

When an entry is being excluded from a conveyance for the specific purpose of further adjudication, rather than as recognition of such entry pursuant to 43 CFR 2650.3-1(a), the conveyance document must so state.

Appeal of Ellen Demit, 4 ANCAB 217 (May 6, 1980) 87 I.D. 163
See also 4 ANCAB 240 (May 23, 1980)

Appeal of Leroy Isaac, 4 ANCAB 232 (May 7, 1980)
See also 4 ANCAB 242 (May 23, 1980)

Rights-of-way granted by Revised Statutes Sec. 2477 shall be identified in the decision to issue conveyance and in the conveyance document in the same manner as other third-party interests which the Bureau of Land Management need not adjudicate.

State of Alaska, Dept. of Transportation and Public Facilities, 5 ANCAB 307 (June 26, 1981) 88 I.D. 629

Where, in R.S. 2477, Congress made a grant of rights-of-way which became effective only upon valid acceptance of the grant, and where the Bureau of Land Management is prohibited from adjudicating the right-of-way to determine whether it is valid and has therefore "issued" within the meaning of § 14(g) of ANCSA, the holding in Appeals of State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1, 84 I.D. 349 (1977) [VLS 75-14/75-15], requiring identification of valid existing rights in the conveyance document is not applicable to R.S. 2477 rights-of-way.

Where the Bureau of Land Management seeks to reserve a § 17(b) public easement over an existing road constructed by the State of Alaska and claimed by the State as an R.S. 2477 right-of-way, the conveyance documents shall contain a provision specifying that the reserved public easement is subject to the claimed R.S. 2477 right-of-way, "if valid."

State of Alaska, Dept. of Transportation and Public Facilities (On Reconsideration), 7 ANCAB 108 (June 24, 1982) 89 I.D. 346

Decision to Issue Conveyance

A redetermination of navigability by the Bureau of Land Management which modifies a published decision is itself a decision requiring publication in accordance with 43 CFR 2650.7.

Appeal of Bristol Bay Native Corp., 4 ANCAB 222 (May 6, 1980) 87 I.D. 164

When the Bureau of Land Management redetermines its own finding of navigability which would result in a change from its published Decision to Issue Conveyance, and when the Bureau of Land Management has, or is given, jurisdiction to make such redetermination, then that redetermination is itself a decision requiring public notice through publication in accordance with 43 CFR 2650.7.

Redetermination by the Bureau of Land Management of navigability of water bodies while jurisdiction over the subject water bodies is in the Alaska Native Claims Appeal Board is not a "decision" of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Decisions by the Alaska Native Claims Appeal Board, made pursuant to its authority in 43 CFR 4.1(b)(5), are

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Decision to Issue Conveyance--Continued

not decisions of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Redetermination by the Bureau of Land Management from nonnavigability to navigability of water bodies not the subject of an appeal is a decision "proposing to convey lands," and notice thereof must be given pursuant to 43 CFR 2650.7(d).

Appeal of Bristol Bay Native Corp., 4 ANCAB 355 (July 31, 1980) 87 I.D. 341

Redetermination by the Bureau of Land Management of navigability of water bodies while jurisdiction over the subject water bodies is in the Alaska Native Claims Appeal Board is not a "decision" of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Appeal of Napaskiak, Ltd., 5 ANCAB 139 (Dec. 18, 1980)

Doyon, Ltd., 5 ANCAB 350 (July 24, 1981)

Northway Natives, Inc., 6 ANCAB 1 (Aug. 5, 1981) 88 I.D. 711

Doyon, Ltd., 6 ANCAB 138 (Oct. 30, 1981)

Departmental policy expressed in Secretary's Order No. 3029 and converted into the Departmental Manual at 601 DM 2.3 and 2.4 does not require the Bureau of Land Management to identify or adjudicate alleged third-party interests derived from sources other than the Federal Government or the State of Alaska.

Tetlin Native Corp., 5 ANCAB 197 (Apr. 14, 1981) 88 I.D. 442

Tetlin Native Corp., 5 ANCAB 212 (Apr. 15, 1981)

Rights-of-way granted by Revised Statutes Sec. 2477 shall be identified in the decision to issue conveyance and in the conveyance document in the same manner as other third-party interests which the Bureau of Land Management need not adjudicate.

State of Alaska, Dept. of Transportation and Public Facilities, 5 ANCAB 307 (June 26, 1981) 88 I.D. 629

The general language of 43 CFR 2650.0-2 and § 2(b) of the Alaska Native Claims Settlement Act that the settlement of claims of Alaska Natives be accomplished with maximum participation by Natives in decisions affecting their rights and property does not establish an appealable right to predecision notice of Departmental intent to reject a selection.

Doyon, Ltd., 6 ANCAB 95 (Sept. 28, 1981) 88 I.D. 886

Doyon, Ltd., 6 ANCAB 129 (Oct. 22, 1981)

Redetermination by the Bureau of Land Management of navigability of water bodies while jurisdiction over the subject water bodies is in the Alaska Native Claims Appeal Board is not a "decision" of the Bureau of Land

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Decision to Issue Conveyance--Continued

Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Where in a decision to issue conveyance the Bureau of Land Management lists certain water bodies and declares them to be the only water bodies within the conveyance area which are considered to be navigable, there is no requirement in ANCSA or its implementing regulations that the BLM list those water bodies, if any, which were determined to be nonnavigable and the beds of which are to be conveyed to the grantee corporation(s) and charged against its entitlement.

The Bureau of Land Management is not required to include in a decision to issue conveyance a written statement of reasons for its navigability determinations, if any.

Doyon, Ltd. and NTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

Where, in R.S. 2477, Congress made a grant of rights-of-way which became effective only upon valid acceptance of the grant, and where the Bureau of Land Management is prohibited from adjudicating the right-of-way to determine whether it is valid and has therefore "issued" within the meaning of § 14(g) of ANCSA, the holding in Appeals of State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1, 84 I.D. 349 (1977) [VLS 75-14/75-15], requiring identification of valid existing rights in the conveyance document is not applicable to R.S. 2477 rights-of-way.

Where the Bureau of Land Management seeks to reserve a § 17(b) public easement over an existing road constructed by the State of Alaska and claimed by the State as an R.S. 2477 right-of-way, the conveyance documents shall contain a provision specifying that the reserved public easement is subject to the claimed R.S. 2477 right-of-way, "if valid."

State of Alaska, Dept. of Transportation and Public Facilities (On Reconsideration), 7 ANCAB 188 (June 24, 1982) 89 I.D. 346

A claim of prior use of public lands does not preclude the selection and conveyance of the lands in accordance with the Alaska Native Claims Settlement Act, and a decision of the Bureau of Land Management to convey the public lands will be upheld against such a claim.

Manley Hot Springs Community Ass'n, 80 IBLA 313 (May 4, 1984)

Publication

A redetermination of navigability by the Bureau of Land Management which modifies a published decision is itself a decision requiring publication in accordance with 43 CFR 2650.7.

Appeal of Bristol Bay Native Corp., 4 ANCAB 222 (May 6, 1980) 87 I.D. 164

When the Bureau of Land Management redetermines its own finding of navigability which would result in a change from its published Decision to Issue Conveyance, and when the Bureau of Land Management has, or is given

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ADMINISTRATIVE PROCEDURE--Continued

Publication--Continued

jurisdiction to make such redetermination, then that redetermination is itself a decision requiring public notice through publication in accordance with 43 CFR 2650.7.

Redetermination by the Bureau of Land Management of navigability of water bodies while jurisdiction over the subject water bodies is in the Alaska Native Claims Appeal Board is not a "decision" of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Decisions by the Alaska Native Claims Appeal Board made pursuant to its authority in 43 CFR 4.1(b)(5), are not decisions of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Redetermination by the Bureau of Land Management from nonnavigability to navigability of water bodies not the subject of an appeal is a decision "proposing to convey lands," and notice thereof must be given pursuant to 43 CFR 2650.7(d).

Appeal of Bristol Bay Native Corp., 4 ANCAB 355 (July 31, 1980) 87 I.D. 341

Redetermination by the Bureau of Land Management of navigability of water bodies while jurisdiction over the subject water bodies is in the Alaska Native Claims Appeal Board is not a "decision" of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

Appeal of Nunapitchuk, Ltd., 5 ANCAB 139 (Dec. 18, 1980)

Doyon, Ltd., 5 ANCAB 354 (July 24, 1981)

Northway Natives, Inc., 6 ANCAB 1 (Aug. 5, 1981) 88 I.D. 711

Doyon, Ltd., 6 ANCAB 138 (Oct. 30, 1981)

Doyon, Ltd. and NTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

The general language of 43 CFR 2650.0-2 and § 2(b) of the Alaska Native Claims Settlement Act that the settlement of claims of Alaska Natives be accomplished with maximum participation by Natives in decisions affecting their rights and property does not establish an appealable right to predecision notice of Departmental intent to reject a selection.

Doyon, Ltd., 6 ANCAB 95 (Sept. 28, 1981) 88 I.D. 886

Doyon, Ltd., 6 ANCAB 129 (Oct. 22, 1981)

ALASKA NATIVE CLAIMS APPEAL BOARD

Appeals

Generally

Denial of an appeal brought prematurely does not prejudice any right an appellant may have to appeal a future decision of the Bureau of Land Management to convey lands, provided such appeal is properly filed pursuant to applicable regulations.

State of Alaska, 5 ANCAB 110 (Dec. 1, 1980)

Joseph C. Hanna, 5 ANCAB 343 (June 26, 1981)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Generally--Continued

Where the Federal Government grants a right-of-way for a Federal aid material site, that right-of-way, if valid, is a valid existing right within the meaning of § 14(g) of ANCSA, and as such a patent issued pursuant to ANCSA must contain provisions making it subject to the right-of-way.

If the terms of the right-of-way grants were violated, the rights-of-way would not be automatically terminated but would be subject to cancellation within the discretion of the Bureau of Land Management.

When the record before the Bureau of Land Management raises questions which may affect the validity of Federally created third-party interests, Secretary's Order No. 3029 requires the Bureau of Land Management to determine through adjudication, the validity of such interests.

Northway Natives, Inc., 5 ANCAB 147 (Jan. 5, 1981) 88 I.D. 14

The Board is bound by duly promulgated Departmental regulations as well as by Departmental policy expressed in Secretarial Orders published in the Federal Register or set forth in the Departmental Manual.

Oregon Portland Cement Co., 6 ANCAB 65 (Aug. 25, 1981) 88 I.D. 760

Albert Hanan et al; J. A. Jack and Sons, Inc.; and Hospill Brothers, Inc., 6 ANCAB 111 (Sept. 29, 1981)

In the absence of allegation of error in the decision itself, an allegation that an internal unpublished agency practice regarding predecision procedure was violated does not provide a basis for appeal to this Board.

Doyon, Ltd., 6 ANCAB 95 (Sept. 28, 1981) 88 I.D. 886

Doyon, Ltd., 6 ANCAB 129 (Oct. 22, 1981)

In the absence of an issue regarding error in the decision itself, allegations of irregularities or deficiencies in the predecision procedure, such as noncompliance with the pertinent section of ANCSA and its implementing regulations, do not provide a basis for appeal to this Board.

Doyon, Ltd., 6 ANCAB 219 (Dec. 14, 1981) 88 I.D. 1086

Doyon, Ltd., 6 ANCAB 242 (Dec. 16, 1981) 88 I.D. 1105

Doyon, Ltd. and SYNT, Ltd., 6 ANCAB 359 (Feb. 16, 1982)

The Alaska Native Claims Appeal Board is bound by an enactment of Congress which amends the Alaska Native Claims Settlement Act and also by provisions of an agreement which is specifically ratified and given the effect of Federal law.

The Board holds that when § 12(b)(4) of P.L. 94-204 mandates the conveyance of specifically described lands in fee simple to Cook Inlet Region, Inc., this Board is without authority to overturn a Congressional directive and cannot rule on the validity of a claimed

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Generally--Continued

interest in the same unconveyed lands which purports to defeat conveyance under the mandate of Congress.

Seldovia Native Ass'n, Inc., 6 ANCAB 369 (Feb. 26, 1982) 89 I.D. 74

The Board is bound by duly promulgated Departmental regulations as well as by Departmental policy expressed in Secretarial Orders published in the Federal Register or set forth in Departmental manuals.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D. 293

Decisions

The Board is bound by statements of policy made by the Secretary of the Interior and contained in a published Departmental Manual Release or in a Secretarial Order published in the Federal Register.

Appeal of Bruce McAllister, 4 ANCAB 294 (June 30, 1980) 87 I.D. 286

Appeal of Nels Pilakos, 4 ANCAB 307 (July 8, 1980)

Appeal of Alan Y. Hannon, 4 ANCAB 321 (July 24, 1980)

Appeal of C. E. Sharp, 4 ANCAB 328 (July 24, 1980)

Appeal of Raymond E. Koon, 4 ANCAB 335 (July 24, 1980)

Appeal of State of Alaska, 4 ANCAB 342 (July 24, 1980)

Appeal of State of Alaska, 5 ANCAB 4 (Aug. 20, 1980) 87 I.D. 366

Appeal of Daniel B. Winn, 5 ANCAB 19 (Aug. 25, 1980) 87 I.D. 372

Appeal of E. Walter Johnson et al., 5 ANCAB 32 (Aug. 25, 1980)

Appeal of Theodore A. Richards, 5 ANCAB 39 (Aug. 26, 1980)

Appeal of Judith P. Miller, 5 ANCAB 46 (Aug. 26, 1980)

When reservation of public easements under § 17(b) of ANCSA is appealed and the issue has been remanded to the Bureau of Land Management for easement conformance pursuant to regulations in 43 CFR 2650.4-7, and when the Bureau of Land Management subsequently renders a decision which modifies the public easements reserved, such modified decision supersedes the previous easement reservations and constitutes the final, appealable decision to reserve public easements under § 17(b) in a conveyance under ANCSA.

When the appealed issue of public easements reserved under § 17(b) of ANCSA, in the Decision to Issue Conveyance, has been remanded for easement conformance under regulations in 43 CFR 2650.4-7, and when the Bureau of Land Management's easement conformance decision modifying the Decision to Issue Conveyance is published, those § 17(b) easement issues appealed from the initial Decision to Issue Conveyance become moot.

Doyon, Ltd., 5 ANCAB 354 (July 24, 1981)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Decisions--Continued

Where an appeal challenges the location of an easement reserved in a Decision to Issue Conveyance, and the Bureau of Land Management then changes the location of such easement in a published amendment to the Decision to Issue Conveyance, any issue concerning the original easement location is moot and the appeal will be dismissed as to that issue.

A published amendment to a Decision to Issue Conveyance is itself an appealable decision, and where such amendment changes the location of an easement from that described in the original Decision to Issue Conveyance, the new location of the easement is subject to appeal.

Bay DeWilbiss (Wolverine Grazing Ass'n), 6 ANCAB 122 (Oct. 6, 1981)

The Alaska Native Claims Appeal Board is bound by an enactment of Congress which amends the Alaska Native Claims Settlement Act and also by provisions of an agreement which is specifically ratified and given the effect of Federal law.

The Board holds that when § 12(b)(4) of P.L. 94-204 mandates the conveyance of specifically described lands in fee simple to Cook Inlet Region, Inc., this Board is without authority to overturn a Congressional directive and cannot rule on the validity of a claimed interest in the same unconveyed lands which purports to defeat conveyance under the mandate of Congress.

Seldovia Native Ass'n, Inc., 6 ANCAB 369 (Feb. 26, 1982) 89 I.D. 74

Dismissal

Where an appellant does not include in a notice of appeal a claim of property interest in lands affected by the decision being appealed and a statement of the facts relied upon for standing, and such information is not filed within 30 days after filing the notice of appeal as required by regulations in 43 CFR 4.903, the appeal is subject to summary dismissal in the discretion of the Board.

Where an appellant fails to claim a property interest in land affected by the decision appealed, and further fails to file a statement of standing when specifically ordered to do so by this Board, the appeal will be summarily dismissed for failure to satisfy standing requirements in 43 CFR 4.903.

Appeal of Charles G. and Sara Hornberger, 4 ANCAB 112 (Jan. 9, 1980)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board files a voluntary dismissal.

Appeal of Bristol Bay Native Corp., 4 ANCAB 130 (Jan. 21, 1980)

Appeal of Doyon, Ltd., 4 ANCAB 132 (Jan. 31, 1980)

Appeal of Nels Swanberg, et al., 5 ANCAB 145 (Dec. 18, 1980)

Appeal of Bering Straits Native Corp., 5 ANCAB 146 (Dec. 18, 1980)

Doyon, Ltd., 5 ANCAB 163 (Jan. 14, 1981)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Dismissal--Continued

City of Kodiak, 5 ANCAB 297 (May 13, 1981)

State of Alaska, 7 ANCAB 1 (Mar. 8, 1982)

E. Gregory Read, 7 ANCAB 42 (Apr. 9, 1982)

State of Alaska, Dept. of Transportation & Public Facilities, 7 ANCAB 92 (June 10, 1982)

Danbit Hanlgii Corp., 7 ANCAB 94 (June 10, 1982)

Doyon, Ltd., 7 ANCAB 96 (June 10, 1982)

State of Alaska, 7 ANCAB 98 (June 10, 1982)

State of Alaska, 7 ANCAB 100 (June 10, 1982)

State of Alaska, 7 ANCAB 102 (June 10, 1982)

Inupiat, Inc., 7 ANCAB 104 (June 14, 1982)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when there remain therein no issues to be resolved by the Board.

Appeal of State of Alaska, Dept. of Transportation and Public Facilities, 4 ANCAB 147 (Feb. 27, 1980)

Appeal of Bristol Bay Native Corp., 4 ANCAB 160 (Feb. 28, 1980)

Appeal of Ellen Demit, 4 ANCAB 217 (May 6, 1980)
See also 4 ANCAB 240 (May 23, 1980) 87 I.D. 163

Appeal of Leroy Isaac, 4 ANCAB 232 (May 7, 1980)
See also 4 ANCAB 242 (May 23, 1980).

Appeal of Northway Natives, Inc., 4 ANCAB 238 (May 20, 1980)

Appeal of State of Alaska, Dept. of Transportation and Public Facilities, 4 ANCAB 244 (May 28, 1980)

Appeal of Terry Liboff, 4 ANCAB 314 (July 9, 1980)

Appeals of Jim Garfield, et al. and Richard Stoffel, 5 ANCAB 1 (Aug. 20, 1980)

Appeal of Matanuska-Susitna Borough, 5 ANCAB 54 (Sept. 10, 1980)

Doloyoheet, Inc., 5 ANCAB 165 (Feb. 20, 1981)

Ketchikan Public Utilities, 5 ANCAB 279 (Apr. 30, 1981)

Bay DeWilbiss (Wolverine Grazing Ass'n), 6 ANCAB 122 (Oct. 6, 1981)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board files a motion to dismiss.

Appeal of the State of Alaska, 4 ANCAB 171 (Feb. 29, 1980)

Appeal of Doyon, Ltd., 5 ANCAB 57 (Sept. 22, 1980)

Bering Straits Native Corp., 6 ANCAB 127 (Oct. 21, 1981)

State of Alaska, 6 ANCAB 230 (Dec. 15, 1981)

State of Alaska, 6 ANCAB 233 (Dec. 15, 1981)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Dismissal--Continued

State of Alaska, 6 ANCAB 236 (Dec. 15, 1981)

State of Alaska, 6 ANCAB 239 (Dec. 15, 1981)

State of Alaska, 6 ANCAB 256 (Dec. 21, 1981)

State of Alaska, 6 ANCAB 259 (Dec. 21, 1981)

State of Alaska, 6 ANCAB 262 (Dec. 21, 1981)

Northway Natives, Inc., 6 ANCAB 338 (Jan. 29, 1982)

A notice of appeal to the Alaska Native Claims Appeal Board must be dismissed where it is not timely filed since the requirement of timely filing is jurisdictional.

Appeal of Northway Natives, Inc., 4 ANCAB 207 (Apr. 21, 1980)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant before the Board withdraws its appeal.

Appeal of Elizabeth Gardner, 4 ANCAB 215 (Apr. 23, 1980)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when no issues remain to be resolved by the Board.

Appeal of Bristol Bay Native Corp., 4 ANCAB 222 (May 6, 1980) 87 I.D. 168

Absent reasons justifying continuance of his appeal, an appeal will be dismissed as to one appellant in a group of appellants when that individual withdraws his appeal. Therefore Paul Jones is hereby dismissed as an appellant in this matter.

Appeal of Lillie Pleasant et al., 4 ANCAB 234 (May 9, 1980)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board files a withdrawal of appeal.

Appeal of NANA Regional Corp., Inc., 4 ANCAB 236 (May 12, 1980)

Absent reasons justifying continuance of the appeal as to a specific issue therein, the issue will be dismissed when resolved by settlement stipulation approved by the Alaska Native Claims Appeal Board.

Appeal of Northway Natives, Inc., 4 ANCAB 247 (June 2, 1980)

Appeals of Dot Lake Native Corp. and Doyon, Ltd., 4 ANCAB 318 (July 15, 1980)

Appeal of Northway Natives, Inc., 4 ANCAB 350 (July 30, (1980)

State of Alaska, 7 ANCAB 203 (June 25, 1982)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Dismissal--Continued

Where the Bureau of Land Management has issued a decision that a Native village has a dual core township, and the decision does not purport to convey lands but announces that action on the village selection applications will be taken in the future, an appeal from such decision on the grounds that the Bureau of Land Management failed to exclude certain third-party rights from the Native village selection is premature and will be denied.

State of Alaska, 5 ANCAB 118 (Dec. 1, 1980)

Where one issue on appeal is that the Bureau of Land Management erred by excluding certain lands from conveyance without adjudicating the status of such lands, and the appellant and the Bureau of Land Management stipulate to withdrawal of the appeal on condition that the Bureau of Land Management will later adjudicate the status of such lands, then the issue is resolved and the Board will order partial dismissal of the appeal as to that issue.

Northway Natives, Inc., 5 ANCAB 123 (Dec. 12, 1980) 87 I.D. 603

Absent reasons justifying continuance of the appeal, the Board will dismiss a particular portion of an appeal when there remain in that portion no issues to be resolved by the Board.

Appeal of Nunapitchuk, Ltd., 5 ANCAB 139 (Dec. 18, 1980)

Absent reasons justifying the continuance of the appeal as to a specific issue therein, that issue will be dismissed when the appellant informs the Board that the specific issue is no longer an issue on appeal.

Where one issue on appeal is that the Bureau of Land Management erred by excluding certain lands from conveyance without adjudicating the status of such lands, and the appellant and the Bureau of Land Management stipulate to withdrawal of the appeal on condition that the Bureau of Land Management will later adjudicate the status of such lands, then the issue is resolved and the Board will order partial dismissal of the appeal as to that issue.

Northway Natives, Inc., 5 ANCAB 168 (Feb. 26, 1981)

Absent reasons justifying continuance as to a specific issue therein, the appeal will be dismissed as to this issue when a stipulation includes a voluntary withdrawal of this issue by the appellant before the Board.

Yak-Tat Kwaan, Inc., 5 ANCAB 172 (Feb. 27, 1981)

Where all issues presented by an appeal have been resolved by agreement and action of the parties, the appeal will be dismissed.

Lillie Pleasant, et al., 5 ANCAB 195 (Mar. 31, 1981)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Dismissal--Continued

An appeal will be dismissed when the appellant fails to respond to an order of this Board requiring a showing of cause why the appeal should not be dismissed.

Kaguyak, Inc., 5 ANCAB 257 (Apr. 21, 1981)

Matanuska-Susitna Borough, 7 ANCAB 4 (Mar. 24, 1982)

An appeal will be dismissed when an appellant has failed to file additional pleadings ordered by the Board pursuant to 43 CFR Part 4, Subpart J, 4.907, and further fails to comply with an order of the Board requiring a showing of cause.

Alaska Placer Co., 5 ANCAB 260 (Apr. 24, 1981)
88 I.D. 511

Absent a showing of any other interest or other reason justifying the continuance of the appeal, the appeal will be dismissed when a stipulation by appellant and holder of other affected interests requests dismissal of the appeal.

State of Alaska, Dept. of Transportation and Public Facilities, 5 ANCAB 284 (May 4, 1981)

Absent reasons justifying continuance, a specified portion of an appeal will be dismissed when the only appellant before the Board files a motion to dismiss that portion of its appeal.

Totlin Native Corp., 5 ANCAB 299 (May 13, 1981)

When an appeal is filed prematurely, it will be dismissed without prejudice.

Chugach Natives, Inc., 5 ANCAB 301 (May 18, 1981)

An appeal will be dismissed for lack of diligent prosecution when a party fails to respond to an order of this Board requiring a showing of cause why the appeal should not be dismissed.

Arctic Mining Co., 5 ANCAB 302 (May 29, 1981)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant and all parties of record before the Board stipulate to a dismissal of the appeal.

Ida Lawrence, 5 ANCAB 304 (May 29, 1981)

Alaska Offshore Marine Services, Inc. and Milton Holmes, 6 ANCAB 134 (Oct. 23, 1981)

Joseph C. Mapes et al., 6 ANCAB 136 (Oct. 26, 1981)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Dismissal--Continued

When an issue on appeal is limited to the claim that the Bureau of Land Management erred in a Decision to Issue Conveyance by incorrectly describing lands from which a parcel of land is excluded and when the Bureau of Land Management provides a corrected description of the lands without objection by the appellant, the issue is mooted and will be dismissed.

Absent a showing of any other interest or other reason justifying the continuance of an appealed issue, an appeal will be dismissed when a stipulation by appellant and holder of any other affected interests accepts the Bureau of Land Management's determination of a disputed issue and requests conveyance as in issued Decision to Issue Conveyance.

Doyon, Ltd., 5 ANCAB 354 (July 24, 1981)

Where an appeal is not filed within 30 days after receipt of actual notice or within 30 days after publication in the Federal Register, as required by regulations in 43 CFR 4.903(a), the appeal must be dismissed.

Where an appeal is filed 48 days after the date of the decision appealed, and the appellant does not respond to an order to show cause why the appeal should not be dismissed for failure to file notice of appeal timely, the appeal will be dismissed.

State of Alaska, 5 ANCAB 373 (July 28, 1981)

Absent reasons justifying continuance of an appeal as to a particular issue, an appeal will be dismissed when the appellant before the Board withdraws its appeal of that issue.

Northway Natives, Inc., 6 ANCAB 1 (Aug. 5, 1981)
88 I.D. 711

An appeal to the Secretary of the Interior will be dismissed when enactment of legislation renders moot the questions raised on appeal.

U.S. Fish and Wildlife Service, 6 ANCAB 37 (Aug. 21, 1981)
88 I.D. 757

Where all issues presented by an appeal have been resolved by agreement and action of the parties, and the appellant has withdrawn the appeal, the appeal will be dismissed.

Kodiak Island Borough, 6 ANCAB 93 (Sept. 28, 1981)

Where an appeal is remanded to allow amendment of the appealed decision in the manner stipulated by the parties to the appeal, and where such amendment resolves all the issues raised in the appeal, the appeal will be dismissed following issuance and any required publication of the amendment.

State of Alaska, Dept. of Transportation and Public Facilities, 6 ANCAB 143 (Oct. 30, 1981)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Dismissal--Continued

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the appellant requests dismissal on the grounds that all issues have been resolved by a negotiated settlement.

Doyon, Ltd., 6 ANCAB 145 (Nov. 24, 1981)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed for lack of diligent prosecution when the only appellant fails to file with the Board, within the time allowed, substantive briefing in support of the appeal.

Joseph C. Hanna, 6 ANCAB 147 (Nov. 27, 1981)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board stipulates and agrees to dismissal of its appeal.

State of Alaska, Dept. of Transportation and Public Facilities, 6 ANCAB 150 (Nov. 27, 1981)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board fails to timely respond to an order of the Board requiring that the appellant file notice as to whether it intends to pursue its appeal.

U.S. Fish and Wildlife Service, 6 ANCAB 264 (Jan. 15, 1982)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when there remain no issues to be resolved by the Board.

Clara Helgason, 6 ANCAB 267 (Jan. 15, 1982)

An appeal will be dismissed when the decision appealed from is amended pursuant to Board order based upon a stipulation entered into by the parties and a timely appeal has not been taken from the published amended decision.

Kvik, Inc., 6 ANCAB 304 (Jan. 27, 1982)

Absent reasons justifying continuance of the appeal, an appeal will be dismissed when the only appellant before the Board is in agreement with a motion to dismiss filed by another party to the appeal.

Matanuska-Susitna Borough, 7 ANCAB 89 (May 20, 1982)

Where an appellant fails to respond to an order to show cause why an appeal should not be dismissed on jurisdictional grounds, the Board will dismiss the appeal.

William F. Straub, 7 ANCAB 184 (June 23, 1982)

Helge A. Bognist, 7 ANCAB 186 (June 23, 1982)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Dismissal--Continued

Where an appellant fails to respond to an order to show cause why an appeal should not be dismissed and when the motion for dismissal asserts as a basis therefore appropriate provisions of 43 CFR 4.900 et seq., the Board will dismiss the appeal.

Chickaloon Moose Creek Native Ass'n, Inc., 7 ANCAB 200 (June 24, 1982)

When a stipulation is filed in which all parties have agreed to the dismissal of all appealed issues, except for one specifically stated as being an unresolved issue, and which the Board approves and finds is in accordance with 43 CFR 4.913, and when no other party of record has an interest affected by the terms of such stipulation, the Board will dismiss the appeal as to those issues.

Ervin K. Tokay, 7 ANCAB 206 (June 25, 1982)

Intervention

Intervention in proceedings before the Alaska Native Claims Appeal Board is in the discretion of the Board. 43 CFR 4.909(b).

The Board will not allow intervention following resolution of the issues on appeal.

The Board will not allow introduction of new issues to an appeal by an intervenor.

Northway Natives, Inc., 5 ANCAB 123 (Dec. 12, 1980) 87 I.D. 603

Jurisdiction

There is no administrative appeal process available to claimants under § 14(c) of ANCSA, and such claims must be brought in a judicial forum.

Appeals of John P. Thein, Kenneth F. Schoonover, Wendell Shaflestad, and Kolbjorn Shaflestad, 4 ANCAB 116 (Jan. 11, 1980) 87 I.D. 1

Contractual disputes between the appellant and other corporations are not appeals from findings of Departmental officials within the contemplation of jurisdictional regulations in 43 CFR 4.1(b)(5), nor can they be decided by this Board in connection with such appeals.

Appeal of Chickaloon Moose Creek Native Ass'n, Inc., 4 ANCAB 134 (Feb. 8, 1980)

As an administrative adjudicative body organized to decide appeals under ANCSA, the Board finds all challenges to the validity of ANCSA beyond its jurisdiction.

Appeal of Theodore J. Albasy et al., 4 ANCAB 151 (Feb. 27, 1980) 87 I.D. 81

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Jurisdiction--Continued

Interim conveyance and patent are documents of equal significance in the granting of title under ANCSA and its amendments, unless such amendments provide otherwise. Sec. 4(a) of P.L. 94-456 does not authorize the Secretary of the Interior to grant less than full legal title to Cook Inlet Region, Inc. Therefore, when BLM issues interim conveyance to Cook Inlet Region, Inc., pursuant to P.L. 94-456, the Secretary of the Interior and this Board lose jurisdiction of those interests in lands which have been conveyed and cannot maintain control over such lands pending reconveyance by Cook Inlet Region, Inc.

Contractual disputes between the appellant and other corporations are not appeals from findings of Departmental officials within the contemplation of jurisdictional regulations in 43 CFR 4.1(b)(5), nor can they be decided by this Board in connection with such appeals.

Appeal of Chickaloon Moose Creek Native Ass'n, Inc., 4 ANCAB 250 (June 16, 1980) 87 I.D. 219

Where the State of Alaska has issued patent to a third party on lands tentatively approved to the State under the Alaska Statehood Act, the proper forum to adjudicate the status of such patent is a court, and the Department lacks administrative jurisdiction over the issue.

Appeal of Eyak Corp., 4 ANCAB 277 (June 30, 1980) 87 I.D. 279

Where a matter on appeal has been remanded to the Bureau of Land Management for a specific determination, the Board retains jurisdiction over the question of whether or not such a determination has been rendered moot by subsequent actions of the party.

Appeal of Pang-Vik, Inc., Ltd., 5 ANCAB 59 (Sept. 24, 1980) 87 I.D. 422

Where a decision by the BLM involves the effect of the Alaska Native Claims Settlement Act upon an interest, or pending application for an interest derived under the public land laws, including the general mining law and mineral leasing acts, any appeal from such decision shall be directed to the Alaska Native Claims Appeal Board. Where the decision by the BLM involves the validity of an interest, or pending application for an interest, asserted under the public land laws, including the general mining law and mineral leasing acts, any appeal from such decision shall be directed to the Interior Board of Land Appeals.

Nelbro Packing Co., 5 ANCAB 174 (Mar. 9, 1981) 88 I.D. 352

The Board has jurisdiction to decide whether the Bureau of Land Management, in issuing a decision to convey land pursuant to ANCSA, erred by failing to identify and adjudicate an alleged third-party interest derived from a source other than the Federal Government or the State of Alaska.

Tetlin Native Corp., 5 ANCAB 197 (Apr. 14, 1981) 88 I.D. 442

Tetlin Native Corp., 5 ANCAB 212 (Apr. 15, 1981)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Jurisdiction--Continued

The effect of the issuance of a patent to public lands by the United States, even if issued by mistake or inadvertence, is to transfer the legal title from the United States and to end all authority and jurisdiction of the Department of the Interior over the lands conveyed. The proper forum to further adjudicate the status of such an interest is in a judicial proceeding and the Board lacks jurisdiction to decide the issue.

Tetlin Native Corp., 5 ANCAB 220 (Apr. 17, 1981)

The Board is without jurisdiction to adjudicate the validity of a Native allotment.

Clara Goodman, 6 ANCAB 17 (Aug. 5, 1981) 88 I.D. 718

Timothy Luke, 6 ANCAB 340 (Feb. 16, 1982) 89 I.D. 62

Heirs of Jimmie Walters, 6 ANCAB 352 (Feb. 16, 1982)

The approval of the Alaska State Director of the Bureau of Land Management of a general plan of action for meeting the requirements of sec. 22(k) of the Alaska Native Claims Settlement Act is not a decision "rendered by Departmental officials in matters relating to land selection arising under the Alaska Native Claims Settlement Act" within the context of 43 CFR 4.1(b)(5), and an appeal from the approval of such a plan must be dismissed by this Board for lack of jurisdiction.

Sierra Club, Inc. and Southeast Alaska Conservation Council, Inc., 6 ANCAB 152 (Nov. 30, 1981) 88 I.D. 1027

Where the present appeal is Tetlin's first opportunity to challenge BLM's delineation of the land to which they are entitled under ANCSA, their appeal directly addresses a land selection matter within the meaning of 43 CFR 4.1(b)(5) and the appeal is within the Board's jurisdiction.

Tetlin Native Corp., 7 ANCAB 132 (June 18, 1982) 89 I.D. 303

Parties

The State of Alaska's motion to intervene will not be granted where the granting of such motion would permit the State to pursue, as an appellant, issues which the State failed to appeal timely and which the appellant has been denied standing to raise.

Ervin K. Terry, 7 ANCAB 63 (May 19, 1982) 89 I.D. 242

Remand

Where a matter on appeal has been remanded to the Bureau of Land Management for a specific determination, the Board retains jurisdiction over the question of whether or not such a determination has been rendered moot by subsequent actions of the party.

Appeal of Pang-Vik, Inc., Ltd., 5 ANCAB 59 (Sept. 24, 1980) 87 I.D. 422

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Remand--Continued

When the record on appeal raises questions which may affect the validity of Federally created third-party interests, and when there is no evidence that a determination of validity has been made pursuant to Secretary's Order No. 3029, the Board will remand to the Bureau of Land Management for such determination.

Northway Natives, Inc., 5 ANCAB 147 (Jan. 5, 1981) 88 I.D. 14

Absent reasons justifying the contrary, where the parties to an appeal file a stipulation which resolves all the issues in the appeal and requests a remand to the Bureau of Land Management for amendment of the appealed decision so as to incorporate the matter stipulated, the Board will remand the appeal in order to allow the proposed amendment.

State of Alaska, Dept. of Transportation and Public Facilities, 5 ANCAB 201 (May 1, 1981)

Where the Alaska Railroad claims use of a tract of land and thus nominally meets the definition of the term "holding agency" in 43 CFR 2655.0-5(a), and where factual and legal questions relating to the issue of whether the railroad actually used the land as claimed have not yet been determined by the BLM, the Board concludes that a finding on whether the ARR is the holding agency is properly an initial part of the § 3(e) determination to be made by BLM if a remand is ordered.

Where regulations in 43 CFR 2655.4(b) provide that the Board must remand an appeal to the Bureau of Land Management for a § 3(e) determination unless the appeal is found to be "frivolous," and the term "frivolous" is not defined in such regulations, the Board will find the appeal frivolous only if the appellant can make no rational argument on the law or facts in support of his claim.

Where the Alaska Railroad raises issues of fact and law, which were addressed for the first time in regulations implementing § 3(e) of ANCSA, and the Bureau of Land Management has not yet made a § 3(e) determination on the lands in dispute, the railroad's appeal is not frivolous and the appeal will be remanded to the Bureau of Land Management for consideration of these issues in a § 3(e) determination.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

Settlement Approval

43 CFR 4.913(b) provides:

Where an appeal is before the Alaska Native Claims Appeal Board, and no unit of the Department of the Interior is a party to the appeal, no agreement between parties which may require future action or forbearance from action by the Department of the Interior shall bind the Department unless such agreement is approved by the Alaska Native Claims Appeal Board, or the Secretary, or his delegate.

Appeal of Northway Natives, Inc., 4 ANCAB 350 (July 30, 1980)

State of Alaska, 7 ANCAB 203 (June 25, 1982)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Settlement Approval--Continued

Where the record is uncontested and supports a factual finding that the United States no longer uses or needs an improvement pursuant to the principles of Instructions, 44 L.D. 513 (1916), the Board can accept a stipulation by the parties to remove the reservation of interest from a conveyance document.

Doyon, Ltd., 5 ANCAB 77 (Oct. 10, 1980) 87 I.D. 480

When the Bureau of Land Management is the only agency of the Department of the Interior which is a party to the appeal, and a settlement agreement does not require or provide for future action or forbearance from action by any agency of the Department of the Interior, an appeal from a Decision to Issue Conveyance will be dismissed upon a stipulation for dismissal based upon such a settlement agreement, and no approval of the settlement agreement is required by the Board, or the Secretary or his delegate by provisions of 43 CFR 4.913(b).

State of Alaska, Dept. of Transportation and Public Facilities, 5 ANCAB 284 (May 4, 1981)

When a stipulation is filed in which all parties have agreed to the dismissal of all appealed issues, except for one specifically stated as being an unresolved issue, and which the Board approves and finds is in accordance with 43 CFR 4.913, and when no other party of record has an interest affected by the terms of such stipulation, the Board will dismiss the appeal as to those issues.

Ervin K. Tokey, 7 ANCAB 206 (June 25, 1982)

Standing

Where an appellant does not include in a notice of appeal a claim of property interest in lands affected by the decision being appealed and a statement of the facts relied upon for standing, and such information is not filed within 30 days after filing the notice of appeal as required by regulations in 43 CFR 4.903, the appeal is subject to summary dismissal in the discretion of the Board.

Where an appellant fails to claim a property interest in land affected by the decision appealed, and further fails to file a statement of standing when specifically ordered to do so by this Board, the appeal will be summarily dismissed for failure to satisfy standing requirements in 43 CFR 4.903.

Appeal of Charles G. and Sara Bornberger, 4 ANCAB 112 (Jan. 9, 1980)

If the only interest in land claimed by appellants affected by the decision appealed was a terminated or relinquished special use permit, the appellants will be found to lack a property interest in land sufficient to confer standing under regulations in 43 CFR 4.902.

Appeals of John F. Thein, Kenneth E. Schoonover, Wendell Skaflestad, and Solbjorn Skaflestad, 4 ANCAB 116 (Jan. 11, 1980) 87 I.D. 1

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Standing--Continued

Where a party has not selected lands within the lands in dispute in an appeal, that party cannot be found to claim a property interest in such lands within the meaning of standing regulations in 43 CFR 4.902.

Appellant's claim that adjacent lands, which it has selected, will be impacted by conveyance to other villages of the lands here in dispute, is not grounds for a claim of property interest in the land selected by the other villages.

Appeal of Chickaloon Moose Creek Native Ass'n, Inc., 4 ANCAB 134 (Feb. 8, 1980)

Where land selections by a Cook Inlet village corporation pursuant to § 12(a) of ANCSA are rejected by the Bureau of Land Management so that such lands may be conveyed to Cook Inlet Regional Corp. which is obligated to reconvey lands to the village under the terms of an amendment to ANCSA, the village corporation's interest in its rejected land selection and in its ultimate right to reconveyance of land constitutes a property interest affected by a determination of the Bureau of Land Management, sufficient to confer standing under regulations contained in 43 CFR 4.902.

Appeal of Chickaloon Moose Creek Native Ass'n, Inc., 4 ANCAB 250 (June 16, 1980) 87 I.D. 219

Where the Alaska Gateway School District claims only prospective ownership in lands and there is no evidence in the record that the School District has taken steps to obtain title pursuant to AS 14.08.151(b), the School District cannot be found to claim a property interest in such lands, within the meaning of 43 CFR 4.902, by reason of prospective ownership.

While a "property interest" sufficient to confer standing under 43 CFR 4.902 need not be a vested interest, it may not be completely speculative.

Alaska Gateway School District, 5 ANCAB 111 (Nov. 12 1980) 87 I.D. 560

The appropriate test of standing to appeal a decision under ANCSA is not whether a person is an "aggrieved party," but whether a person "claims a property interest in land affected by a determination from which an appeal to the Alaska Native Claims Appeal Board is allowed" as required by 43 CFR 4.902.

Decisions made pursuant to ANCSA affect property interests differently, with the effect depending, in part, upon the section of the Act on which each decision is based. Therefore, application of the standing test in 43 CFR 4.902 must take into account the section of the Act relied upon in the decision under appeal.

Since the purpose of a § 17(b)(1) public easement is to provide access across Native lands to lands not selected, such an easement necessarily affects lands other than those to be conveyed. Therefore, in asserting standing to appeal a § 17(b)(1) easement decision, a member of the public who claims a private interest in land other than the land to be conveyed may rely on this private holding as his or her "property interest" affected within the meaning of 43 CFR 4.902.

An individual claiming standing to appeal a § 17(b)(1) public easement decision must assert public use of the desired easement in order to distinguish it from a § 17(b)(2) private access right.

Joseph C. Banga et. al., 5 ANCAB 224 (Apr. 20, 1981) 88 I.D. 460

Patrick J. Bliss, 6 ANCAB 181 (Nov. 30, 1981) 88 I.D. 1039

The appropriate test for determining standing to appeal a decision made pursuant to ANCSA is whether a party "claims a property interest in land affected by a determination" appealable to this Board.

Where an assertion that a property interest is affected by a decision to convey is based on the effect of a possible future waiver of administration by the agency presently administering a lease, and such waiver is discretionary with the agency under § 14(g) of ANCSA, the alleged effect on the property interest is too speculative to meet the requirement of 43 CFR 4.902.

Ray DeVilbiss (Wolverine Grazing Association), 5 ANCAB 265 (Apr. 28, 1981) 88 I.D. 513

John L. Sargaard, 5 ANCAB 290 (May 11, 1981)

The appropriate test of standing to appeal a decision under ANCSA is not whether a person is an "aggrieved party," but whether a person "claims a property interest in land affected by a determination from which an appeal to the Alaska Native Claims Appeal Board is allowed" as required by 43 CFR 4.902.

A person desiring to appeal a public easement decision can not claim a property interest in the land underlying the easement, because, pursuant to ANCSA, title to the land underlying the easement goes to the selecting Native corporation. Likewise, a potential appellant can not claim a private property interest in a § 17(b)(1) easement because these are public easements. The concept of private ownership of a public easement is a contradiction in terms.

Since the purpose of a § 17(b)(1) public easement is to provide access across Native lands to lands not selected, such an easement necessarily affects lands other than those to be conveyed. Therefore, in asserting standing to appeal a § 17(b)(1) easement decision, a member of the public who claims a private interest in land other than the land to be conveyed may rely on this private holding as his or her "property interest" affected within the meaning of 43 CFR 4.902.

An individual claiming standing to appeal a § 17(b)(1) public easement decision must assert public use of the desired easement in order to distinguish it from a § 17(b)(2) private access right.

Joseph C. Banga, 5 ANCAB 343 (June 26, 1981)

Decisions pursuant to ANCSA affect property interests differently, depending, in part, upon the section of the Act on which each decision is based. Application of the standing test in 43 CFR 4.902 must take into account the section of the Act relied upon in the decision under appeal.

Since the purpose of a § 17(b)(1) public easement is to provide access across Native lands to lands not selected, such an easement necessarily affects lands

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Standing--Continued

other than those to be conveyed. Therefore, in asserting standing to appeal a § 17(b)(1) easement decision, a member of the public who claims a private interest in land other than the land to be conveyed may rely on this private holding as a "property interest affected" within the meaning of 43 CFR 4.902.

Where appellants seek a public access easement under § 17(b)(1) of ANCSA, they may rely on their patented homesite, located outside the conveyance, as a property interest for purposes of meeting the standing requirements of 43 CFR 4.902.

Where appellants claim that their homesite is affected by the Bureau of Land Management's failure to reserve a § 17(b)(1) public access easement, along a road used by appellants and the public, because in the absence of such an easement their present access route to the homesite may be cut off by the proposed conveyance to a Native corporation, this is a claim that their property interest is affected within the terms of 43 CFR 4.902.

Sec. 17(b)(2) of ANCSA assures that persons who have valid existing uses do not lose access rights because of the public easements provided by § 17(b)(1). The private right of access provided to holders of valid existing rights pursuant to § 17(b)(2) of ANCSA is separate from the right provided by § 17(b)(1) of public access routes. An individual claiming standing to appeal a public easement decision must assert public use of the desired easement to distinguish it from a private access right under § 17(b)(2). However, the possibility of protection under § 17(b)(2) does not preclude the holder of a property interest from asserting that an easement decision affects his interest so as to meet the standing requirements of 43 CFR 4.902.

Patricia and William Wordmark, 6 ANCAB 157 (Nov. 30, 1981) 88 I.D. 1028

When a municipality's "interest" in a particular tract of land is based only on the possibility that some day it may acquire the land under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, the municipality's "interest" is too speculative to constitute a "property interest" under 43 CFR 4.902.

The appropriate test of standing to appeal a decision under ANCSA is not whether a person is an "aggrieved party" but whether a person "claims a property interest in lands affected by a determination from which an appeal to the Alaska Native Claims Appeal Board is allowed."

The Act of Jan. 2, 1976, P.L. 94-204, 89 Stat. 1145, as amended, was clearly an amendment to ANCSA and the standing requirements of the original Act (43 CFR 4.902) apply to the amendments.

City of Homer, 6 ANCAB 203 (Nov. 30, 1981) 88 I.D. 1047

The test for standing to appeal a decision under 43 CFR 4.902 requires, in part, that the appellant claim a property interest within the meaning of the regulation. To appeal a § 17(b)(1) public easement decision this portion of the standing requirement is satisfied when the appellant's property interest consists of a § 14(g) valid existing right to which the conveyance of lands under ANCSA is subject.

An appellant claiming standing to appeal a § 17(b)(1) public easement decision must not only claim to have a property interest, but in order to meet the

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Standing--Continued

standing test of 43 CFR 4.902, must further assert that the appealed decision affects that property interest by failing to provide the appellant and the public with access to public lands.

Ray DeVilbiss (Wolverine Creeks Ass'n), 6 ANCAB 290 (Jan. 27, 1982) 89 I.D. 9

The appropriate test of standing to appeal a decision to this Board is not whether a person is an aggrieved party, but whether a person claims a property interest in land affected by a determination from which an appeal to the Alaska Native Claims Appeal Board is allowed.

In response to arguments that the test of whether a person is aggrieved should be applied because it is consistent with judicial requirements for standing, the Board must find itself bound by its own regulations for standing, which require a claim of property interest.

The mere allegation of ownership and use of State and Federal lands as a member of the public does not constitute a claim of property interest in land as is required for standing under regulations in 43 CFR 4.902.

A fee simple ownership interest in a fishing lodge is clearly the type of property interest contemplated by standing regulations in 43 CFR 4.902.

Where the Bureau of Land Management under regulations in 43 CFR 2650.0-5(g) or 43 CFR 2650.5-1(b) makes administrative determinations of navigability for the purpose of conveying title to submerged lands, and where title to such lands could pass to the State of Alaska or to a Native corporation, but cannot pass to the appellant, the appellant's property interest in other lands is not affected by such navigability determination, and he lacks standing to raise issues of navigability on appeal.

Decisions made pursuant to ANCSA affect property interests differently, with the effect depending, in part, upon the section of the Act on which each decision is based. Therefore, application of the standing requirements in 43 CFR 4.902 must take into account the section of the Act relied upon in the decision under appeal.

Since the purpose of a § 17(b)(1) easement is to provide public access across Native lands to public lands, such an easement necessarily affects lands other than those to be conveyed. A member of the public who claims a private interest in land outside the conveyance, in asserting standing to appeal a § 17(b)(1) easement decision, may rely on this private holding as a property interest affected within the meaning of regulations in 43 CFR 4.902.

Where access, by appellant and members of the public, from a public airport to appellant's property and adjacent public lands is dependent upon use of a water body, and upon access to the water body by a public easement, then the appellant's property interest is affected by failure to reserve such a public access easement.

Walt Nanni, 6 ANCAB 307 (Jan. 28, 1982) 89 I.D. 14

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Standing--Continued

Where an application for selection made by a Cook Inlet village corporation pursuant to § 12(b) of ANCSA is rejected by the Bureau of Land Management so that the same lands may be conveyed to Cook Inlet Region, Inc., under the terms of an amendment to ANCSA, and when an issue on appeal is whether the status of the lands in question is affected by the amendment, the village corporation's interest in the rejected application constitutes a property interest affected by a determination of the Bureau of Land Management sufficient to confer standing under the regulations in 43 CFR 4.902.

Seldovia Native Ass'n, Inc., 6 ANCAB 369 (Feb. 26, 1982) 89 I.D. 74

Where an appellant fails to meet criteria in 43 CFR 1.3 for who may practice before the Department, he may not appear on behalf of others, and his standing must be determined based on his claim of property interest on his own behalf.

A riparian owner cannot claim that a determination that a water body is nonnavigable adversely affects his property interest so as to confer standing to appeal within the meaning of regulations in 43 CFR 4.902, where the appeal seeks to have the same water body found navigable and thereby deprive the appellant of a claim of riparian ownership rights.

Decisions made pursuant to ANCSA affect property interests differently with the effect depending, in part, upon the section of the Act on which each decision is based. Therefore, application of the standing test in 43 CFR 4.902 must take into account the section of the Act relied upon in the decision under appeal.

Since the purpose of a § 17(b)(1) public easement is to provide access across Native lands to lands not selected, the Board has concluded that a § 17(b)(1) easement necessarily affects lands other than those to be conveyed. Therefore, a member of the public who claims a private interest in land other than the land to be conveyed, in asserting standing to appeal a § 17(b)(1) easement decision, may rely on this private holding as his or her "property interest" affected within the meaning of 43 CFR 4.902.

Where access by appellant to appellant's property is dependent upon use of a water body, and upon access to the water body by a public easement, then the appellant's property interest is affected by failure to reserve such a public access easement.

In the absence of any indication that a water body is a major waterway, where appellant lacks standing to appeal the navigability of the water body, and where appellant has thus failed to indicate that the absence of an easement in any way affects access between his land and public lands or a major waterway, an appellant will be found to lack standing to appeal that particular easement.

Where appellant's land is surrounded by Native-selected lands, and the only means of access by appellant and members of the public to appellant's land and public lands beyond the Native selections is by a public road, the failure of the Bureau of Land Management to reserve a public access easement for such road adversely affects the appellant's property interest so as to confer standing under 43 CFR 4.902 to appeal the lack of such an easement. Appellant's property interest is similarly affected by BLM's failure to reserve a site easement providing access from appellant's land to submerged lands underlying navigable waters.

Ervin E. Tokey, 7 ANCAB 63 (May 19, 1982) 89 I.D. 242

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

ALASKA NATIVE CLAIMS APPEAL BOARD--Continued

Appeals--Continued

Standing--Continued

When pursuant to lawful authority, lands are withdrawn by Secretary's Order for an Air Navigation Site for the benefit of the Territory of Alaska, and when the Secretary's Order was not rescinded upon Statehood, and the State of Alaska continued operation of the ANS facility, the State has standing to assert a claim of property interest, within the meaning of 43 CFR 4.902, for purposes of appealing the status of the ANS.

State of Alaska, Dept. of Transportation and Public Facilities, 7 ANCAB 157 (June 23, 1982) 89 I.D. 321

APPEALS

Generally

Regulation 43 CFR 4.401(a) authorizes a 10-day grace period for the filing of documents required under 43 CFR, Part 4, Subpart E, if the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Where the final day of the grace period is a Saturday and the following Monday is a Federal holiday, a document filed on Tuesday, if timely transmitted to the proper office, meets the requirements of the regulation.

A prior decision of the Department will not be overturned by the Board of Land Appeals where the claimant has failed to appeal such decision and in essence acquiesced to the decision for a prolonged period of time.

Ida Mae Rose, Leo G. Coser, 73 IBLA 97 (May 23, 1983)

When a party appeals a BLM easement determination made pursuant to ANCSA and Department regulations, the burden of proof is on the party challenging the determination to show that the determination is erroneous.

Henry W. Waterfield, 77 IBLA 2[illegible] (Nov. 30, 1983)

When a party appeals a BLM easement determination made pursuant to ANCSA and Department regulations, the burden of proof is on the party challenging the determination to show that the determination is erroneous. Where BLM finds that site easements are not necessary to accommodate existing patterns of travel and an appealing party fails to show otherwise, the BLM decision will ordinarily be affirmed. Where BLM's decision rests on an assumption which is not supported by facts of record, it must be set aside for the record to be supplemented.

State of Alaska, 78 IBLA 390 (Jan. 31, 1984)

Prior to the conveyance of public lands subject to valid existing rights not leading to acquisition of title, but recognized under the Alaska Native Claims Settlement Act, there is no basis for an administrative appeal to enforce the valid existing rights claimed.

Manley Hot Springs Community Ass'n, 80 IBLA 313 (May 4, 1984)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

APPEALS--Continued

Generally--Continued

In deciding whether an easement is properly reserved pursuant to sec. 17(b) of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1616(b) (1976), the burden of proving error by a preponderance of the evidence is on the person seeking the easement.

Patrick J. Bliss, 84 IBLA 211 (Dec. 28, 1984)

Jurisdiction

The Board lacks jurisdiction to decide an appeal based on interests claimed pursuant to sec. 14(c) of the Alaska Native Claims Settlement Act. There is no administrative appeal process available to claimants under sec. 14(c), and the only recourse is to a judicial forum.

Circle Civic Community Ass'n, Inc., 67 IBLA 376 (Oct. 8, 1982)

George Fredericks, 73 IBLA 344 (June 10, 1983)

Under sec. 901(b) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1631(b) (Supp. IV 1980), no appeals board of the Department of the Interior has the authority to determine the navigability of water covering a parcel of submerged land selected by a Native corporation unless a determination by the Bureau of Land Management that the water covering a parcel of submerged land is not navigable was validly appealed to such a board prior to Dec. 2, 1980. A premature appeal does not constitute a valid appeal within the meaning of this provision.

Bristol Bay Native Corp., 71 IBLA 318 (Mar. 23, 1983)

Standing

When lands are withdrawn for an air navigation site for the benefit of the Territory of Alaska, the withdrawal was not rescinded upon statehood, and the State of Alaska continued operation of the air navigation site, the State has standing to assert a claim of property interest within the meaning of 43 CFR 4.902 for the purposes of appealing the status of the air navigation site.

State of Alaska, Dept. of Transportation and Public Facilities, 67 IBLA 344 (Oct. 5, 1982)

An assertion of the public interest does not constitute a claim of property interest in land as is required for standing to appeal under 43 CFR 4.410(b).

Circle Civic Community Ass'n, Inc., 67 IBLA 376 (Oct. 8, 1982)

A mining claimant whose unpatented mining claims are located in Alaska outside lands approved for conveyance has standing to appeal a failure by BLM to reserve a public easement in the conveyance.

Henry W. Waterfield, 77 IBLA 270 (Nov. 30, 1983)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

APPEALS--Continued

Standing--Continued

The State of Alaska has standing to challenge the failure of the Bureau of Land Management to reserve site easements along a navigable river by virtue of the property interest it holds in the submerged lands of the river and its allegations that site easements are necessary for a reasonable pattern of public travel and access to public lands along the river.

State of Alaska, 78 IBLA 390 (Jan. 31, 1984)

Standing to appeal decisions relating to land selections under the Alaska Native Claims Settlement Act requires that a party have a property interest in land affected by the decision. 43 CFR 4.410(b). The allegation of ownership and use of State and Federal lands as a member of the public does not establish standing.

Sierra Club, Alaska Chapter, et al., 79 IBLA 112 (Feb. 21, 1984)

CONVEYANCES

Generally

The Bureau of Land Management is not bound to make its navigability determinations in conformity with information provided by the State of Alaska pursuant to 43 CFR 2650.1(b) as to navigability of water bodies within lands selected under ANCSA, or to accept the State's conclusions as to navigability.

When the State of Alaska's claim of ownership of submerged lands is based solely upon its own conclusions as to the navigability of water bodies within lands selected under ANCSA, and not upon a final adjudication of navigability, the mere assertion of the State's ownership does not constitute a claim of title in the submerged lands which requires the Bureau of Land Management to exclude such lands from the Decision to Issue Conveyance.

Doyon, Ltd. and State of Alaska, 5 ANCAB 324 (June 26, 1981) 88 I.D. 636

Doyon Ltd., 5 ANCAB 368 (July 27, 1981)

Doyon, Ltd., 6 ANCAB 27 (Aug. 19, 1981)

Doyon, Ltd., 6 ANCAB 32 (Aug. 19, 1981)

Gana-a' Yoo, Ltd., 6 ANCAB 45 (Aug. 24, 1981)

Gana-a' Yoo, Ltd., 6 ANCAB 50 (Aug. 24, 1981)

Gana-a' Yoo, Ltd., 6 ANCAB 55 (Aug. 24, 1981)

Doyon Ltd., 6 ANCAB 60 (Aug. 24, 1981)

Doyon, Ltd., 6 ANCAB 219 (Dec. 16, 1981) 88 I.D. 1086

Doyon, Ltd., 6 ANCAB 242 (Dec. 16, 1981) 88 I.D. 1105

Doyon, Ltd. and NTNT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

Doyon, Ltd., 6 ANCAB 364 (Feb. 24, 1982)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Generally--Continued

When lands have been selected by a Native corporation and approved by the Bureau of Land Management for conveyance under ANCSA, such lands may be excluded from conveyance only pursuant to provisions of ANCSA or implementing regulations which constitute an exception to the requirements of Secretary's Order No. 3029, as amended.

Exclusion of the disputed mining claims from conveyance, pending their adjudication, is not permitted under any provision of ANCSA or implementing regulations.

Oregon Portland Cement Co., 6 ANCAB 65 (Aug. 25, 1981) 88 I.D. 760

Albert Hanan et al; J. A. Jack and Sons, Inc.; and Heaphill Brothers, Inc., 6 ANCAB 111 (Sept. 29, 1981)

The conveyance to Cook Inlet Region, Inc. (CIRI), of lands previously patented to the State of Alaska pursuant to P.L. 94-204, 89 Stat. 1145, as amended (1976), is in satisfaction of CIRI's ANCSA entitlement; must be treated as a conveyance pursuant to ANCSA; and, unless expressly excepted, is governed by the provisions of ANCSA as interpreted by the courts.

Pursuant to § 3(a) of P.L. 95-178, 91 Stat. 1369 (1977), the reservation of easements on lands already conveyed to Cook Inlet Region, Inc., in satisfaction of its entitlement under ANCSA, is subject to the determination of the Court in Alaska Public Easement Defense Fund v. Andrus, 435 F. Supp. 664, 680-681 (D.C. Alaska 1977), which held that floating railroad easements under 43 U.S.C. § 975d may not be reserved in conveyances made pursuant to ANCSA.

Alaska Railroad, 7 ANCAB 43 (Apr. 22, 1982) 89 I.D. 219

The interest of an unpatented millsite location under 30 U.S.C. § 42(b) situated within lands properly selected by a Native corporation under ANCSA does not cause a segregation of such lands which requires the lands to be excluded from a conveyance.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D. 293

One who settles on withdrawn land in Alaska acquires no rights to or title interest in the land which is superior to a conveyance of the land to a Native village corporation pursuant to sec. 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1611 (1976), and the appeal against the conveyance must be dismissed.

L. Joe McVey, 77 IBLA 374 (Dec. 7, 1983)

A decision rejecting an application, filed at a time when the land was withdrawn, pursuant to the tract book or notation rule may be reversed where the application remained pending unadjudicated until after termination of the withdrawal (and thus no administrative burden would be avoided by rejection) and where consideration of the application would not give the applicant any preference right in the land over the general public to which he was not otherwise entitled.

Cook Inlet Region, Inc., 77 IBLA 383 (Dec. 9, 1983) 90 I.D. 543

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Generally--Continued

A claim of prior use of public lands does not preclude the selection and conveyance of the lands in accordance with the Alaska Native Claims Settlement Act, and a decision of the Bureau of Land Management to convey the public lands will be upheld against such a claim.

Hanley Hot Springs Community Ass'n, 80 IBLA 313 (May 4, 1984)

With respect to a known party claiming a property interest adversely affected by a decision to issue conveyance under the Alaska Native Claims Settlement Act, both the regulations at 43 CFR 2650.7 and the requirements of due process mandate an effort to serve notice of the decision, coupled with a 30-day appeal period from date of service. Where such a party files a notice of appeal within 30 days of service of the decision, but not within 30 days of publication of that decision in the Federal Register, it is error for the Bureau of Land Management to dismiss the appeal as untimely.

Goodnews Bay Mining Co. et al., 81 IBLA 1 (May 14, 1984)

Acreage Entitlement

Where the Bureau of Land Management under regulations in 43 CFR 2650.0-5(g) or 43 CFR 2650.5-1(b) makes administrative determinations of navigability for the purpose of conveying title to submerged lands, and where title to such lands could pass to the State of Alaska or to a Native corporation, but cannot pass to the appellant, the appellant's property interest in other lands is not affected by such navigability determination, and he lacks standing to raise issues of navigability on appeal.

Walt Banni, 6 ANCAB 307 (Jan. 28, 1982) 89 I.D. 14

Cemetery Sites and Historical Places

Sec. 14(h)(1) of the Alaska Native Claims Settlement Act authorizes the Secretary to withdraw and convey historical places and cemetery sites to the appropriate regional corporation. Although lands withdrawn under sec. 11 of the Alaska Native Claims Settlement Act for village selection may not be conveyed under sec. 14(h), after Dec. 18, 1975, lands withdrawn under sec. 11 for village selections which have not been selected or lands embraced in village selections which have been relinquished lose their status as lands withdrawn under sec. 11 and may be conveyed under sec. 14(h)(1).

Cook Inlet Region, Inc., 77 IBLA 383 (Dec. 9, 1983) 90 I.D. 543

Easements

The existence of a Revised Statutes Sec. 2477 right-of-way precludes neither the reservation of an overlapping § 17(b) public easement nor the conveyance of the underlying fee. Such reservation or conveyance does not affect the previously existing right-of-way.

The continued existence of a Revised Statutes Sec. 2477 right-of-way following conveyance of the underlying fee interest is entirely independent of

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Easements--Continued

any reservation, pursuant to § 17(b), of a public easement.

State of Alaska, Dept. of Transportation and Public Facilities, 5 ANCAB 307 (June 26, 1981) 88 I.D. 629

A regional land selection conveyance must reserve access easements to any isolated tract of publicly owned land and public access easements may be terminated only after an opportunity for public hearing or consent. Therefore, it is not proper to provide in a conveyance for the automatic termination of such easements.

Doyon, Ltd., 74 IBLA 139 (July 6, 1983) 90 I.D. 289

Sec. 17(b) of the Alaska Native Claims Settlement Act requires the Secretary, when approving a selection of lands by a Native corporation, to reserve such easements as are reasonably necessary to guarantee a full right of public access across selected lands to public lands not embraced in the selection.

Where it appears from the record that the easement reserved crosses patented lands (inholdings) over which the Bureau of Land Management has no authority to grant the right of access, the case will be remanded for survey of the inholdings to ascertain any conflict with the easement and consideration of the feasibility of routing the reserved easement around the inholdings.

State of Alaska, 74 IBLA 275 (July 25, 1983)

BLM may properly reserve a site easement pursuant to sec. 17(b) of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1613(a) (1982), where the easement is reasonably necessary to guarantee a full right of public use because there are no reasonable alternative sites on publicly owned land which likewise guarantee such use, e.g., where the suggested alternative sites are within a bombing range under the jurisdiction of the Department of the Air Force.

Toghotthele Corp., 81 IBLA 317 (June 19, 1984)

Sec. 17(b) of the Alaska Native Claims Settlement Act requires the Secretary, when approving a selection of lands by a Native corporation, to reserve such easements as are reasonably necessary to guarantee a full right of public access across selected lands to public lands not embraced in the selection. Reservation of an easement for a road noted on the public land records pursuant to Instructions, 44 L.D. 513 (1916), will not be disturbed in the absence of a showing that it is either unnecessary or inadequate to preserve access to the public lands not selected.

Federal Aviation Administration, Paug-Vik, Inc., Ltd., State of Alaska, 83 IBLA 382 (Nov. 20, 1984)

Interim Conveyance

Interim conveyance and patent are documents of equal significance in the granting of title under ANCSA and its amendments, unless such amendments provide otherwise. Sec. 4(a) of P.L. 94-456 does not authorize the Secretary of the Interior to grant less than full legal title to Cook Inlet Region, Inc. Therefore, when BLM issues interim conveyance to Cook Inlet Region, Inc., pursuant to P.L. 94-456, the Secretary of the Interior and this Board lose jurisdiction

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Interim Conveyance--Continued

of those interests in lands which have been conveyed and cannot maintain control over such lands pending reconveyance by Cook Inlet Region, Inc.

Appeal of Chickaloon Moose Creek Native Ass'n, Inc., 4 ANCAB 250 (June 16, 1980) 87 I.D. 219

Having ruled that Air Navigation Site 131 is protected under § 14(c)(4), the Board holds that the Secretary is bound by his own regulations and therefore, as to the State of Alaska's claim to ANS 131, will include in the conveyance to the village corporation, any and all covenants which he deems necessary to insure the fulfillment of the corporation's obligation under § 14(c)(4), as required by 43 CFR 2651.6(b).

State of Alaska, Dept. of Transportation and Public Facilities, 7 ANCAB 157 (June 23, 1982) 89 I.D. 321

When the State of Alaska has continued operation of an air navigation site on land withdrawn for such use but has never made application for the withdrawn land under any Federal law, the State has no valid existing right within the meaning of sec. 14(g) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(g) (1976). However, the State's interest in the air navigation site is adequately protected where BLM's decision provides that a grant of the land to a village will be subject to sec. 14(c) of ANCSA, as amended, 43 U.S.C. § 1613(c) (Supp. IV 1980), since subsec. (c)(4) requires the grantee to convey title to the State together with such additional acreage and/or easements as are necessary. No further provision is necessary to fulfill the Secretary's duty under 43 CFR 2651.6(b) to include in the conveyance covenants necessary to fulfill the obligations imposed by sec. 14(c)(4).

State of Alaska, Dept. of Transportation and Public Facilities, 67 IBLA 344 (Oct. 5, 1982)

The Bureau of Land Management may properly decline a request to participate in coal exploration licenses where the licenses are close to expiration; the land in question is selected by a Native corporation; and publication of a proposed withdrawal segregating the land and conveyance of the land to the Native corporation is imminent.

James W. Taylor & Associates, Inc., 76 IBLA 103 (Sept. 21, 1983)

Where Congress has provided in 16 U.S.C. § 818 (1982) that lands sought for a proposed power project shall from the date of the filing of an application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Federal Power Commission or by Congress, and thereafter has further withdrawn these same lands for selection pursuant to sec. 16 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1615 (1976), BLM may properly convey such lands to a Native corporation selecting same, all else being regular.

Ketchikan Public Utilities, 79 IBLA 266 (Mar. 20, 1984)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Native Groups

To establish its eligibility to select lands a Native group must constitute a majority of the residents in the locality. Where, on the critical date, all members of the Native group resided on a patented, surveyed, homestead in a community or neighborhood where there were other residents in relatively close proximity, the census or tally may not be limited to the 153 acres within the confines of the homestead boundaries, as the "locality" must include the neighboring area within which the other persons of the community resided.

Tanalian, Inc., et al., 75 IBLA 316 (Aug. 30, 1983)

A determination by the Bureau of Indian Affairs to deny a Native corporation status as a Native group because the members of the corporation do not compose more than one family or household as required by 43 CFR 2653.6(a)(5) will be affirmed on appeal where the facts show that the five Native members are a father and four of his children and that although one of the children was an adult on the critical census date and was head of a household in another area, the living situation at the group locality was that of a single family or household with the father as the head of that family or household.

Beechootaslichaagat Corp., 79 IBLA 301 (Mar. 20, 1984)

To establish its eligibility to select lands under the Alaska Native Claims Settlement Act, a Native group must constitute a majority of the residents in the locality. Where the record before the Board reveals disputed questions of fact as to the geographic boundaries of a Native group's locality as well as the resident population of the group on Apr. 1, 1970, the census enumeration date for determining Native group eligibility for land selection entitlement, the matter should be referred for hearing.

Chugach Natives, Inc., The Grouse Creek Corp., 80 IBLA 89 (Mar. 30, 1984)

A determination by the Bureau of Indian Affairs to deny a Native corporation status as a Native group because the members of the corporation do not compose more than one family or household as required by 43 CFR 2653.6(a)(5) will be affirmed on appeal where the facts show that the seven Native members are a father, a mother, and five children, and that although one of the children was an adult on the critical census date and was head of a household in another area, the living situation at the group locality was that of a single family or household with the father as the head of that family or household.

Savonoski, Inc., 80 IBLA 231 (Apr. 30, 1984)

BLM may properly reject a Native group selection application filed pursuant to sec. 14(h)(2) of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1613(h)(2) (1982), where, prior to Dec. 18, 1975, the land was withdrawn for village selections and at all times thereafter the land has been subject to a prior selection by a Native village corporation, such that the land is not available for selection under 43 CFR 2653.3(a).

Gold Creek-Susitna Native Ass'n, Inc., 81 IBLA 69 (May 23, 1984)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Native Groups--Continued

Where a certificate of ineligibility for status as a Native group was not sent by the Bureau of Indian Affairs to the person authorized in the record by the members of a Native group to be their agent for any and all legal effects for the group but was sent instead to a member of the Native group, at an incorrect address, the provisions of 43 CFR 2653.6(a)(6) were not followed, and the certificate of ineligibility was not served on the Native group.

Nabesna Native Corp., Inc. (On Reconsideration), 83 IBLA 82 (Sept. 28, 1984)

Reconveyances

Sec. 14(c) of ANCSA protects certain land uses based on occupancy alone, by requiring that village corporations receiving lands pursuant to ANCSA reconvey to the occupants those lands occupied for certain specified purposes.

Where the appellants' claimed right to use and occupancy of certain land is based on past use and occupancy of the land, such right might be protected by the reconveyance provisions of § 14(c) if the proposed conveyance were to a village corporation.

The Board lacks jurisdiction to decide an appeal based on interests claimed pursuant to § 14(c). There is no administrative appeal process available to claimants under § 14(c), and the only recourse is to a judicial forum.

Appeal of Theodore J. Alagey et al., 9 ANCAB 151 (Feb. 27, 1980) 87 I.D. 81

Where land selections by a Cook Inlet village corporation pursuant to § 12(a) of ANCSA are rejected by the Bureau of Land Management so that such lands may be conveyed to Cook Inlet Regional Corp. which is obligated to reconvey lands to the village under the terms of an amendment to ANCSA, the village corporation's interest in its rejected land selection and in its ultimate right to reconveyance of land constitutes a property interest affected by a determination of the Bureau of Land Management, sufficient to confer standing under regulations contained in 43 CFR 4.902.

Where the Secretary of the Interior and Cook Inlet Regional Corp. execute an agreement setting forth the procedure by which land shall be conveyed to the regional corporation for reconveyance to villages within Cook Inlet Region, and such procedure is authorized by Congress in an amendment to ANCSA, the agreement is binding on the Bureau of Land Management and the BLM is required to convey lands to Cook Inlet Regional Corp. pursuant to the terms of the agreement.

When BLM rejects a village corporation's land selections for the purpose of conveying such lands to Cook Inlet Regional Corp. for reconveyance pursuant to § 4(a) of P.L. 94-456 and associated agreements, the rejection extinguishes the right of the village corporation to receive title from the Federal Government to those lands selected, but does not adjudicate or extinguish the right of the village corporation to receive title from Cook Inlet Region, Inc., to those lands.

The rights of a village corporation in the Cook Inlet Region to receive title from Cook Inlet Region, Inc., to lands for which it had applied pursuant to § 12(a) of ANCSA are determined by the terms of § 4(a) of P.L. 94-456 and associated agreements.

Appeal of Chickaloon Moose Creek Native Ass'n, Inc., 9 ANCAB 250 (June 16, 1980) 87 I.D. 219

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Reconveyances--Continued

When the State of Alaska has continued operation of facilities on an Air Navigation Site withdrawn by Secretary's Order for use by the Territory, but has never applied for the land under Federal law, the State's interest in the ANS is protected pursuant to § 14(c)(4) of ANSCA, as amended, which requires the Native corporation to convey title to the State, together with such additional acreage and/or easements as are necessary.

Having ruled that Air Navigation Site 131 is protected under § 14(c)(4), the Board holds that the Secretary is bound by his own regulations and therefore, as to the State of Alaska's claims to ANS 131, will include in the conveyance to the village corporation, any and all covenants which he deems necessary to insure the fulfillment of the corporation's obligation under § 14(c)(4), as required by 43 CFR 2651.6(b).

State of Alaska, Dept. of Transportation and Public Facilities, 7 ANCAB 157 (June 23, 1982) 89 I.D. 321

When the State of Alaska has continued operation of an air navigation site on land withdrawn for such use but has never made application for the withdrawn land under any Federal law, the State has no valid existing right within the meaning of sec. 14(g) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(g) (1976). However, the State's interest in the air navigation site is adequately protected where BLM's decision provides that a grant of the land to a village will be subject to sec. 14(c) of ANCSA, as amended, 43 U.S.C. § 1613(c) (Supp. IV 1980), since subsec. (c)(4) requires the grantee to convey title to the State together with such additional acreage and/or easements as are necessary. No further provision is necessary to fulfill the Secretary's duty under 43 CFR 2641.6(b) to include in the conveyance covenants necessary to fulfill the obligations imposed by sec. 14(c)(4).

State of Alaska, Dept. of Transportation and Public Facilities, 67 IBLA 344 (Oct. 5, 1982)

The Board lacks jurisdiction to decide an appeal based on interests claimed pursuant to sec. 14(c) of the Alaska Native Claims Settlement Act. There is no administrative appeal process available to claimants under sec. 14(c), and the only recourse is to a judicial forum.

Circle Civic Community Ass'n, Inc., 67 IBLA 376 (Oct. 8, 1982)

George Fredericks, 73 IBLA 344 (June 10, 1983)

Regional Conveyances

When, by amendment to the Alaska Native Claims Settlement Act, an act of Congress expressly provides that specifically described lands shall be conveyed in fee simple to Cook Inlet Region, Inc., as part of its § 12(c) entitlement under ANCSA, the Bureau of Land Management is required to make conveyance notwithstanding that the same land was earlier made available and application for selection had been filed by a Native village corporation under provision of § 12(b) of ANCSA.

Saldovia Native Ass'n, Inc., 6 ANCAB 369 (Feb. 26, 1982) 89 I.D. 74

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Regional Conveyances--Continued

Where a portion of the regional boundary between Ahtna and Doyon Regions has been described by the Secretary as following the Tetlin Reserve boundary, but the location of the Tetlin Reserve was and remains in dispute, Tetlin Native Corp. cannot now be held to a boundary which delineates their entire land entitlement and sole benefit under ANCSA when such boundary was determined by an agreement to which Tetlin was not a party.

Insofar as a segment of the Doyon-Ahtna boundary was located in 1972 along a portion of the Tetlin Reserve boundary which was unadjudicated, and which is now disputed by Tetlin, the Ahtna-Doyon boundary remains the boundary of Tetlin Reserve but is subject to resolution of the issues raised by Tetlin. If Tetlin prevails and the boundary as delineated by BLM is found to be in error, the regional boundary will continue to be the Reserve boundary, wherever the latter is found to be correctly located.

Where there appears from the appeal record to have been an ongoing boundary dispute, culminating in this appeal, between Tetlin Native Corp. and Departmental officials, and where election to take Reserve lands did not require boundary description, the Board cannot conclude that at the time of such election, Tetlin acquiesced by silence in the Reserve boundary as depicted on survey plats still current.

Tetlin Native Corp., 7 ANCAB 132 (June 18, 1982) 89 I.D. 303

Where an application for a regional land selection does not exclude unpatented mining claims as provided in 43 CFR 2651.4(e), the Bureau of Land Management is not required to identify or to adjudicate unpatented mining claims on the lands to be conveyed if no contest has been filed by the applicant pursuant to 43 CFR 4.450 as provided in 43 CFR 2650.3-2(a).

The Bureau of Land Management is not required to search state record offices for mining claims which have not been recorded with the Bureau of Land Management on behalf of an applicant for an Alaska regional conveyance. Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), failure to record such a claim shall be deemed conclusively to constitute abandonment of the claim, and obviates the need for the Bureau of Land Management to search state records.

Doyon, Ltd., 74 IBLA 139 (July 6, 1983) 90 I.D. 289

Where selection of lands for conveyance to a Native Alaska corporation includes unpatented mining claims, the Bureau of Land Management is not required to identify or to adjudicate unpatented mining claims on the lands to be conveyed, nor is it required to search state records to ascertain the existence of such claims.

Doyon, Ltd., 74 IBLA 281 (July 25, 1983)

Doyon, Ltd., ESTT, Ltd., 75 IBLA 65 (Aug. 10, 1983)

Where selection of lands for conveyance to a Native Alaska corporation includes unpatented mining claims, the Bureau of Land Management is not required to identify unpatented mining claims on the lands to be conveyed.

Doyon, Ltd. (On Reconsideration), 77 IBLA 219 (Nov. 28, 1983)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Regional Conveyances--Continued

Under 43 CFR 2650.3-2(c), mineral patent applications may continue to be filed after Dec. 18, 1976, on land selected by village or regional corporations until such land is actually conveyed. Sec. 22(c) of Alaska Native Claims Settlement Act, 43 U.S.C. § 1621(c) (1976), prohibits the filing of such an application after Dec. 18, 1976, only if the land had been conveyed before the patent application was filed.

Doyon, Ltd., STNT, Ltd. (On Reconsideration), 78 IBLA 327 (Jan. 24, 1984)

Pursuant to the 1982 Chugach Natives, Inc., Settlement Agreement, the proviso of sec. 11 of P.L. 94-204 shall be included in any conveyance of lands to Chugach Natives, Inc., in the Icy Bay regional deficiency withdrawal area. A conveyance to that corporation which is not made expressly subject to such proviso will not be disturbed where it appears that the land at issue was not within the deficiency withdrawal area.

Henry Porter, George Bogren, Yak-Tat Kwaan, Inc., 81 IBLA 311 (June 18, 1984)

Valid Existing Rights

Generally

A right-of-way under 43 U.S.C. § 959 (1976), issued before conveyance under ANCSA of the underlying land, would be a valid existing right protected under § 14(g) of the Act.

Nelbro Packing Co., 5 ANCAB 174 (Mar. 9, 1981) 88 I.D. 352

The private right of access protected by § 17(b)(2) of ANCSA for holders of valid existing rights is separate from public access routes specifically identified pursuant to § 17(b)(1). Possible protection under § 17(b)(2) does not preclude an individual from asserting that a public easement decision affects his or her property interest so as to meet the standing test of 43 CFR 4.902.

Joseph C. Manga et. al., 5 ANCAB 224 (Apr. 20, 1981) 88 I.D. 460

Joseph C. Manga, 5 ANCAB 343 (June 26, 1981)

When a lease is identified in a Decision to Issue Conveyance as a § 14(g) interest, and the conveyance is made subject to such interest, then all rights the lessee holds under the terms of the lease, if valid, are protected and there remains no issue which the lessee may appeal as to the effect of the conveyance on the lease.

Ray DeVilbiss (Wolverine Grazing Association), 5 ANCAB 265 (Apr. 28, 1981) 88 I.D. 513

John L. Seemann, 5 ANCAB 290 (May 11, 1981)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Valid Existing Rights--Continued

Generally--Continued

Possible protection under § 17(b)(2) does not preclude an individual from asserting that a public easement decision affects his or her property interest so as to meet the standing test of 43 CFR 4.902.

Patrick J. Bligh, 6 ANCAB 181 (Nov. 30, 1981) 88 I.D. 1039

When the State of Alaska has continued operation of an Air Navigation Site withdrawn by Secretary's Order for use by the Territory, but has never made application for the withdrawn land under any Federal law, the State's use of the ANS is not "issued" within the meaning of § 14(g) of ANCSA and whatever right the State has to continued use of the land is not protected pursuant to § 14(g).

State of Alaska, Dept. of Transportation and Public Facilities, 7 ANCAB 157 (June 23, 1982) 89 I.D. 321

When the State of Alaska has continued operation of an air navigation site on land withdrawn for such use but has never made application for the withdrawn land under any Federal law, the State has no valid existing right within the meaning of sec. 14(g) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(g) (1976). However, the State's interest in the air navigation site is adequately protected where BLM's decision provides that a grant of the land to a village will be subject to sec. 14(c) of ANCSA, as amended, 43 U.S.C. § 1613(c) (Supp. IV 1980), since subsec. (c)(4) requires the grantee to convey title to the State together with such additional acreage and/or easements as are necessary. No further provision is necessary to fulfill the Secretary's duty under 43 CFR 2641.6(b) to include in the conveyance covenants necessary to fulfill the obligations imposed by sec. 14(c)(4).

State of Alaska, Dept. of Transportation and Public Facilities, 67 IBLA 344 (Oct. 5, 1982)

Land withdrawn for an air navigation site is public land within the context of 43 U.S.C. § 1613 (1976 and Supp. IV 1980), and is proper for selection by a Native village.

Land withdrawn by Executive Order for use as an air navigation site by the Alaska Road Commission was not thereby severed from the public domain and under the terms of the order remained under the jurisdiction of the Secretary of the Interior. No interest, legal or equitable, could be conveyed to the Territory of Alaska by a withdrawal for an air navigation site. Interests in the public lands of the United States can be conveyed only pursuant to an Act of Congress.

Land used for an airport site which is conveyed to a Native village must be subsequently conveyed to the State of Alaska pursuant to 43 U.S.C. § 1613(c)(4) (Supp. IV 1980).

State of Alaska, Dept. of Transportation and Public Facilities, 67 IBLA 360 (Oct. 8, 1982)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Valid Existing Rights--Continued

Generally--Continued

Although sec. 901 of the Alaska National Interest Lands Conservation Act provides that the Bureau of Land Management is the only agency in the Department of the Interior with authority to determine navigability of waters covering a parcel of submerged land selected by a Native corporation, and such determination is final unless it is validly challenged, on appeal, prior to Dec. 2, 1980, where an appeal was filed in 1979 challenging the determination of navigability of certain waters, the matter will be referred to the Hearings Division for a hearing before an Administrative Law Judge on the question of the navigability of the waters in question.

Pursuant to the Departmental Manual, 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to the ANCSA and Secretary's Order No. 3029, as amended, lands selected by a Native corporation must be conveyed by the Bureau of Land Management notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

Doyon Ltd., 70 IBLA 302 (Jan. 28, 1983)

Land used for an airport site which is conveyed to a Native village must be subsequently conveyed to the State of Alaska pursuant to 43 U.S.C. § 1613(c)(4) (Supp. V 1981).

Chefornak, Inc., 75 IBLA 242 (Aug. 24, 1983)

In accordance with sec. 14 of the Alaska Native Claims Settlement Act, the Bureau of Land Management's conveyances of public lands to a village corporation are made subject to valid existing rights in the lands, including rights of access.

Prior to the conveyance of public lands subject to valid existing rights not leading to acquisition of title, but recognized under the Alaska Native Claims Settlement Act, there is no basis for an administrative appeal to enforce the valid existing rights claimed.

Naplor Hot Springs Community Ass'n, 80 IBLA 313 (May 4, 1984)

With respect to an interim conveyance of land to a Native corporation pursuant to sec. 14 of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1613 (1982), the statute does not provide for the reservation of a private right of access to a mining claim, but such right of access is protected as a valid existing right under sec. 17(b)(2) of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1616(b)(2) (1976).

Herbert L. Stewart, Donald J. Ferguson, 82 IBLA 329 (Sept. 7, 1984)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Valid Existing Rights--Continued

Third-Party Interests

Where Forest Service permits were terminated for apparent cause (failure to comply with permit conditions), the original holders of the permits no longer have property interests which constitute valid existing rights protected by § 14(g) of ANCSA.

Where the holder of a Forest Service permit requested that his special use permit be cancelled and the Forest Service did so and, subsequently, issued a special use permit for the same lot to another person, the original holder of the permit no longer has a property interest or a valid existing right derived from the permit which is protected under § 14(g) of ANCSA.

Appeals of John F. Thein, Kenneth E. Schoonover, Wendell Skaflestad, and Kolbjorn Skaflestad, 4 ANCAB 116 (Jan. 11, 1980) 87 I.D. 1

Valid existing rights which are protected under § 14(g) of the Alaska Native Claims Settlement Act (ANCSA), 85 Stat. 688, as amended, 43 U.S.C. §§ 1601-1628 (1976 and Supp. I 1977), are in all cases derived from and created by the State or Federal Government.

Sec. 22(b) of ANCSA protects rights of use and occupancy pending patent of land upon which lawful entry was made prior to Aug. 31, 1971, for the purpose of gaining title to a homestead, headquarters site, trade and manufacturing site, or small tract site. Protection under § 22(b) is contingent upon compliance with the appropriate public land law.

Sec. 22(c) of ANCSA provides limited protection for unpatented mining claims, contingent upon compliance with the specified requirements.

Where the appellants have not asserted that they have a lease, contract, permit, right-of-way, or easement issued by the Federal Government or by the State of Alaska, they fail to prove entitlement to the protection provided by § 14(g) of ANCSA.

Where the appellants do not allege entry under, or compliance with, any public land laws, they cannot claim the protection of § 22(b).

Appeal of Theodore J. Alsaqy et al., 4 ANCAB 151 (Feb. 27, 1980) 87 I.D. 81

Where the State of Alaska has issued patent to a third party on lands tentatively approved to the State under the Alaska Statehood Act, the proper forum to adjudicate the status of such patent is a court, and the Department lacks administrative jurisdiction over the issue.

Contracts for the sale of real property, issued by the State of Alaska for lands in tentatively approved State land selections under the Statehood Act, are valid existing rights leading to the acquisition of title, protected by exclusion from conveyances to Native corporations under the Alaska Native Claims Settlement Act, as interpreted by Secretary's Order No. 3029 (43 FR 55287 (1978)).

In the case of unlisted villages a period occurred, after enactment of the Alaska Native Claims Settlement Act and before the villages filed for eligibility, in which tentatively approved land selections of the State of Alaska were not yet withdrawn for potential village selections, and during this period the

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Valid Existing Rights--Continued

Third-Party Interests--Continued

State could still create third-party interests in such lands.

In the case of unlisted villages, third-party interests created by the State of Alaska on tentatively approved lands after enactment of the Alaska Native Claims Settlement Act are entitled to protection as valid existing rights provided such interests were created before the unlisted village applied for eligibility and lands were withdrawn for it.

Appeal of Eyak Corp., 4 ANCAB 277 (June 30, 1980)
87 I.D. 279

Lands tentatively approved for conveyance under the Alaska Statehood Act and leased by the State of Alaska pursuant to its open-to-entry lease program prior to enactment of the Alaska Native Claims Settlement Act must, pursuant to Secretary's Order No. 3029 (43 FR 55287 (1978)), be excluded from conveyance under ANCSA as valid existing rights leading to the acquisition of title.

The policy expressed in Secretary's Order No. 3029 is applicable to all lands still within the Department's jurisdiction, even if the decision to convey such lands pursuant to the Alaska Native Claims Settlement Act was issued by the Bureau of Land Management prior to publication of Order No. 3029.

Tentative approval of land selections by the State of Alaska under the Statehood Act was rescinded by the Bureau of Land Management to permit conveyance of the same lands to a Native corporation under the Alaska Native Claims Settlement Act. Subsequently, Secretary's Order No. 3029 found that third-party interests leading to fee title, created by the State in such lands, were valid existing rights which must be excluded from conveyance to the Native corporation. Accordingly, BLM must reinstate tentative approval of the State's selection of such lands so that the State is able to grant title to such third parties as contemplated by Order No. 3029.

Appeal of Bruce McAllister, 4 ANCAB 294 (June 30, 1980)
87 I.D. 286

Appeal of Nels Pilskog, 4 ANCAB 307 (July 8, 1980)

Appeal of Alan V. Hanson, 4 ANCAB 321 (July 24, 1980)

Appeal of C. E. Sharp, 4 ANCAB 328 (July 24, 1980)

Appeal of Raymond E. Koon, 4 ANCAB 335 (July 24, 1980)

Appeal of State of Alaska, 4 ANCAB 342 (July 24, 1980)

Where lands tentatively approved for conveyance under the Alaska Statehood Act were leased by the State of Alaska pursuant to its open-to-entry lease program prior to enactment of the Alaska Native Claims Settlement Act, such lands must, pursuant to Secretary's Order No. 3029 (43 FR 55287 (1978)), be excluded from conveyance under the Alaska Native Claims Settlement Act because the leases and concurrent purchase options are valid existing rights leading to the acquisition of title.

The policy expressed in Secretary's Order No. 3029 is applicable to all lands still within the Department's jurisdiction, even if the decision to convey such lands

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Valid Existing Rights--Continued

Third-Party Interests--Continued

pursuant to the Alaska Native Claims Settlement Act was issued by the Bureau of Land Management prior to publication of Order No. 3029.

Where tentative approval of land selections by the State of Alaska under the Statehood Act was rescinded by the Bureau of Land Management to permit conveyance of the same lands to a Native corporation under the Alaska Native Claims Settlement Act, and subsequently Secretary's Order No. 3029 found that third-party interests leading to fee title, created by the State of Alaska in such lands, were valid existing rights which must be excluded from conveyance to the Native corporation, the Bureau of Land Management must reinstate tentative approval of the State of Alaska's selection of such lands so that the State of Alaska is able to grant title to such third parties as contemplated by Order No. 3029.

Appeal of State of Alaska, 5 ANCAB 4 (Aug. 20, 1980)
87 I.D. 366

Appeal of Daniel E. Winn, 5 ANCAB 19 (Aug. 25, 1980)
87 I.D. 372

Appeal of B. Walter Johnson et al., 5 ANCAB 32 (Aug. 25, 1980)

Appeal of Theodore A. Richards, 5 ANCAB 39 (Aug. 26, 1980)

Appeal of Judith P. Miller, 5 ANCAB 46 (Aug. 26, 1980)

Sec. 14(g) of ANCSA mandates identification, in conveyance documents issued pursuant to ANCSA, of only those interests issued by the United States or the State of Alaska. Alleged third-party interests derived from sources other than the United States or the State of Alaska are not within the scope of § 14(g) of ANSCA.

Departmental policy expressed in Secretary's Order No. 3029 and converted into the Departmental Manual at 601 DM 2.2 and 2.4 does not require the Bureau of Land Management to identify or adjudicate alleged third-party interests derived from sources other than the Federal Government or the State of Alaska.

Tetlin Native Corp., 5 ANCAB 197 (Apr. 14, 1981)
88 I.D. 442

Tetlin Native Corp., 5 ANCAB 212 (Apr. 15, 1981)

The existence of a Revised Statutes Sec. 2477 right-of-way precludes neither the reservation of an overlapping § 17(b) public easement nor the conveyance of the underlying fee. Such reservation or conveyance does not affect the previously existing right-of-way.

The continued existence of a Revised Statutes Sec. 2477 right-of-way following conveyance of the underlying fee interest is entirely independent of any reservation, pursuant to § 17(b), of a public easement.

Rights-of-way granted by Revised Statutes Sec. 2477 shall be identified in the decision to issue conveyance and in the conveyance document in the same

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Valid Existing Rights--Continued

Third-Party Interests--Continued

manner as other third-party interests which the Bureau of Land Management need not adjudicate.

State of Alaska, Dept. of Transportation and Public Facilities, 5 ANCAB 307 (June 26, 1981) 88 I.D. 629

The Board will order the exclusion of a disputed Native allotment from the conveyance of lands pursuant to the Alaska Native Claims Settlement Act pending adjudication of the disputed allotment.

Clara Goodman, 6 ANCAB 17 (Aug. 5, 1981) 88 I.D. 718

Timothy Luke, 6 ANCAB 340 (Feb. 16, 1982) 89 I.D. 62

Heirs of Jimmie Walters, 6 ANCAB 352 (Feb. 16, 1982)

Pursuant to the Departmental Manual 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to ANCSA and Secretary's Order No. 3029, as amended, lands selected by a Native corporation must be conveyed by the Bureau of Land Management notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

When an unpatented mining claim is situated within lands selected and approved for conveyance under ANCSA, the possessory interest of the mining claimant is protected under provisions of § 22(c) and 43 CFR 2650.3-2 as a valid existing right notwithstanding that the Bureau of Land Management has not adjudicated such unpatented mining claims prior to conveyance.

Oregon Portland Cement Co., 6 ANCAB 65 (Aug. 25, 1981) 88 I.D. 760

Albert Hanan et al; J. A. Jack and Sons, Inc.; and Hespball Brothers, Inc., 6 ANCAB 111 (Sept. 29, 1981)

The interest of an appellant-owner in a millsite located under 30 U.S.C. § 42(b) and situated within lands selected by a Native corporation under ANCSA, constitutes a location under the general mining laws and is therefore included within meaning of interests protected under the provisions of § 22(c) of ANCSA.

Pursuant to § 22(c) of ANCSA the interest of the owner of an unpatented millsite location under 30 U.S.C. § 42(b) does not constitute any impediment to the Bureau of Land Management conveying the legal title of the same lands to a selecting Native corporation.

Pursuant to § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c), the Bureau of Land Management may convey title to lands selected by a Native corporation without excluding those lands situated within an unpatented millsite location under provisions of 30 U.S.C. § 42(b).

The owner of an unpatented millsite location situated within lands selected by a Native corporation under ANCSA is not denied any interests acquired under 30 U.S.C. § 42(b) notwithstanding that the provisions of

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Valid Existing Rights--Continued

Third-Party Interests--Continued

§ 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c) establish a time limit within which steps must be taken to proceed to patent.

The terms of § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c) requiring that the owner of an unpatented millsite location must proceed to patent within a time limit is not in derogation of the general mining laws which contain no time limit within which a mining claimant needs to proceed to obtain patent.

Thus, pursuant to 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to ANCSA and Secretary's Order No. 3029, as amended, lands selected by a Native corporation must be conveyed by BLM notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

When an unpatented millsite location is situated within lands selected and approved for conveyance under ANCSA, the possessory interest of the mining claimant is protected under provisions of § 22(c) and 43 CFR 2650.3-2 as a valid existing right notwithstanding that the Bureau of Land Management has not adjudicated the validity of such millsite prior to conveyance.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D. 293

When the State of Alaska has continued operation of facilities on an Air Navigation Site withdrawn by Secretary's Order for use by the Territory, but has never applied for the land under Federal law, the State's interest in the ANS is protected pursuant to § 14(c)(8) of ANSCA, as amended, which requires the Native corporation to convey title to the State, together with such additional acreage and/or easements as are necessary.

State of Alaska, Dept. of Transportation and Public Facilities, 7 ANCAB 157 (June 23, 1982) 89 I.D. 321

Where, in R.S. 2477, Congress made a grant of rights-of-way which became effective only upon valid acceptance of the grant, and where the Bureau of Land Management is prohibited from adjudicating the right-of-way to determine whether it is valid and has therefore "issued" within the meaning of § 14(g) of ANCSA, the holding in Appeals of State of Alaska and Seldovia Native Ass'n, Inc., 2 ANCAB 1, 84 I.D. 349 (1977) [VLS 75-14/75-15], requiring identification of valid existing rights in the conveyance document is not applicable to R.S. 2477 rights-of-way.

Where the Bureau of Land Management seeks to reserve a § 17(b) public easement over an existing road constructed by the State of Alaska and claimed by the State as an R.S. 2477 right-of-way, the conveyance documents shall contain a provision specifying that the reserved public easement is subject to the claimed R.S. 2477 right-of-way, "if valid."

State of Alaska, Dept. of Transportation and Public Facilities (On Reconsideration), 7 ANCAB 188 (June 24, 1982) 89 I.D. 346

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Valid Existing Rights--Continued

Third-Party Interests--Continued

Sec. 22(c) of the Alaska Native Claims Settlement Act permits the conveyance of land that is subject to unpatented mining claims located prior to Aug. 31, 1971, to a regional Native corporation. The possessory interest of the mining claimant in the claims is protected, although limited, as a valid existing right by sec. 22(c) and 43 CFR 2650.3-2.

Theodore J. Aleasr, 69 IBLA 160 (Dec. 13, 1982)
89 I.D. 619

Federal land occupied by a municipally operated utility pursuant to a license from the Federal Power Commission may be conveyed to a Native corporation selecting such land, subject to such license. Lands occupied by the utility are not excluded from the interim conveyance describing them.

Ketchikan Public Utilities, 79 IBLA 286 (Mar. 20, 1984)

BLM may properly approve land for interim conveyance to a Native village corporation subject to certain third-party interests, if valid, and thereby reserve the question of whether those interests constitute valid existing rights under sec. 14(g) of ANCSA, as amended, 43 U.S.C. § 1613(g) (1982).

Ukpeagvik Inupiat Corp., 81 IBLA 222 (June 6, 1984)

Village Conveyances

Where an application for a regional land selection does not exclude unpatented mining claims as provided in 43 CFR 2651.4(e), the Bureau of Land Management is not required to identify or to adjudicate unpatented mining claims on the lands to be conveyed if no contest has been filed by the applicant pursuant to 43 CFR 4.450 as provided in 43 CFR 2650.3-2(a).

Doyon, Ltd., 74 IBLA 139 (July 6, 1983) 90 I.D. 289

Where selection of lands for conveyance to a Native Alaska corporation includes unpatented mining claims, the Bureau of Land Management is not required to identify or to adjudicate unpatented mining claims on the lands to be conveyed, nor is it required to search state records to ascertain the existence of such claims.

Doyon, Ltd., 74 IBLA 281 (July 25, 1983)

Doyon, Ltd., NTNT, Ltd., 75 IBLA 65 (Aug. 10, 1983)

The Alaska Native Claims Settlement Act provides that a Native village corporation shall select all of the township or townships in which the village is located. The language is imperative, not permissive. If land within the "core" township is available for selection, it must be selected.

Chefornak, Inc., 75 IBLA 282 (Aug. 24, 1983)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

CONVEYANCES--Continued

Village Conveyances--Continued

Where selection of lands for conveyance to a Native Alaska corporation includes unpatented mining claims, the Bureau of Land Management is not required to identify unpatented mining claims on the lands to be conveyed.

Doyon, Ltd. (On Reconsideration), 77 IBLA 219 (Nov. 28, 1983)

Under 43 CFR 2650.3-2(c), mineral patent applications may continue to be filed after Dec. 18, 1976, on land selected by village or regional corporations until such land is actually conveyed. Sec. 22(c) of Alaska Native Claims Settlement Act, 43 U.S.C. § 1621(c) (1976), prohibits the filing of such an application after Dec. 18, 1976, only if the land had been conveyed before the patent application was filed.

Doyon, Ltd., NTNT, Ltd. (On Reconsideration), 78 IBLA 327 (Jan. 24, 1984)

Under sec. 1427(e)(3)(A) of the Alaska National Interest Lands Conservation Act, 94 Stat. 2525, Ayakulik, Inc., a village corporation, is entitled only to the available lands within the "one mile square" exclusion of Public Land Order No. 1634.

Ayakulik, Inc., 82 IBLA 60 (July 17, 1984)

DEFINITIONS

Generally

To establish its eligibility to select lands a Native group must constitute a majority of the residents in the locality. Where, on the critical date, all members of the Native group resided on a patented, surveyed, homestead in a community or neighborhood where there were other residents in relatively close proximity, the census or tally may not be limited to the 153 acres within the confines of the homestead boundaries, as the "locality" must include the neighboring area within which the other persons of the community resided.

Yaqulian, Inc., et al., 75 IBLA 316 (Aug. 30, 1983)

Federal Installation

An agreement between selecting Native corporations and a Federal agency, on lands actually used by the Federal agency, cannot be enforced in lieu of a § 3(e) determination by the Bureau of Land Management to compel conveyance to the Native corporations in accord with the agreement. ANCSA by clear language in § 3(e) mandates a Secretarial determination. While the Secretary may delegate, he may not be compelled to relinquish his statutory duty to third parties.

Where the required § 3(e) determination is crucial to conveyance, where the affected Federal agency and all affected Native corporations agree on the identification of lands actually used by the agency, where the record discloses no inconsistency between the agreement and § 3(e), where the determination has already been delayed for a significant period of time by the lack of implementing regulations and the date of publication of final regulations cannot be ascertained, the Bureau of Land Management may make a § 3(e) determination, relying on

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

DEFINITIONS--Continued

Federal Installation--Continued

the parties' agreement for factual data, in the absence of final regulatory guidelines.

Appeal of Peng-Tik, Inc., Ltd., 5 ANCAB 59 (Sept. 24, 1980) 87 I.D. 422

Where the Alaska Railroad claims use of a tract of land and thus nominally meets the definition of the term "holding agency" in 43 CFR 2655.0-5(a), and where factual and legal questions relating to the issue of whether the railroad actually used the land as claimed have not yet been determined by the BLM, the Board concludes that a finding on whether the ARR is the holding agency is properly an initial part of the § 3(e) determination to be made by BLM if a remand is ordered.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

"Federal installation." The Beaver Falls Hydroelectric Power Project, which is operated by Ketchikan Public Utilities, a nonprofit division of the municipality of Ketchikan, pursuant to a license issued by the Federal Power Commission, is not a "Federal installation" and, therefore, the land occupied by the project is not being used in connection with the administration of any "Federal installation" within the meaning of 43 U.S.C. § 1602(e) (1976).

A licensee of the Federal Power Commission, or its successor, the Federal Energy Regulatory Commission, is not an agent of the licenser so as to qualify the licenser as a "holding agency" within the meaning of 43 CFR 2655.0-5(a).

Ketchikan Public Utilities, 79 IBLA 286 (Mar. 20, 1984)

BLM may properly include all land actually used in connection with the administration of a Federal installation during the period of time that the land was available for selection by the Native village corporation when defining land excluded from an interim conveyance to a Native village corporation under sec. 3(e) of ANCSA, as amended, 43 U.S.C. § 1602(e) (1982), regardless of whether the Federal agency may thereafter contemplate relocation of the installation.

Ukpeagvik Inupiat Corp., 81 IBLA 222 (June 6, 1984)

Frivolous Appeal

Where regulations in 43 CFR 2655.4(b) provide that the Board must remand an appeal to the Bureau of Land Management for a § 3(e) determination unless the appeal is found to be "frivolous," and the term "frivolous" is not defined in such regulations, the Board will find the appeal frivolous only if the appellant can make no rational argument on the law or facts in support of his claim.

Where the Alaska Railroad raises issues of fact and law, which were addressed for the first time in regulations implementing § 3(e) of ANCSA, and the Bureau of Land Management has not yet made a § 3(e) determination on the lands in dispute, the railroad's appeal is not frivolous and the appeal will be remanded to the Bureau of Land Management for consideration of these issues in a § 3(e) determination.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

DEFINITIONS--Continued

Holding Agency

Where the Alaska Railroad claims use of a tract of land and thus nominally meets the definition of the term "holding agency" in 43 CFR 2655.0-5(a), and where factual and legal questions relating to the issue of whether the railroad actually used the land as claimed have not yet been determined by the BLM, the Board concludes that a finding on whether the ARR is the holding agency is properly an initial part of the § 3(e) determination to be made by BLM if a remand is ordered.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

"Federal installation." The Beaver Falls Hydroelectric Power Project, which is operated by Ketchikan Public Utilities, a nonprofit division of the municipality of Ketchikan, pursuant to a license issued by the Federal Power Commission, is not a "Federal installation" and, therefore, the land occupied by the project is not being used in connection with the administration of any "Federal installation" within the meaning of 43 U.S.C. § 1602(e) (1976).

A licensee of the Federal Power Commission, or its successor, the Federal Energy Regulatory Commission, is not an agent of the licenser so as to qualify the licenser as a "holding agency" within the meaning of 43 CFR 2655.0-5(a).

Ketchikan Public Utilities, 79 IBLA 286 (Mar. 20, 1984)

Public Lands

Generally

The Department of the Interior under provisions of ANCSA and regulations in 43 CFR has both the authority and responsibility to determine which lands, including submerged lands, are "public lands" within the definition of § 3(e) of ANCSA and are therefore available for selection by a Native corporation.

Doyon, Ltd. and State of Alaska, 5 ANCAB 324 (June 26, 1981) 43 I.D. 636

The Bureau of Land Management under provisions of ANCSA and regulations in 43 CFR has both the authority and responsibility to determine which lands, including submerged lands, are "public lands" within the definition of § 3(e) of ANCSA and are therefore available for selection by a Native corporation.

Doyon Ltd., 5 ANCAB 368 (July 27, 1981)

Doyon, Ltd., 6 ANCAB 27 (Aug. 19, 1981)

Doyon, Ltd., 6 ANCAB 32 (Aug. 19, 1981)

Gana-a' Yoo, Ltd., 6 ANCAB 45 (Aug. 24, 1981)

Gana-a' Yoo, Ltd., 6 ANCAB 50 (Aug. 24, 1981)

Gana-a' Yoo, Ltd., 6 ANCAB 55 (Aug. 24, 1981)

Doyon Ltd., 6 ANCAB 60 (Aug. 24, 1981)

Doyon, Ltd., 6 ANCAB 219 (Dec. 14, 1981) 88 I.D. 1086

Doyon, Ltd., 6 ANCAB 242 (Dec. 16, 1981) 88 I.D. 1105

Doyon, Ltd. and NYNY, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

Doyon, Ltd., 6 ANCAB 364 (Feb. 24, 1982)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

DEFINITIONS--Continued

Public Lands--Continued

Generally--Continued

"Public lands" as defined by § 3(e) of the Alaska Native Claims Settlement Act do not include lands identified for selection by the State of Alaska prior to Jan. 17, 1969.

Doyon, Ltd., 6 ANCAB 95 (Sept. 28, 1981) 88 I.D. 886

Doyon, Ltd., 6 ANCAB 129 (Oct. 22, 1981)

Where the Bureau of Land Management under regulations in 43 CFR 2650.0-5(g) or 43 CFR 2650.5-1(b) makes administrative determinations of navigability for the purpose of conveying title to submerged lands, and where title to such lands could pass to the State of Alaska or to a Native corporation, but cannot pass to the appellant, the appellant's property interest in other lands is not affected by such navigability determination, and he lacks standing to raise issues of navigability on appeal.

Walt Hanni, 6 ANCAB 307 (Jan. 28, 1982) 89 I.D. 14

"Federal installation." The Beaver Falls Hydroelectric Power Project, which is operated by Ketchikan Public Utilities, a nonprofit division of the municipality of Ketchikan, pursuant to a license issued by the Federal Power Commission, is not a "Federal installation" and, therefore, the land occupied by the project is not being used in connection with the administration of any "Federal installation" within the meaning of 43 U.S.C. § 1602(e) (1976).

A licensee of the Federal Power Commission, or its successor, the Federal Energy Regulatory Commission, is not an agent of the licenser so as to qualify the licenser as a "holding agency" within the meaning of 43 CFR 2655.0-5(a).

Ketchikan Public Utilities, 79 IBLA 286 (Mar. 20, 1984)

BLM may properly include all land actually used in connection with the administration of a Federal installation during the period of time that the land was available for selection by the Native village corporation when defining land excluded from an interim conveyance to a Native village corporation under sec. 3(e) of ANCSA, as amended, 43 U.S.C. § 1602(e) (1982), regardless of whether the Federal agency may thereafter contemplate relocation of the installation.

Ukpeagvik Inupiat Corp., 81 IBLA 222 (June 6, 1984)

"Public lands" available for selection by a Native village corporation under the Alaska Native Claims Settlement Act do not include the smallest practicable tract of land actually used by a Federal agency in connection with the administration of an installation or facility. 43 U.S.C. § 1602(e) (1982). Although such land need not necessarily be improved on Dec. 18, 1971, the land must be in actual use on that date and throughout the selection period. Land which is the subject of planning or which is held for future use does not qualify and, hence, is available for selection.

The status of a withdrawal of public domain is not dispositive of the question of whether Federal lands

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

DEFINITIONS--Continued

Public Lands--Continued

Generally--Continued

are actually used in connection with the administration of a Federal installation and, thus, not available for Native selection under sec. 3(e) of the Alaska Native Claims Settlement Act.

Federal Aviation Administration, Paug-Vik, Inc., Ltd., State of Alaska, 83 IBLA 382 (Nov. 20, 1984)

Department of the Interior Instructions, 44 L.D. 513 (1916)

Construction and maintenance of an authorized Federal improvement on public lands under principles of Department of the Interior Instructions, 44 L.D. 359 (1915) and 44 L.D. 513 (1916), does not cause an appropriation of land affected and thus does not affect the right of selection by a Native corporation under the provisions of ANCSA.

Inasmuch as the Federal interest in an improvement constructed and maintained on public land pursuant to Instructions, 44 L.D. 513 (1916), does not effect a segregation of, nor is it an interest in, the land itself, but is limited to the improvement, it cannot be considered as a possible exception to being "public land" within meaning of § 3(e)(1) of ANCSA.

Where the record is uncontested and supports a factual finding that the United States no longer uses or needs an improvement pursuant to the principles of Instructions, 44 L.D. 513 (1916), the Board can accept a stipulation by the parties to remove the reservation of interest from a conveyance document.

Doyon, Ltd., 5 ANCAB 77 (Oct. 10, 1980) 87 I.D. 480

Withdrawal for National Defense Purposes

The phrase "national defense purposes" is not a term of art and does not have a precise legal meaning, but is a broadly inclusive descriptive term.

Where neither the express language, nor the legislative history of ANCSA draws any distinction between withdrawals "for national defense purposes" and withdrawals for military reservations or other military uses, a withdrawal for use of the Department of the Army for terminal facilities in connection with a petroleum products pipeline system is considered to be a withdrawal "for national defense purposes" within the meaning of § 11(a)(1) of ANCSA.

In determining whether a national defense withdrawal, within the meaning of § 11(a)(1) of ANCSA, existed on Dec. 18, 1971, only the formal legal status of the withdrawal may be considered, and it is immaterial whether the purpose of the withdrawal has been fulfilled or whether the actual use to which the land is put has changed.

ANCSA does not give the Secretary of the Interior the authority to make factual determinations as to the actual use of land which is withdrawn for national defense purposes, resulting in removal of such land from the protection of the exception for national defense purpose withdrawals in § 11(a)(1) of ANCSA.

Appeal of Tyonek, Inc., 6 ANCAB 173 (Apr. 7, 1980) 87 I.D. 123

Appeal of Northway Natives, Inc., 6 ANCAB 207 (Apr. 21, 1980)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

DEFINITIONS--Continued

Withdrawal for National Defense Purposes--Continued

Lands affected by construction and maintenance of a linear pipeline under principles of Instructions, 44 L.D. 513 (1916), are not "lands withdrawn or reserved for national defense purposes" within the meaning of the exception in § 11(a)(1) of ANCSA.

Doyon, Ltd., 5 ANCAB 77 (Oct. 10, 1980) 87 I.D. 480

Where a public land order withdraws lands under the jurisdiction of the Bureau of Land Management as a source of materials for use in construction and maintenance of Federal projects, and the Alaska Railroad is not indicated expressly in the public land order as an agency benefiting from the withdrawal, the Railroad cannot invoke the national defense exception in § 11(a) of ANCSA to defeat Native selection of the withdrawn lands.

Alaska Railroad, 7 ANCAB 8 (Mar. 24, 1982) 89 I.D. 118

DISENROLLMENT

Metlakatla Natives

The provisions of the Alaska Native Claims Settlement Act specifically exclude members of the Metlakatla Tribe of the Annette Islands Reserve from benefits under the Act. Where appellant and her children periodically resided at Metlakatla, accepted benefits from the Metlakatla Tribe as tribal members, were enrolled members since 1968, and did not initiate efforts to terminate tribal membership until 1976, appellants were enrolled members of Metlakatla within the meaning of the Alaska Native Claims Settlement Act and were properly excluded from enrollment under the Act.

Corinne Mae Howell & Her Minor Children, Gary Arnold Howell, Richard Dewayne Howell, and Darcy Lynn Howell v. United States, 9 IBIA 3 (June 11, 1981) 88 I.D. 575

Exclusion of appellant members of the Metlakatla Community from benefits under provisions of the Alaska Native Claims Settlement Act held not to be precluded by a contrary result reached in a prior Administrative Law Judge's decision in a similar case. The determination by the agency factfinder in the separate but similar situation is not binding upon the Board of Indian Appeals, which renders final decision for the Department in disenrollment appeals referred on appeal to the Board.

Corinne Mae Howell & Her Minor Children Gary Arnold Howell, Richard Dewayne Howell, and Darcy Lynn Howell v. United States, 9 IBIA 70 (Sept. 9, 1981) 88 I.D. 822

EASEMENTS

Generally

There is no requirement in the Alaska Native Claims Settlement Act easement regulations that all of the standard uses described for 25-foot-wide trails be allowed in every easement reservation. To the contrary, the regulations specifically permit variances from standard uses "when justified by special circumstances." 43 CFR 2650.4-7(a)(8). In this case, the evidence supports the use of easement 14 for "travel by foot, dogsleds, [and] animals" (43 CFR 2650.4-7(b)(2)(i)), but the record does not support use by "snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. G.V.W.)." Id.

Northway Natives, Inc., Doyon Ltd., 69 IBLA 219 (Dec. 17, 1982) 89 I.D. 642

Where a Native corporation contends on appeal alternatives exist to easements reserved across Native land selections made pursuant to the Alaska Native Claims Settlement Act, the burden lies upon the corporation to show that the alternatives proposed are reasonable.

Evidence offered to show use of a Native selection for transportation purposes after 1977, was properly admitted as relevant to an issue raised by appellant concerning the existence of alternative easement sites, even though the evidence of use after Dec. 18, 1976, could not be considered to determine the separate issue concerning whether there was present existing use of land prior to Dec. 18, 1976.

Evidence of use of a reserved transportation easement for other uses does not tend to invalidate the easement, where it appears there was also actual use of the area for transportation purposes.

Where, by regulation, a site easement for parking in connection with a transportation easement is limited in extent to 1 acre, no greater area than 1 acre may be reserved.

Goldbelt, Inc., 74 IBLA 308 (July 27, 1983)

Sec. 17(b)(3) of ANCSA directs the Secretary of the Interior, after consultation, to reserve such public easements as he determines are necessary. In making easement reservations, the Secretary must adhere to the specific selection criteria set forth in sec. 17(b)(1) of ANCSA.

State of Alaska, 79 IBLA 335 (Mar. 22, 1984)

If BLM determines that a waterway through land to be conveyed pursuant to the Alaska Native Claims Settlement Act is a "major waterway," as defined in 43 CFR 2650.0-5(o), BLM must reserve in the land conveyance such public easements at periodic points along the waterway as are reasonably necessary to facilitate proper public use of the waterway after the conveyance.

State of Alaska, 81 IBLA 7 (May 14, 1984)

Access

Sec. 17(b)(2) of ANCSA protects the private right of access, provided for under existing law, to any valid right recognized by ANCSA.

Sec. 17(b)(2) of ANCSA ensures that persons who have valid existing uses do not lose access rights because of the public easements provided by § 17(b)(1). The private right of access provided to holders of valid existing rights pursuant to § 17(b)(2) of ANCSA is separate from the right provided by § 17(b)(1) of public access routes. An individual claiming standing to appeal a public easement decision must assert public use of the desired easement to distinguish it from a private access right under § 17(b)(2). However, the possibility of protection under § 17(b)(2) does not

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

EASEMENTS--Continued

Access--Continued

preclude the holder of a property interest from asserting that an easement decision affects his interest so as to meet the standing requirements of 43 CFR 4.902.

Patricia and William Nordmark, 6 ANCAB 157 (Nov. 30, 1981) 88 I.D. 1028

Since the purpose of a § 17(b)(1) easement is to provide public access across Native lands to public lands, such an easement necessarily affects lands other than those to be conveyed. A member of the public who claims a private interest in land outside the conveyance, in asserting standing to appeal a § 17(b)(1) easement decision, may rely on this private holding as a property interest affected within the meaning of regulations in 43 CFR 4.902.

Where access, by appellant and members of the public, from a public airport to appellant's property and adjacent public lands is dependent upon use of a water body, and upon access to the water body by a public easement, then the appellant's property interest is affected by failure to reserve such a public access easement.

Where determination of a lake's status as a major waterway is relevant to reservation of public access easements to the lake, and the appellant's assertions regarding public use of the lake, made in connection with an attempt to appeal navigability determinations, are equally relevant to the question of whether the lake is a major waterway, then the appellant may attempt to prove that the lake is a major waterway in order to justify reservation of the public access easement he seeks.

Walt Manni, 6 ANCAB 307 (Jan. 28, 1982) 89 I.D. 14

Since the purpose of a § 17(b)(1) public easement is to provide access across Native lands to lands not selected, the Board has concluded that a § 17(b)(1) easement necessarily affects lands other than those to be conveyed. Therefore, a member of the public who claims a private interest in land other than the land to be conveyed, in asserting standing to appeal a § 17(b)(1) easement decision, may rely on this private holding as his or her "property interest" affected within the meaning of 43 CFR 4.902.

Where access by appellant to appellant's property is dependent upon use of a water body, and upon access to the water body by a public easement, then the appellant's property interest is affected by failure to reserve such a public access easement.

Where determination of a lake's status as a major waterway is relevant to reservation of public access easements to the lake, and the appellant has appealed the Bureau of Land Management's failure or refusal to reserve a trail easement to the lake, and appellant's assertions indicate some possibility that the lake is a major waterway, then the appellant may attempt to prove that the lake is a major waterway in order to justify reservation of the public access easement he seeks.

In the absence of any indication that a water body is a major waterway, where appellant lacks standing to appeal the navigability of the water body, and where appellant has thus failed to indicate that the absence of an easement in any way affects access between his land and public lands or a major waterway, an appellant will be found to lack standing to appeal that particular easement.

Where appellant's land is surrounded by Native-selected lands, and the only means of access by appellant and members of the public to appellant's land and

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

EASEMENTS--Continued

Access--Continued

public lands beyond the Native selections is by a public road, the failure of the Bureau of Land Management to reserve a public access easement for such road adversely affects the appellant's property interest so as to confer standing under 43 CFR 4.902 to appeal the lack of such an easement. Appellant's property interest is similarly affected by BLM's failure to reserve a site easement providing access from appellant's land to submerged lands underlying navigable waters.

Ervin E. Terry, 7 ANCAB 63 (May 19, 1982) 89 I.D. 242

The regulations contain safeguards to guarantee the public access to the public domain via easements across Native-selected lands so that other than present existing uses of the public domain may be enjoyed. At 43 CFR 2650.4-7(a)(3) it is provided that a public easement may be reserved absent a demonstration of present existing use if, among other things, there is no reasonable alternative route available or if the public easement is for access to an isolated tract or area of publicly owned land.

Northway Natives, Inc., Doyon Ltd., 69 IBLA 219 (Dec. 17, 1982) 89 I.D. 642

Pursuant to 43 CFR 2650.4-7(b), a transportation easement for public access may not be reserved across Native lands where there exists a reasonable alternative route of transportation across publicly owned lands. Where the reasonableness of an alternate route is put in dispute and the facts of record are insufficient to find that a BLM decision not to reserve an easement based on that route is supported by a rational basis, this Board has the discretionary authority to order a hearing in the matter before an Administrative Law Judge pursuant to 43 CFR 4.415.

State of Alaska, 71 IBLA 256 (Mar. 21, 1983)

Doyon, Ltd. (On Reconsideration), 77 IBLA 219 (Nov. 28, 1983)

A regional land selection conveyance must reserve access easements to any isolated tract of publicly owned land and public access easements may be terminated only after an opportunity for public hearing or comment. Therefore, it is not proper to provide in a conveyance for the automatic termination of such easements.

Doyon, Ltd., 74 IBLA 139 (July 6, 1983) 90 I.D. 289

Sec. 17(b) of the Alaska Native Claims Settlement Act requires the Secretary, when approving a selection of lands by a Native corporation, to reserve such easements as are reasonably necessary to guarantee a full right of public access across selected lands to public lands not embraced in the selection.

Where it appears from the record that the easement reserved crosses patented lands (inholdings) over which the Bureau of Land Management has no authority to grant the right of access, the case will be remanded for survey of the inholdings to ascertain any conflict with the easement and consideration of the feasibility of routing the reserved easement around the inholdings.

State of Alaska, 74 IBLA 275 (July 25, 1983)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

EASEMENTS--Continued

Access--Continued

BLM may properly reserve a site easement pursuant to sec. 17(b) of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1613(a) (1982), where the easement is reasonably necessary to guarantee a full right of public use because there are no reasonable alternative sites on publicly owned land which likewise guarantee such use, e.g., where the suggested alternative sites are within a bombing range under the jurisdiction of the Department of the Air Force.

Toghotthele Corp., 81 IBLA 317 (June 19, 1984)

With respect to an interim conveyance of land to a Native corporation pursuant to sec. 14 of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1613 (1982), the statute does not provide for the reservation of a private right of access to a mining claim, but such right of access is protected as a valid existing right under sec. 17(b)(2) of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1616(b)(2) (1976).

Herbert I. Stewart, Donald J. Ferguson, 82 IBLA 329 (Sept. 7, 1984)

Sec. 17(b) of the Alaska Native Claims Settlement Act requires the Secretary, when approving a selection of lands by a Native corporation, to reserve such easements as are reasonably necessary to guarantee a full right of public access across selected lands to public lands not embraced in the selection. Reservation of an easement for a road noted on the public land records pursuant to Instructions, 44 L.D. 513 (1916), will not be disturbed in the absence of a showing that it is either unnecessary or inadequate to preserve access to the public lands not selected.

Federal Aviation Administration, Paug-Vik, Inc., Ltd., State of Alaska, 83 IBLA 382 (Nov. 20, 1984)

The Secretary of the Interior is authorized and directed to reserve public easements across lands selected by Native village corporations which are reasonably necessary to guarantee a full right of public use and access for recreation, hunting, transportation, utilities, docks, and such other public uses as the Planning Commission determines to be important.

Patrick J. Bliss, 84 IBLA 211 (Dec. 28, 1984)

Decision to Reserve

When reservation of public easements under § 17(b) of ANCSA is appealed and the issue has been remanded to the Bureau of Land Management for easement conformance pursuant to regulations in 43 CFR 2650.4-7, and when the Bureau of Land Management subsequently renders a decision which modifies the public easements reserved, such modified decision supersedes the previous easement reservations and constitutes the final, appealable decision to reserve public easements under § 17(b) in a conveyance under ANCSA.

When the appealed issue of public easements reserved under § 17(b) of ANCSA, in the Decision to Issue Conveyance, has been remanded for easement conformance under regulations in 43 CFR 2650.4-7, and when the Bureau of Land Management's easement conformance decision modifying the Decision to Issue Conveyance is published, those § 17(b) easement issues

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

EASEMENTS--Continued

Decision to Reserve--Continued

appealed from the initial Decision to Issue Conveyance become moot.

Doyon, Ltd., 5 ANCAB 354 (July 24, 1981)

Where easements have been recommended by the Joint Federal-State Land Use Planning Commission for Alaska, their reservation in a Bureau of Land Management decision of intent to convey will generally be upheld.

Doyon Ltd., 70 IBLA 302 (Jan. 28, 1983)

A mining claimant whose unpatented mining claims are located in Alaska outside lands approved for conveyance has standing to appeal a failure by BLM to reserve a public easement in the conveyance.

Henry E. Waterfield, 77 IBLA 270 (Nov. 30, 1983)

The State of Alaska has standing to challenge the failure of the Bureau of Land Management to reserve site easements along a navigable river by virtue of the property interest it holds in the submerged lands of the river and its allegations that site easements are necessary for a reasonable pattern of public travel and access to public lands along the river.

State of Alaska, 78 IBLA 390 (Jan. 31, 1984)

With respect to an interim conveyance of land to a Native corporation pursuant to sec. 14 of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1613 (1982), the statute does not provide for the reservation of a private right of access to a mining claim, but such right of access is protected as a valid existing right under sec. 17(b)(2) of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1616(b)(2) (1976).

Herbert I. Stewart, Donald J. Ferguson, 82 IBLA 329 (Sept. 7, 1984)

Present Existing Use

Pursuant to 43 CFR 2650.4-7(a)(3), the primary standard for determining which public easements are reasonably necessary for access shall be present existing use. In light of the detailed concern repeatedly expressed in the easement regulations about controlling the "uses" of public easements, it makes little sense to regard the "primary standard" for determining which public easements are reasonably necessary as nothing more than favoring trails, regardless of their purpose, which have recency of use. The most reasonable interpretation of the "present existing use" requirement is that easements substantially conform to existing uses and that such evidence of use be recent.

The regulations contain safeguards to guarantee the public access to the public domain via easements across Native-selected lands so that other than present existing uses of the public domain may be enjoyed. At 43 CFR 2650.4-7(a)(3) it is provided that a public easement may be reserved absent a demonstration of present existing use if, among other things, there is no reasonable alternative route available or if the

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

EASEMENTS--Continued

Present Existing Use--Continued

public easement is for access to an isolated tract or area of publicly owned land.

Northway Natives, Inc., Doyon Ltd., 69 IBLA 219 (Dec. 17, 1982) 89 I.D. 642

Under 43 CFR 2650.4-7(a)(3), present existing use is the primary standard used to determine whether easements are reasonably necessary to be reserved under the Alaska Native Claims Settlement Act. Evidence offered by users of the reserved easement of actual use of the area for transportation purposes prior to Dec. 18, 1976, is sufficient to support a reservation under the Act for the transportation uses described in 43 CFR 2650.4-7(b)(1)(viii).

Goldbelt, Inc., 74 IBLA 308 (July 27, 1983)

Procedures

Conformance

When reservation of public easements under § 17(b) of ANCSA is appealed and the issue has been remanded to the Bureau of Land Management for easement conformance pursuant to regulations in 43 CFR 2650.4-7, and when the Bureau of Land Management subsequently renders a decision which modifies the public easements reserved, such modified decision supersedes the previous easement reservations and constitutes the final, appealable decision to reserve public easements under § 17(b) in a conveyance under ANCSA.

When the appealed issue of public easements reserved under § 17(b) of ANCSA, in the Decision to Issue Conveyance, has been remanded for easement conformance under regulations in 43 CFR 2650.4-7, and when the Bureau of Land Management's easement conformance decision modifying the Decision to Issue Conveyance is published, those § 17(b) easement issues appealed from the initial Decision to Issue Conveyance become moot.

Doyon, Ltd., 5 ANCAB 354 (July 24, 1981)

Public Easements

Since the purpose of a § 17(b)(1) public easement is to provide access across Native lands to lands not selected, such an easement necessarily affects lands other than those to be conveyed. Therefore, in asserting standing to appeal a § 17(b)(1) easement decision, a member of the public who claims a private interest in land other than the land to be conveyed may rely on this private holding as his or her "property interest" affected within the meaning of 43 CFR 4.902.

The private right of access protected by § 17(b)(2) of ANCSA for holders of valid existing rights is separate from public access routes specifically identified pursuant to § 17(b)(1). Possible protection under § 17(b)(2) does not preclude an individual from asserting that a public easement decision affects his or her property interest so as to meet the standing test of 43 CFR 4.902.

An individual claiming standing to appeal a § 17(b)(1) public easement decision must assert public use of the desired easement in order to distinguish it from a § 17(b)(2) private access right.

Joseph C. Mangs et. al., 5 ANCAB 224 (Apr. 20, 1981) 88 I.D. 460

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

EASEMENTS--Continued

Public Easements--Continued

Joseph C. Mangs, 5 ANCAB 343 (June 26, 1981)

The existence of a Revised Statutes Sec. 2477 right-of-way precludes neither the reservation of an overlapping § 17(b) public easement nor the conveyance of the underlying fee. Such reservation or conveyance does not affect the previously existing right-of-way.

The continued existence of a Revised Statutes Sec. 2477 right-of-way following conveyance of the underlying fee interest is entirely independent of any reservation, pursuant to § 17(b), of a public easement.

State of Alaska, Dept. of Transportation and Public Facilities, 5 ANCAB 307 (June 26, 1981) 88 I.D. 629

Since the purpose of a § 17(b)(1) public easement is to provide access across Native lands to lands not selected, such an easement necessarily affects lands other than those to be conveyed. Therefore, in asserting standing to appeal a § 17(b)(1) easement decision, a member of the public who claims a private interest in land other than the land to be conveyed may rely on this private holding as a "property interest affected" within the meaning of 43 CFR 4.902.

Where appellants seek a public access easement under § 17(b)(1) of ANCSA, they may rely on their patented homesite, located outside the conveyance, as a property interest for purposes of meeting the standing requirements of 43 CFR 4.902.

Where appellants claim that their homesite is affected by the Bureau of Land Management's failure to reserve a § 17(b)(1) public access easement, along a road used by appellants and the public, because in the absence of such an easement their present access route to the homesite may be cut off by the proposed conveyance to a Native corporation, this is a claim that their property interest is affected within the terms of 43 CFR 4.902.

Patricia and Willian Nordmark, 6 ANCAB 157 (Nov. 30, 1981) 88 I.D. 1028

Since the purpose of a § 17(b)(1) public easement is to provide access across Native lands to lands not selected, such an easement necessarily affects lands other than those to be conveyed. Therefore, in asserting standing to appeal a § 17(b)(1) easement decision, a member of the public who claims a private interest in land other than the land to be conveyed may rely on this private holding as his or her "property interest" affected within the meaning of 43 CFR 4.902.

Possible protection under § 17(b)(2) does not preclude an individual from asserting that a public easement decision affects his or her property interest so as to meet the standing test of 43 CFR 4.902.

An individual claiming standing to appeal a § 17(b)(1) public easement decision must assert public use of the desired easement in order to distinguish it from a § 17(b)(2) private access right.

Patrick J. Bliss, 6 ANCAB 161 (Nov. 30, 1981) 88 I.D. 1039

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

EASEMENTS--Continued

Public Easements--Continued

Criteria for reserving public easements for future roads, including railroads, in 43 CFR 2650.4-7(b)(1)(v) require that such easements be both site specific and actually planned for construction within 5 years of the date of conveyance. The minimal submission of a map, along with a letter stating that the map depicts proposed railroad extensions, cannot be found to demonstrate an actual plan for construction within the meaning of the regulation.

Alaska Railroad, 7 ANCAB 43 (Apr. 22, 1982) 89 I.D. 219

Pursuant to 43 CFR 2650.4-7(b), a transportation easement for public access may not be reserved across Native lands where there exists a reasonable alternative route of transportation across publicly owned lands. Where the reasonableness of an alternate route is put in dispute and the facts of record are insufficient to find that a BLM decision not to reserve an easement based on that route is supported by a rational basis, this Board has the discretionary authority to order a hearing in the matter before an Administrative Law Judge pursuant to 43 CFR 4.415.

State of Alaska, 71 IBLA 256 (Mar. 21, 1983)

Doyon, Ltd. (On Reconsideration), 77 IBLA 219 (Nov. 28, 1983)

Sec. 17(b) of the Alaska Native Claims Settlement Act requires the Secretary, when approving a selection of lands by a Native corporation, to reserve such easements as are reasonably necessary to guarantee a full right of public access across selected lands to public lands not embraced in the selection.

Where it appears from the record that the easement reserved crosses patented lands (inholdings) over which the Bureau of Land Management has no authority to grant the right of access, the case will be remanded for survey of the inholdings to ascertain any conflict with the easement and consideration of the feasibility of routing the reserved easement around the inholdings.

State of Alaska, 74 IBLA 275 (July 25, 1983)

The Department's authority to reserve public easements across lands conveyed to a village corporation under the Alaska Native Claims Settlement Act is limited to providing access to lands not selected for conveyance.

Manley Hot Springs Community Ass'n, 80 IBLA 313 (May 4, 1984)

A BLM decision reserving a public easement, which constitutes a buffer zone around a weather balloon launching facility, pursuant to sec. 17(b) of ANCSA, as amended, 43 U.S.C. § 1616(b) (1982), will be affirmed on appeal where the decision is supported by a rational basis.

Ukpeagvik Inupiat Corp., 81 IBLA 222 (June 6, 1984)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

EASEMENTS--Continued

Public Easements--Continued

BLM may properly reserve a site easement pursuant to sec. 17(b) of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1613(a) (1982), where the easement is reasonably necessary to guarantee a full right of public use because there are no reasonable alternative sites on publicly owned land which likewise guarantee such use, e.g., where the suggested alternative sites are within a bombing range under the jurisdiction of the Department of the Air Force.

Toghotthele Corp., 81 IBLA 317 (June 19, 1984)

Sec. 17(b) of the Alaska Native Claims Settlement Act requires the Secretary, when approving a selection of lands by a Native corporation, to reserve such easements as are reasonably necessary to guarantee a full right of public access across selected lands to public lands not embraced in the selection. Reservation of an easement for a road noted on the public land records pursuant to Instructions, 44 L.D. 513 (1916), will not be disturbed in the absence of a showing that it is either unnecessary or inadequate to preserve access to the public lands not selected.

Federal Aviation Administration, Paug-Vik, Inc., Ltd., State of Alaska, 83 IBLA 382 (Nov. 20, 1984)

The Secretary of the Interior is authorized and directed to reserve public easements across lands selected by Native village corporations which are reasonably necessary to guarantee a full right of public use and access for recreation, hunting, transportation, utilities, docks, and such other public uses as the Planning Commission determines to be important.

Patrick J. Bliss, 84 IBLA 211 (Dec. 28, 1984)

Railroads, Telegraph and Telephone Lines

Pursuant to § 3(a) of P.L. 95-178, 91 Stat. 1369 (1977), the reservation of easements on lands already conveyed to Cook Inlet Region, Inc., in satisfaction of its entitlement under ANCSA, is subject to the determination of the Court in Alaska Public Easement Defense Fund v. Andrus, 435 F. Supp. 664, 680-681 (D.C. Alaska 1977), which held that floating railroad easements under 43 U.S.C. § 975d may not be reserved in conveyances made pursuant to ANCSA.

Alaska Railroad, 7 ANCAB 43 (Apr. 22, 1982) 89 I.D. 219

Review

When an interested party appeals a BLM easement determination made pursuant to ANCSA and Department regulations, the burden of proof is upon the party challenging the determination to show that the decision is erroneous. A decision to reserve easements must be affirmed as long as it is supported by a rational basis.

The failure of BLM to include in the predecision record or the easement reservation decision itself all factors bearing on its selection does not render the decision arbitrary and capricious. The lack of a formal requirement that BLM fully justify its decisions in writing does not mean that BLM may reserve public easements across Native-selected lands without abiding by the selection criteria set forth in the Alaska Native Claims Settlement Act and Departmental regulations, or

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

EASEMENTS--Continued

Review--Continued

that BLM need not be able to document a rational basis for its decision to reserve or not reserve an easement.

Northway Natives, Inc., Doyon Ltd., 69 IBLA 219 (Dec. 17, 1982) 89 I.D. 642

When a party appeals a BLM easement determination made pursuant to ANCSA, the burden of proof is upon the party challenging the determination to show that the decision is erroneous. While a decision to reserve an easement will ordinarily be affirmed where it is supported by a rational basis, a decision which lacks a rational basis and is unsupported by the record of the determination process will be reversed.

United States Fish & Wildlife Service, 72 IBLA 218 (Apr. 25, 1983)

Where Native corporation appeals a decision to reserve transportation easements across Native lands selected pursuant to the Alaska Native Claims Settlement Act, the burden of proof to show the easements were not properly reserved is on the corporation. Where the decision to reserve transportation easements is supported on the record by a showing of a reasonable basis for the reservation, it is ordinarily affirmed in the absence of a showing of error of law.

Goldbelt, Inc., 74 IBLA 308 (July 27, 1983)

When a party appeals a BLM easement determination made pursuant to ANCSA, the burden of proof is upon the party challenging the determination to show that the decision is erroneous. A decision to reserve an easement will ordinarily be affirmed where it is supported by a rational basis. However, when the written assessment required by 43 CFR 2650.4-7 and the record do not provide a sufficient factual basis for the Board to determine the reasonableness of the BLM decision or the merits of the appellant's arguments, the decision will be set aside and the case remanded to BLM for compilation of a more complete record and a reevaluation of its easement decision.

State of Alaska, 79 IBLA 335 (Mar. 22, 1984)

When the record of BLM's final decision concerning the reservation of public easements in the conveyance of land pursuant to the Alaska Native Claims Settlement Act does not reveal any explanation of BLM's determination not to include the reservation of particular easements timely recommended by the State of Alaska, the Board will set aside the decision and require BLM to consider the State's recommendations and provide a written explanation of its decision in response to the recommendations.

State of Alaska, 81 IBLA 7 (May 14, 1984)

Interim conveyance of a village selection made subject to a right-of-way issued to the State of Alaska pursuant to the 1958 Federal Aid Highway Act does not convey to the village corporation the authority to cancel the right-of-way. A patent subsequently issued subject to the right-of-way will not operate to vest in the village corporation any such right, but will be subordinate to the right-of-way, which may only be terminated by act of an agency of the Federal Government.

Where a village land selection conveyance under the Alaska Native Claims Settlement Act is made subject

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

EASEMENTS--Continued

Review--Continued

to a highway right-of-way for a maintenance site held by a state agency, the Department of the Interior retains jurisdiction to determine whether the right-of-way should continue or be canceled.

Bering Straits Native Corp., Council Native Corp., 83 IBLA 280 (Oct. 25, 1984)

ENROLLMENT

The provisions of the Alaska Native Claims Settlement Act defining the class of persons entitled to share in benefits under the Act are not ambiguous so as to require reference to the legislative history to determine whether persons becoming United States citizens after Dec. 18, 1971, the effective date of the Act, are entitled to be enrolled.

Interpretation of the Alaska Native Claims Settlement Act by the Bureau of Indian Affairs contemporaneous with the enactment of the statute and continued over the succeeding 9 years is relevant to a determination of the application to be given to the statute. The Agency refusal to enroll persons who were not United States citizens on Dec. 18, 1971, the effective date of the Act, is a reasonable application of the Act and of Departmental regulations implementing the Act, and gives the language of the statute (43 U.S.C. § 1604 (1976)) its common and ordinary meaning.

United States v. Aimee Marion Bowen (Edenshaw) and Phyllis Josephine Kimball, 8 IBIA 218 (Feb. 12, 1981) 88 I.D. 261

NATIVE LAND SELECTIONS

Generally

The interest of an appellant-owner in a millsite located under 30 U.S.C. § 42(b) and situated within lands selected by a Native corporation under ANCSA, constitutes a location under the general mining laws and is therefore included within meaning of interests protected under the provisions of § 22(c) of ANCSA.

Pursuant to § 22(c) of ANCSA the interest of the owner of an unpatented millsite location under 30 U.S.C. § 42(b) does not constitute any impediment to the Bureau of Land Management conveying the legal title of the same lands to a selecting Native corporation.

Pursuant to § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c), the Bureau of Land Management may convey title to lands selected by a Native corporation without excluding those lands situated within an unpatented millsite location under provisions of 30 U.S.C. § 42(b).

The interest of an unpatented millsite location under 30 U.S.C. § 42(b) situated within lands properly selected by a Native corporation under ANCSA does not cause a segregation of such lands which requires the lands to be excluded from a conveyance.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D. 293

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

NATIVE LAND SELECTIONS--Continued

Generally--Continued

Owners of unpatented mining claims located within tracts conveyed to an Alaska Native Corporation pursuant to the Alaska Native Claims Settlement Act held not to be entitled to a Departmental adjudication of the validity of their claims prior to conveyance.

Edward D. Moore, Van Moore, A. L. Anderson, 68 IBLA 174 (Nov. 4, 1982)

National Forest Land

Where Congress has provided in 16 U.S.C. § 818 (1982) that lands sought for a proposed power project shall from the date of the filing of an application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Federal Power Commission or by Congress, and thereafter has further withdrawn these same lands for selection pursuant to sec. 16 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1615 (1976), BLM may properly convey such lands to a Native corporation selecting same, all else being regular.

Ketchikan Public Utilities, 79 IBLA 286 (Mar. 20, 1984)

Regional Selections

Generally

Departmental regulations at 43 CFR 2653.5, insofar as they prescribe a specified course of action including publication, referral, investigation, conferring, reporting, etc., by the Department with regard to selections of public lands made pursuant to § 14(h)(3) of the Alaska Native Claims Settlement Act, cannot apply when the selected lands are not public lands and the selection applications must be rejected at the outset.

Doyon, Ltd., 6 ANCAB 95 (Sept. 28, 1981) 88 I.D. 886

Doyon, Ltd., 6 ANCAB 129 (Oct. 22, 1981)

Under sec. 901(b) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1631(b) (Supp. IV 1980), no appeals board of the Department of the Interior has the authority to determine the navigability of water covering a parcel of submerged land selected by a Native corporation unless a determination by the Bureau of Land Management that the water covering a parcel of submerged land is not navigable was validly appealed to such a board prior to Dec. 2, 1980. A premature appeal does not constitute a valid appeal within the meaning of this provision.

A regional corporation filing an application under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (1976), may not rely upon aboriginal right as a basis for conveyance of title to the bed of the lake, since the act under which the application was filed extinguishes all such rights. A regional selection application for land beneath a navigable lake is properly rejected, since title to the bed passed to the State of Alaska under the Statehood Act.

A regional selection application is properly rejected where a current protraction diagram of the Bureau of Land Management indicates that the land applied for is beneath a navigable lake, even though the applicant contends the land described in the application is upland. Such rejection does not prejudice a Native village's selection of uplands surrounding the lake, even if subsequent survey of the land establishes that sections applied for contain uplands, since the Native village's conveyance will be conformed to the

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

NATIVE LAND SELECTIONS--Continued

Regional Selections--Continued

Generally--Continued

result of the survey and the Native village will receive title to such uplands.

Bristol Bay Native Corp., 71 IBLA 318 (Mar. 23, 1983)

Allocations

Sec. 14(h)(8)(B) of ANCSA, which governs withdrawal and allocation of lands for selection by the Native regional corporation for southeastern Alaska, constitutes an exception to the requirement that lands withdrawn and allocated by the Secretary under § 14(h)(8) must be from unreserved and unappropriated lands outside areas withdrawn by §§ 11 and 16.

Oregon Portland Cement Co., 6 ANCAB 65 (Aug. 25, 1981) 88 I.D. 760

Albert Hanan et al; J. A. Jack and Sons, Inc.; and Hemphill Brothers, Inc., 6 ANCAB 111 (Sept. 29, 1981)

Selection Limitations

Regulations in 43 CFR 2651.4(e) cannot be applied to permit a selecting Native corporation to exclude lands within unpatented mining claims after the selection period has terminated.

Oregon Portland Cement Co., 6 ANCAB 65 (Aug. 25, 1981) 88 I.D. 760

Albert Hanan et al; J. A. Jack and Sons, Inc.; and Hemphill Brothers, Inc., 6 ANCAB 111 (Sept. 29, 1981)

Only unreserved and unappropriated public lands are available for selection under § 14(h)(1) of the Alaska Native Claims Settlement Act.

Doyon, Ltd., 6 ANCAB 95 (Sept. 28, 1981) 88 I.D. 886

Doyon, Ltd., 6 ANCAB 129 (Oct. 22, 1981)

"Public lands" available for selection by a Native village corporation under the Alaska Native Claims Settlement Act do not include the smallest practicable tract of land actually used by a Federal agency in connection with the administration of an installation or facility. 43 U.S.C. § 1602(e) (1982). Although such land need not necessarily be improved on Dec. 18, 1971, the land must be in actual use on that date and throughout the selection period. Land which is the subject of planning or which is held for future use does not qualify and, hence, is available for selection.

The status of a withdrawal of public domain is not dispositive of the question of whether Federal lands are actually used in connection with the administration of a Federal installation and, thus, not available for Native selection under sec. 3(e) of the Alaska Native Claims Settlement Act.

Federal Aviation Administration, Nana-Via, Inc., Ltd., State of Alaska, 83 IBLA 382 (Nov. 20, 1984)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

NATIVE LAND SELECTIONS--Continued

State-Selected Lands

The Department of the Interior retains jurisdiction to hear a contest brought by the State of Alaska against an applicant for a Native allotment where the lands sought by the Native were tentatively approved to the State following the commencement of the Native's use and occupancy. Sec. 906(c) of the Alaska National Interest Lands Conservation Act, providing for confirmation of all tentative approvals of State land selections subject to valid existing rights, does not convey the lands in dispute out of Federal ownership so as to remove the contest from the Department's jurisdiction.

State of Alaska v. Marcia K. Thorson, State of Alaska v. Phyllis Westcoast, 76 IBLA 264 (Oct. 18, 1983)

The Department of the Interior does not retain jurisdiction to hear a contest brought by the State of Alaska against an applicant for a Native allotment where the lands sought by the Native were tentatively approved to the State following commencement of the Native's use and occupancy. Subsec. 906(c)(1) of the Alaska National Interest Lands Conservation Act, confirming all tentative approvals of State land selections subject to valid existing rights, conveyed the lands in dispute out of Federal ownership so as to remove the contest from the Department's jurisdiction.

State of Alaska v. Marcia K. Thorson, State of Alaska v. Phyllis Westcoast (On Reconsideration), 83 IBLA 237 (Oct. 22, 1984) 91 I.D. 331

Oleanna Hansen, 84 IBLA 150 (Dec. 12, 1984)

Village Selections

Under the decision in Reeves v. Andrus, 465 F. Supp. 1065 (D. Alaska 1979), upon a determination of the Federal Power Commission that the value of land withdrawn for power purposes would not be injured by the allowance of entries under the public land laws, the Secretary of the Interior is required to restore the land to entry, at least insofar as the powersite withdrawal is concerned, within a reasonable time thereafter. Such land, however, does not become available until an order of restoration is issued. No rights may be acquired by a settler on the public land who initiates settlement at a time when the records of the Department indicate that the land is not open to entry.

Where the Department issues a decision finally adjudicating rights to the public land adverse to an appellant and the appellant does not seek judicial review of that decision, the Department will bar reconsideration of that decision, even if arguably erroneous, where a third party has initiated adverse rights to the land originally sought.

Carmel J. McIntyre (On Judicial Remand), 67 IBLA 317 (Oct. 1, 1982)

While an Alaska Native village corporation, organized for profit under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (1976), does not qualify for a free-use exemption under the Materials Disposal Act of 1947, as amended, 30 U.S.C. § 601 (1976), it may apply to purchase sand and gravel under that Act and the mineral sales regulations at 43 CFR Part 3610.

Ukpeagvik Inupiat Corp., 68 IBLA 359 (Nov. 22, 1982)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

NATIVE LAND SELECTIONS--Continued

Village Selections--Continued

The Alaska Native Claims Settlement Act provides that a Native village corporation shall select all of the township or townships in which the village is located. The language is imperative, not permissive. If land within the "core" township is available for selection, it must be selected.

Chefarnmute, Inc., 75 IBLA 242 (Aug. 24, 1983)

Federal land occupied by a municipally operated utility pursuant to a license from the Federal Power Commission may be conveyed to a Native corporation selecting such land, subject to such license. Lands occupied by the utility are not excluded from the interim conveyance describing them.

Ketchikan Public Utilities, 79 IBLA 286 (Mar. 20, 1984)

BLM may properly reject a Native group selection application filed pursuant to sec. 14(h)(2) of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1613(h)(2) (1982), where, prior to Dec. 18, 1975, the land was withdrawn for village selections and at all times thereafter the land has been subject to a prior selection by a Native village corporation, such that the land is not available for selection under 43 CFR 2653.3(a).

Gold Creek-Susitna Native Ass'n, Inc., 81 IBLA 69 (May 23, 1984)

NAVIGABLE WATERS

Where the Bureau of Land Management has redetermined that water bodies which are the subject of an appeal are navigable, and where the Board finds that the facts in the record upon which the Bureau of Land Management made its redetermination meet the essential elements of navigability, and where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable.

Appeal of Bristol Bay Native Corp., 4 ANCAB 355 (July 31, 1980) 87 I.D. 34

Appeal of Nuyapitchuk, Ltd., 5 ANCAB 139 (Dec. 10, 198

Doyon, Ltd., 5 ANCAB 354 (July 24, 1981)

Northway Natives, Inc., 6 ANCAB 1 (Aug. 5, 1981) 88 I.D. 711

Doyon, Ltd., 6 ANCAB 138 (Oct. 30, 1981)

The Bureau of Land Management is not bound to make its navigability determinations in conformity with information provided by the State of Alaska pursuant to 43 CFR 2650.1(b) as to navigability of water bodies within lands selected under ANCSA, or to accept the State's conclusions as to navigability.

When the State of Alaska's claim of ownership of submerged lands is based solely upon its own conclusions as to the navigability of water bodies within lands selected under ANCSA, and not upon a final adjudication of navigability, the mere assertion of the State's ownership does not constitute a claim of title in the submerged lands which requires the Bureau of

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

NAVIGABLE WATERS--Continued

Land Management to exclude such lands from the Decision to Issue Conveyance.

Doyon, Ltd. and State of Alaska, 5 ANCAB 324 (June 26, 1981) 88 I.D. 636

Doyon Ltd., 5 ANCAB 368 (July 27, 1981)

Doyon, Ltd., 6 ANCAB 27 (Aug. 19, 1981)

Doyon, Ltd., 6 ANCAB 32 (Aug. 19, 1981)

Gana-a' Yoo, Ltd., 6 ANCAB 45 (Aug. 24, 1981)

Gana-a' Yoo, Ltd., 6 ANCAB 50 (Aug. 24, 1981)

Gana-a' Yoo, Ltd., 6 ANCAB 55 (Aug. 24, 1981)

Doyon Ltd., 6 ANCAB 60 (Aug. 24, 1981)

Doyon, Ltd., 6 ANCAB 219 (Dec. 14, 1981) 88 I.D. 1086

Doyon, Ltd., 6 ANCAB 242 (Dec. 16, 1981) 88 I.D. 1105

Doyon, Ltd., 6 ANCAB 364 (Feb. 24, 1982)

Where the Bureau of Land Management has redetermined that water bodies which are the subject of an appeal are navigable, and where the Board finds that the facts in the record upon which the Bureau of Land Management made its redetermination meet the essential elements of navigability, and where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable.

The Bureau of Land Management is not bound to make its navigability determinations in conformity with information provided by the State of Alaska pursuant to 43 CFR 2650.1(b) as to navigability of water bodies within lands selected under ANCSA, or to accept the State's conclusions as to navigability.

When the State of Alaska's claim of ownership of submerged lands is based solely upon its own conclusions as to the navigability of water bodies within lands selected under ANCSA, and not upon a final adjudication of navigability, the mere assertion of the State's ownership does not constitute a claim of title in the submerged lands which requires the Bureau of Land Management to exclude such lands from the Decision to Issue Conveyance.

Doyon, Ltd. and NINT, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

Although sec. 901 of the Alaska National Interest Lands Conservation Act provides that the Bureau of Land Management is the only agency in the Department of the Interior with authority to determine navigability of waters covering a parcel of submerged land selected by a Native corporation, and such determination is final unless it is validly challenged, on appeal, prior to Dec. 2, 1980, where an appeal was filed in 1979 challenging the determination of navigability of certain waters, the matter will be referred to the Hearings Division for a hearing before an Administrative Law Judge on the question of the navigability of the waters in question.

Doyon Ltd., 70 IBLA 302 (Jan. 28, 1983)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

NAVIGABLE WATERS--Continued

Under sec. 901(b) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1631(b) (Supp. IV 1980), no appeals board of the Department of the Interior has the authority to determine the navigability of water covering a parcel of submerged land selected by a Native corporation unless a determination by the Bureau of Land Management that the water covering a parcel of submerged land is not navigable was validly appealed to such a board prior to Dec. 2, 1980. A premature appeal does not constitute a valid appeal within the meaning of this provision.

A regional corporation filing an application under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (1976), may not rely upon aboriginal right as a basis for conveyance of title to the bed of the lake, since the act under which the application was filed extinguishes all such rights. A regional selection application for land beneath a navigable lake is properly rejected, since title to the bed passed to the State of Alaska under the Statehood Act.

A regional selection application is properly rejected where a current protraction diagram of the Bureau of Land Management indicates that the land applied for is beneath a navigable lake, even though the applicant contends the land described in the application is upland. Such rejection does not prejudice a Native village's selection of uplands surrounding the lake, even if subsequent survey of the land establishes that sections applied for contain uplands, since the Native village's conveyance will be conformed to the result of the survey and the Native village will receive title to such uplands.

Bristol Bay Native Corp., 71 IBLA 318 (Mar. 23, 1983)

SURVEY

Generally

Where § 13(b) of ANCSA addresses events in the land conveyance process which occur over a period of 3 years or longer, during which time surveys and protraction diagrams may be changed or corrected, it would be unreasonable to conclude that such changes or corrections must be ignored in deference to the survey or protraction in existence on Dec. 18, 1971.

Sec. 13(b) of ANCSA is not a mechanism to determine land entitlement, but is intended to ensure that land is described through use of the most accurate protraction diagrams or surveys.

Tetlin Native Corp., 7 ANCAB 132 (June 18, 1982) 89 I.D. 303

WITHDRAWALS AND RESERVATIONS

Generally

Where a public land order withdraws lands under the jurisdiction of the Bureau of Land Management as a source of materials for use in construction and maintenance of Federal projects, and the Alaska Railroad is not indicated expressly in the public land order as an agency benefiting from the withdrawal, the Railroad cannot invoke the national defense exception in § 11(a) of ANCSA to defeat Native selection of the withdrawn lands.

Where lands are withdrawn by public land order within the jurisdiction of the Bureau of Land Management, such lands are not formally under the administration of the Department of Transportation, and 43 U.S.C.

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

WITHDRAWALS AND RESERVATIONS--Continued

Generally--Continued

§ 1714(i) (1976) does not apply to require the consent of the Secretary of Transportation to conveyance of such land to a Native corporation by the Bureau of Land Management under ANCSA.

The Secretary's power to delegate his withdrawal authority is limited by 43 U.S.C. § 1714(a) (1976). Where lands under withdrawal for other purposes are withdrawn for Native selection by § 11(a)(1) of ANCSA, subject to § 3(e) of the Act, such withdrawal is mandated by Congress and authority to revoke the previous withdrawal, as between the Secretary and the Bureau of Land Management, is not in issue.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

A mining claim located on land previously withdrawn from appropriation under the mining laws pursuant to the authority of sec. 17(d)(1) of the Alaska Native Claims Settlement Act is null and void ab initio.

Allan Kaiser, 72 IBLA 387 (May 5, 1983)

Where oil and gas leasing in Alaska was suspended by Secretarial policy at the time noncompetitive lease offers were pending and the land identified in those offers was thereafter formally withdrawn from mineral leasing for the protection of Alaskan Natives' selection rights, the Secretary of the Interior has not abused his discretion in delaying adjudication of the offers until after the status of the land is settled.

Asamera Oil, Inc., Kenneth J. Gain, 77 IBLA 181 (Nov. 18, 1983)

Withdrawals for Native Selection

Generally

A Native village corporation has no interest in lands included in a townsite prior to the enactment of the Alaska Native Claims Settlement Act, as the lands were segregated prior to this date so that ANCSA did not withdraw the lands for selection by the corporation. Accordingly, the rights of settlers and of the municipality which derive from an entitlement created prior to the Alaska Native Claims Settlement Act, are superior to the corporation's rights.

Stephen Kenyon et al., 51 IBLA 368 (Dec. 30, 1980)

Sec. 14(h)(8)(B) of ANCSA, which governs withdrawal and allocation of lands for selection by the Native regional corporation for southeastern Alaska, constitutes an exception to the requirement that lands withdrawn and allocated by the Secretary under § 14(h)(8) must be from unreserved and unappropriated lands outside areas withdrawn by §§ 11 and 16.

Oregon Portland Cement Co., 6 ANCAB 65 (Aug. 25, 1981) 88 I.D. 760

Albert Hanan et al; J. A. Jack and Sons, Inc.; and Hemphill Brothers, Inc., 6 ANCAB 111 (Sept. 29, 1981)

ALASKA NATIVE CLAIMS SETTLEMENT ACT--Continued

WITHDRAWALS AND RESERVATIONS--Continued

Withdrawals for Native Selection--Continued

Generally--Continued

Where Congress has provided in 16 U.S.C. § 818 (1982) that lands sought for a proposed power project shall from the date of the filing of an application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Federal Power Commission or by Congress, and thereafter has further withdrawn these same lands for selection pursuant to sec. 16 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1615 (1976), BLM may properly convey such lands to a Native corporation selecting same, all else being regular.

Ketchikan Public Utilities, 79 IBLA 286 (Mar. 20, 1984)

State-Selected Lands

In the case of unlisted villages a period occurred, after enactment of the Alaska Native Claims Settlement Act and before the villages filed for eligibility, in which tentatively approved land selections of the State of Alaska were not yet withdrawn for potential village selections, and during this period the State could still create third-party interests in such lands.

In the case of unlisted villages, third-party interests created by the State of Alaska on tentatively approved lands after enactment of the Alaska Native Claims Settlement Act are entitled to protection as valid existing rights provided such interests were created before the unlisted village applied for eligibility and lands were withdrawn for it.

Appeal of Eyak Corp., 4 ANCAB 277 (June 30, 1980) 87 I.D. 279

APPEALS

(See also Administrative Procedure, Contracts, Grazing Permits & Licenses, Indian Probate, Indian Tribes, Rules of Practice, Torts, Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970--if included in this Index.)

The right of appeal is limited to a party to a case adversely affected by a decision of the Bureau of Land Management, and an appeal from a timber sale notice will be remanded to the Bureau of Land Management for treatment as a protest. However, under the circumstances presented here, where the Bureau of Land Management has reviewed the protestant's reasons and, in effect, has made its decision communicating it to the protestant and this Board, no purpose would be served by remanding the case and the Board will consider the matter on its merits.

Julie Adams et al., 45 IBLA 252 (Feb. 4, 1980)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of an order issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department, and an appeal which is limited to those issues must be dismissed.

Texas Oil & Gas Corp., 46 IBLA 50 (Feb. 20, 1980)

APPEALS--Continued

Timely filing of a notice of appeal with the Board of Land Appeals is jurisdictional. If appeal from a decision of a Bureau of Land Management official is untimely, the Board does not have jurisdiction to consider it and that official must close the case pursuant to 43 CFR 4.411(b). When an appeal is properly filed, the BLM official loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal until jurisdiction over it is restored by Board action disposing of the appeal. Where BLM closes a case because appeal was untimely when in fact it was timely, the Board's jurisdiction will have been triggered at the time of filing of the notice of appeal. BLM's action in closing the case is a nullity and does not affect the appellant's rights before the Board.

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, if all else be regular.

Where it appears that a party did not realize that an election of remedies was mandated by Departmental procedures, a decision requiring the initiation of a private contest will be set aside, and the party will be permitted a period of time in which to initiate a private contest or alternatively, waive such private contest and pursue a direct appeal on the question of whether a Government contest should issue.

State of Alaska v. Earl G. Patterson, 46 IBLA 56 (Feb. 22, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from an interlocutory decision which authorizes the State to initiate private contest proceedings to prove lack of qualification on the part of the Native. Rather, it may initiate the private contest within the time period prescribed, or it may appeal the decision of BLM, after it becomes final, to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, all else being regular.

State of Alaska v. Elsie John, 46 IBLA 137 (Mar. 19, 1980)

State of Alaska v. Daniel Jimmie, Bertha A. Williams, 48 IBLA 370 (July 11, 1980)

State of Alaska v. Cora John Smith, 50 IBLA 6 (Sept. 5, 1980)

APPEALS--Continued

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to the Bureau of Land Management that the Native applicant has met the requirements for patent, upon notification to the State, it has an election. The State may initiate a private contest proceeding during the time prescribed to prove lack of qualification of the Native, or the State may await final decision from BLM and then appeal to this Board.

State of Alaska v. Dora David and Cathy Dick, 46 IBLA 177 (Mar. 21, 1980)

When an appeal is properly filed with the Board of Land Appeals from a decision made by an official of the Bureau of Land Management, that official loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal until jurisdiction over the case is restored by Board action disposing of the appeal.

James T. Brown, 46 IBLA 265 (Mar. 27, 1980)

When there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, BLM must notify the State that, if dissatisfied, it has an election of remedies. The State may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska v. Joan E. Newhall, 47 IBLA 85 (Apr. 21, 1980)

The effect of a timely filed notice of appeal is to suspend the authority of the deciding official to exercise jurisdiction relating to the subject of the appeal. It does not have the effect, however, of suspending the authority of BLM to act on matters which, while related to the subject of the appeal, are nevertheless functionally independent therefrom.

East Canyon Irrigation Co., 47 IBLA 155 (May 6, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaskan Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient, it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska v. Moses Chythlook, 47 IBLA 249 (May 13, 1980)

APPEALS--Continued

The validity or legality of regulations, orders, or policies formulated by the Secretary of the Interior are not issues within the appellate jurisdiction of the Board of Land Appeals. However, the Board may review decisions of the Geological Survey or the Bureau of Land Management to determine whether such Secretarial regulations, orders, or policies have been correctly implemented.

Bass Enterprises Production Co., 48 IBLA 11 (May 27, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, if all else be regular.

Where it appears that a party did not realize that an election of remedies was mandated by Departmental procedures, a decision requiring the initiation of a private contest will be set aside, and the party will be permitted a period of time in which to initiate a private contest or alternatively, waive such private contest and pursue a direct appeal on the question of whether a Government contest should issue.

State of Alaska, 48 IBLA 229 (June 17, 1980)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

In order to constitute a notice of appeal a document must state in an objectively ascertainable manner a present intent to appeal a final decision of the Bureau of Land Management. A petition for reconsideration of a decision with reasons directed to the office which issued the decision that expresses a conditional intent to file an appeal in the future if the relief requested by petitioner is not granted does not constitute notice of appeal. Where the decision is reconsidered in response to the petition and the petitioner is notified that the decision is reaffirmed with right of appeal, the decision will become final in the absence of a timely appeal.

Ilean Landis, 49 IBLA 59 (July 21, 1980)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Where appellant's allegations on appeal are immaterial and irrelevant and appellant fails to establish any error in the decision below or any infringement of appellant's rights, the appeal is properly dismissed as lacking in merit.

Margaret Wallace, 49 IBLA 256 (Aug. 18, 1980)

APPEALS--Continued

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of an order, which temporarily suspended oil and gas leasing, and was issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department. An appeal which is limited to those issues must be dismissed.

William R. Jeffers, Jr., William R. Jeffers, 49 IBLA 264 (Aug. 18, 1980)

Where Geological Survey has not yet taken any adverse action on a coal lessee's request under 43 CFR 3473.3-2(d) to reduce royalty due on a coal lease, it is premature for the Board of Land Appeals to consider whether such reduction is appropriate. Rather, the lessee must wait for GS to take action and then, if it is adverse, it may pursue its appeal through normal procedures.

Garland Coal & Mining Co., 49 IBLA 400 (Sept. 5, 1980)

Under 43 CFR 4.402 and 4.412, an appeal to the Board will be subject to summary dismissal by the Board if a statement of reasons for the appeal is not included in the notice of appeal and is not filed within 30 days after the notice of appeal was filed.

E. M. Hart, 50 IBLA 130 (Sept. 26, 1980)

Where an individual is named as an "adverse party" in a BLM decision which is favorable to that person, who then is duly served with copies of a notice of appeal and statement of reasons challenging the validity of BLM's decision before the Board of Land Appeals and seeking reversal of that decision, but decides not to participate in the appellate proceedings before the Board, the matter becomes res judicata upon the rendering of the Board's decision, and the party may not subsequently challenge this decision by filing a new appeal of his own before the Board for readjudication of the same matter.

Donald W. Corer, Fred L. Engle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondents) (On Judicial Remand), 50 IBLA 306 (Oct. 14, 1980)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of a policy directive issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department, and an appeal limited to those issues must be dismissed.

James R. Learned et al., 50 IBLA 416 (Oct. 24, 1980)

Where Geological Survey issues an order directing appellant to pay back royalties attributable to an offshore oil and gas lease, and thereafter schedules a conference with appellant to discuss its order, a notice of appeal filed within 30 days of such conference will be regarded as timely.

Shell Oil Co., 52 IBLA 74 (Jan. 9, 1981)

APPEALS--Continued

A final Departmental appellate decision construing a regulation will be applied with prospective effect only where it materially alters the interpretation given the regulation by earlier administrative decisions and where it would be unfair or prejudicial to apply such decision retroactively.

William L. Hagar, Jr., 52 IBLA 174 (Jan. 26, 1981)

"Service." Where BLM sends a copy of its decision to an adversely affected party at his address of record on Sept. 21; where additional information containing the party's more recent address is filed with BLM on Oct. 5; and where BLM receives the mailed copy back as undeliverable on Oct. 16 but does not mail another copy to the more recent address, BLM has not mailed a copy to the party's last address of record, and there is no "service" under 43 CFR 1810.2. Where BLM has never served a copy of its decision on an adversely affected party, the time for this party to appeal has never commenced, and the decision is not effective per 43 CFR 4.21(a).

Estate of Glenn F. Coy, Resources Service Co., Inc., 52 IBLA 182 (Jan. 26, 1981) 88 I.D. 236

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Glen Gould, 52 IBLA 305 (Feb. 10, 1981)

United States v. William A. Beasley et al., 53 IBLA 320 (Mar. 25, 1981)

It is not necessary to make a separate ruling on each finding of fact and conclusion of law proposed by the parties to an administrative proceeding. It is sufficient if the decision summarizes the controlling principles of law and the facts relative thereto as established by the evidence adduced.

United States v. Graham R. Corns, 53 IBLA 5 (Feb. 26, 1981)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed. However, dismissal is not mandatory and each case will be considered on its own merits.

Genera Barry et al., 54 IBLA 48 (Apr. 9, 1981)

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Richard J. Leaumont, 54 IBLA 202 (Apr. 27, 1981) 88 I.D. 490

Oregon Wilderness Coalition, 71 IBLA 67 (Feb. 22, 1983)

APPEALS--Continued

An appeal from an appraisal of a communication site right-of-way will not be accorded favorable consideration where it does not show with some particularity adequate reason for appeal and support the allegations with evidence showing error.

Rocky Mountain Natural Gas Co., Inc., 55 IBLA 3 (May 26, 1981)

Where a person moves from his record address and does not apprise BLM of a forwarding address, and a copy of a BLM decision affecting him is mailed to this last address of record and returned by the postal service as undeliverable, the decision is considered to have been "served" on him as of the date it is returned to BLM. 43 CFR 4.401(c). Accordingly, the deadline for filing a notice of appeal is 30 days after the date the decision is returned to BLM, and an appeal filed after that date is properly dismissed as untimely.

Reg Whitson, 55 IBLA 5 (May 26, 1981)

On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision. The powers of an agency reviewing an initial or recommended decision of an Administrative Law Judge are greater than those of an appellate court reviewing the decision of a trial judge.

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

While the Board of Land Appeals will give "considerable deference" to Bureau of Land Management designations of Wilderness Study Areas if thorough investigation underlies the Bureau's decision, where an appellant can specifically and convincingly show that there is sufficient reason to change the Bureau's decision, the Board must resolve the issue in favor of appellant. Such is the case where appellant has convinced the Board that the designated Wilderness Study Area is not "wilderness," as that term is described in 16 U.S.C. § 1131(c) (1976), by submitting detailed maps and photographs showing the adverse impact of appellant's open-pit mining operation on the area.

Union Oil Co., 56 IBLA 206 (July 22, 1981)

Where, following the contest of a number of mining claims, a decision is rendered by an Administrative Law Judge holding certain claims and portions of claims to be valid and invalidating the remainder for lack of mineral or as embracing excess mineral reserves, and the Government appeals from that decision but the claimant does not, that decision will be set aside and the case remanded for rehearing on the basis of a judicial decision in another case, made while the subject appeal was pending, that there can be no invalidation of mining claims by this Department on a finding that the claimant has acquired claims for far more mineral than the market can absorb within the foreseeable future.

United States v. Oneida Perlite Corp., 57 IBLA 167 (Aug. 27, 1981) 88 I.D. 772

When an appeal to the Board of Land Appeals from a decision made by an official of the Bureau of Land Management is properly filed, that official loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal until jurisdiction over the case is restored by Board action disposing of the appeal.

Sierra Club, 57 IBLA 288 (Aug. 31, 1981)

APPEALS--Continued

The validity or legality of regulations, orders, or policies formulated by the Secretary of the Interior are not issues within the appellate jurisdiction of the Board of Land Appeals. However, the Board may review decisions of the Geological Survey to determine whether such Secretarial regulations, orders, or policies have been correctly implemented.

Superior Oil Co., 57 IBLA 404 (Sept. 18, 1981)

The provisions of 43 CFR 4.411, requiring that a notice of appeal be filed within 30 days of service of the decision appealed from, are mandatory, inasmuch as they determine the jurisdiction of the Board to hear an appeal, and are not subject to waiver. An appeal which was not filed timely must be dismissed.

Lynn Dahle, 58 IBLA 73 (Sept. 22, 1981)

Neither the State of Alaska nor an instrumentality thereof has standing to appeal a decision which recognizes that full title to a parcel of land is in the State, absent a showing of injury in fact from such a decision.

State of Alaska, 58 IBLA 110 (Sept. 28, 1981)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Union Oil Co. (On Reconsideration), 58 IBLA 166 (Sept. 28, 1981)

A finding by BLM that some statutory mechanism has been triggered which automatically divests a right does not and cannot mean that the adversely affected party is denied recourse to the appellate process. The Board of Land Appeals is the exclusive arbiter of its jurisdiction, and neither employees of BLM nor attorneys of the Office of the Solicitor may create or deny the right of appeal to the Board.

Texas Oil and Gas Corp., 58 IBLA 175 (Sept. 28, 1981)
88 I.D. 879

Under 43 CFR 4.410, a party must be adversely affected by a decision of an officer of the Bureau of Land Management in order to have the right to appeal to the Board of Land Appeals.

California State Lands Commission, 58 IBLA 213 (Sept. 29, 1981)

James H. Chudnow et al., 70 IBLA 71 (Jan. 11, 1983)

APPEALS--Continued

Service of a BLM decision is accomplished when it is delivered to the addressee's last address of record by certified mail and such delivery is substantiated by postal authorities, regardless of whether it was in fact received by the person to whom it was addressed, and the prescribed period for initiating an appeal from such decision commences on the date of such delivery.

Lillian Barlow, 58 IBLA 305 (Oct. 21, 1981)

The Board of Land Appeals will not dismiss or set aside a decision by the Bureau of Land Management holding an appellant liable for an innocent mineral trespass solely because a notice of trespass cited a criminal statute.

Texaco, Inc., 59 IBLA 155 (Oct. 26, 1981)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Galen B. Brazington, 59 IBLA 255 (Oct. 29, 1981)

Sequoia Ass'n, 60 IBLA 386 (Dec. 23, 1981)

Russell L. Osborn, 62 IBLA 104 (Mar. 1, 1982)

R. M. Dodds, 62 IBLA 241 (Mar. 11, 1982)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

Ray Mallory, 68 IBLA 189 (Nov. 9, 1982)

Harold H. Ruppert, 69 IBLA 82 (Nov. 30, 1982)

Ina Ray Collier Johnson et al., 72 IBLA 26 (Apr. 5, 1983)

Jerald F. Russell, Patricia K. Russell, 72 IBLA 28 (Apr. 5, 1983)

James H. Chudnow, Laurent A. Geisbert, 72 IBLA 60 (Apr. 12, 1983)

Gary T. Suhrie, 75 IBLA 9 (Aug. 2, 1983)

Lloyd M. Baldwin, 75 IBLA 251 (Aug. 25, 1983)

Red Rock Golf & Recreational Ass'n, Inc., 77 IBLA 87 (Nov. 9, 1983)

George Schultz et al., 81 IBLA 29 (May 17, 1984)

Failure to obtain counsel at a hearing into the validity of a mining claim will afford the mining claimant no greater rights on appeal than if he had obtained counsel.

United States v. John Burt et al., 59 IBLA 326 (Nov. 5, 1981)

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

The Federal Land Policy and Management Act of 1976 requires the Secretary of the Interior to manage public lands under principles of "multiple use" and "sustained yield," and the statutory definition of these concepts

APPEALS--Continued

recognizes the need for latitude and discretion in their implementation. As the Secretary's delegate, BLM has the responsibility of administering such policies and programs, and BLM must be accorded correlative powers of reasoned discretion in discharging these duties. Therefore, so long as the BLM policy or implementing action is based on a consideration of all relevant factors and is supported by the record, the Board will not disturb it absent a clear showing that it is contrary to statute or regulation or otherwise erroneous.

A.C.O.T.S., 60 IBLA 1 (Nov. 12, 1981)

An appellant or intervenor requesting this Board to reverse a Bureau of Land Management decision regarding the inclusion or exclusion of a unit of land as a wilderness study area must show the decision to be based on a clear and specific error of law or fact, otherwise the Board will affirm.

Merrill G. Hastings, 60 IBLA 54 (Nov. 17, 1981)

The 30-day period within which an appeal from a decision classifying lands as being within a KGS must be initiated commences upon service on the lessee (or co-lessee) of record of a copy of the decision. Both the lessee and his agent, including the holder of operating rights under the lease, are subject to the 30-day deadline.

Robert L. Wright, Shell Oil Co., 60 IBLA 142 (Nov. 24, 1981)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of that portion of a State Director's decision which implements an order issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department and the appeal will be dismissed insofar as it relates to this issue.

Cascade Holistic Economic Consultants et al., 60 IBLA 293 (Dec. 18, 1981)

Where, in a decision published in the Federal Register designating wilderness study areas pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the Bureau of Land Management grants interested parties 30 days to initiate a protest challenging the decision, the 30-day appeal period as to that decision will commence upon expiration of the 30 days accorded for filing protests. An appeal filed after the time period allowed must be dismissed.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

APPEALS--Continued

Where a protest filed against the issuance of an oil and gas lease alleges several specific reasons why the lease should not issue, and BLM dismisses the protest after due consideration of the reasons recited, and on appeal from such dismissal the protestant raises additional arguments and issues, the Board of Land Appeals need not adjudicate the issues raised for the first time on appeal, but may confine its review to the merits of those matters addressed in the decision which is the subject of the appeal.

Henry A. Alker, 62 IBLA 211 (Jan. 10, 1982)

Monty Crawford, 67 IBLA 364 (Oct. 7, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Kolter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

Edward H. Hove, Fred Huff, Gerald A. Strauss, 76 IBLA 27 (Sept. 8, 1983)

Where appellant states that he may not be adversely affected by a decision of the Bureau of Land Management and fails to point out affirmatively in his statement of reasons in what respect the decision is in error, he does not meet the requirements of the Department's rules of practice and the appeal must be dismissed.

Hal V. Corlson, Jr., 62 IBLA 305 (Mar. 16, 1982)

The Board of Indian Appeals is bound by statutes, regulations, case law, and principles of judicial self-restraint not to interfere with substantive decisions of the BIA issued under its discretionary authority.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

Where several BLM decisions declaring appellant's mining claims abandoned and void each stated "In reply refer to 3833 (N-952)," and appellant's notice of appeal specifically applied to BLM decisions bearing that reference number, the notice of appeal was effective, and BLM incorrectly and prematurely closed the file of one claim that BLM decided was not covered by the notice of appeal.

D. P. Colson, 63 IBLA 221 (Apr. 15, 1982)

Where an individual, named as an adverse party in a proceeding before the Board of Land Appeals, is duly served with notice of that fact, and is given the opportunity to participate in the proceeding but fails to do so, the matter becomes res judicata upon the rendering of the Board's decision and the party may not subsequently challenge the decision in a new appeal before the Board from the Bureau of Land Management's ministerial action implementing the decision.

Ray Ray, Tackle Productions, Inc., 63 IBLA 357 (Apr. 29, 1982)

APPEALS--Continued

The effect of decisions of Bureau of Land Management officials regarding applications for use of the public land and its resources are stayed pending the time during which a party adversely affected thereby may file an appeal and during the pendency of any appeal properly filed except where statute or regulation provides otherwise. 43 CFR 4.21(a). Although the regulations governing issuance of rights-of-way pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), provide that such decisions shall be effective when issued, rights-of-way for Federal aid highways are expressly excluded from the scope of such regulation and thus, a decision to issue the latter type of right-of-way is stayed pending appeal.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

Where an advisory letter from an official of the Bureau of Land Management to an official of Minerals Management Service reporting recommendations on an application for permit to drill on an oil and gas lease is clearly interlocutory in nature, and where implementation of the action contemplated by the letter is contingent upon the future approval by Minerals Management Service of an application for a permit to drill, an appeal from the recommendations contained in the letter will be dismissed because the letter does not constitute a final decision, and appellant's interests have not yet been adversely affected.

Utah Wilderness Ass'n, 65 IBLA 219 (July 9, 1982)

Where, in the course of an appeal from the rejection of an oil and gas lease application for other reasons, the pleadings and evidence raise for the first time the question of the existence of an outstanding undisclosed interest in the application, the Board will not decide that issue, but in no event may a lease be granted the appellant unless and until the question is ultimately resolved in appellant's favor.

Lynda Bagley Doyle, 65 IBLA 340 (July 16, 1982)

A notice of appeal must be filed within 30 days after appellant is served with the decision from which he is appealing. When a party does not appeal, the doctrine of administrative finality, the administrative equivalent of res judicata, generally bars consideration of the same issue in a later appeal.

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed. However, dismissal is not mandatory and each case will be considered on its own merits.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

Where an appeal of a Bureau of Land Management action regarding the triggering of a small business set-aside timber sale program raises only class size issues, the appeal must be dismissed because the Small Business Administration, not the Department of the Interior, determines class size.

Public Timber Purchasers Group, 66 IBLA 244 (Aug. 17, 1982)

APPEALS--Continued

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

Susan Pelles et al., 66 IBLA 407 (Aug. 31, 1982)

Where the Bureau of Land Management authorized officer issues a decision determining the grazing privileges of two conflicting applicants which is adverse to one of the applicants, and that applicant appeals to an Administrative Law Judge and receives a favorable decision, the failure of the other applicant to participate in the proceedings before the Administrative Law Judge does not foreclose that applicant from appealing that decision to the Board of Land Appeals, as that applicant is a party to a case adversely affected by a decision of an Administrative Law Judge within the meaning of 43 CFR 4.410.

Bureau of Land Management v. Alfredo R. Baez, 67 IBLA 89 (Sept. 13, 1982)

The regulations governing procedures before the Board of Land Appeals provide for the filing of a statement of reasons for appeal by appellant and an answer by an adverse party within certain time limits (subject to extension). Proper practice requires that all issues deemed relevant by the parties be briefed at that time because, as a general rule, the Board does not issue interlocutory decisions on issues which are not dispositive of the appeal.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D. 496

The Board of Land Appeals must defer to the Secretary's decision to approve the granting of a contract, where such approval implicitly ratifies the entire process which led up to issuance of the contract itself, including compliance with the National Environmental Protection Act of 1969, 42 U.S.C. §§ 4321-4361 (1976). The Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

Donald Fay, 68 IBLA 26 (Oct. 21, 1982)

A decision partly rejecting an oil and gas lease offer because the lands are included in a lease issued to a prior applicant will be affirmed on appeal upon a finding that appellant's contention that the prior applicant failed to comply with the requirements for disclosure of other parties in interest is simply unfounded.

Irvin Hall, 68 IBLA 276 (Nov. 17, 1982)

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APPEALS--Continued

As a general rule an appeal is subject to dismissal where either the appeal or the application which is the subject of the appeal is withdrawn by appellant. An appeal is properly dismissed where the application upon which it is based is withdrawn and the only error in the decision below is a misapplication of the regulations which only the appellant has standing to appeal.

Jerry E. Pritchard, 70 IBLA 154 (Jan. 18, 1983)

Notice of appeal from the dismissal of a protest filed by the State of Alaska pursuant to sec. 905(a)(5)(B) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(a)(5)(B) (Supp. IV 1980), must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

State of Alaska, 70 IBLA 369 (Feb. 3, 1983)

An appeal to the Board will be dismissed where the issues on appeal are moot and where relief sought by appellant has been granted by a court.

Sierra Club, 71 IBLA 235 (Mar. 18, 1983)

An appeal brought by a person who does not fall within any of the categories of persons authorized by regulation to practice before the Department is subject to dismissal.

Thomas L. Tuttle, 71 IBLA 265 (Mar. 22, 1983)

William L. Burner, 72 IBLA 62 (Apr. 12, 1983)

J. C. Trahan, 74 IBLA 15 (June 24, 1983)

Anthony O'Brien, 77 IBLA 154 (Nov. 16, 1983)

Where a decision on appeal is based on a factual issue not raised at the hearing, where no opportunity for argument on appeal was provided and where the facts on which the decision was based were incorrect due to a faulty hearing transcript, the decision will be set aside.

Oxes Development Co. v. Leo Calder (On Reconsideration), A-26604 (Apr. 25, 1983) 90 I.D. 223

In the Department's appellate process involving review of decisions made by subordinate officers and employees, the Secretary, or an appeals board with authority to act as fully and finally as might the Secretary, is not so limited in the scope of review and decisionmaking as to be required to affirm such decisions as are supported merely by "substantial evidence" or which are perceived not to be arbitrary or capricious, unless such a limitation on the scope of appellate review has been imposed by the Secretary himself in a duly promulgated regulation or he has been so constrained by enacted law. Otherwise, the Secretary, as chief executive officer of the Department with full supervisory powers, has plenary authority to review de novo all official actions and to decide appeals on the basis of a preponderance of the evidence in cases involving substantive rights, or on the basis of public policy or public interest in cases involving the exercise of discretion.

United States Fish & Wildlife Service, 72 IBLA 218 (Apr. 25, 1983)

APPEALS--Continued

Where appellant's statement of reasons for appeal from a decision to include certain lands in a wilderness study area fails to assert any right, claim, title or interest in the subject lands, nor any use of them which will be adversely affected, appellant will be considered to lack standing to appeal, and the appeal will be dismissed.

The Board of Land Appeals is the arbiter of its jurisdiction, and neither employees of BLM nor attorneys of the Solicitor's office may create or deny the right of appeal to the Board. Where a notice published by BLM erroneously includes a provision for appeal to the Board, the Board is not thereby bound, and an appeal filed in response to such notice is subject to dismissal.

The authority of BLM state directors to designate the boundaries of wilderness study areas derives from the Secretary, and their determinations are appealable to the Board of Land Appeals, which is empowered to decide such appeals as fully and finally as might the Secretary. The Board, therefore, may affirm, reverse or modify such boundary designations on appeal with finality, and BLM's ministerial implementation of such final decisions will not create a new right of appeal.

Phelps Dodge Corp. et al., 72 IBLA 226 (Apr. 26, 1983)

It is the obligation of the appellant to show error. Therefore, when a statement of reasons does not with some particularity show adequate reasons for appeal and support the allegations with evidence showing error, the appeal cannot be afforded favorable consideration.

United States v. Connor et al., 72 IBLA 254 (Apr. 27, 1983)

Bob G. Howell, 75 IBLA 113 (Aug. 12, 1983)

An appellant seeking reversal of a decision involving lands in a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

A determination that a proposed action will not have a significant impact on the environment will be affirmed on appeal where the record establishes that a hard look at environmental problems has been taken, relevant areas of environmental concern have been identified, and the determination is the reasonable result of the environmental analysis.

Southwest Resource Council, Inc., National & Arizona Wildlife Federations, 73 IBLA 39 (May 11, 1983)

Where, on appeal from the automatic termination of an oil and gas lease pursuant to 30 U.S.C. § 188(b) appellant submits an affidavit in support of its assertion that no termination could occur under the statute because there was present on the lease a well capable of producing oil or gas in paying quantities on the anniversary date of the lease, and that statement is absolutely false, the misrepresentation is one of material fact which, if knowingly and willfully made, constitutes a criminal violation of 18 U.S.C. § 1001 (1976).

Punk Exploration, 73 IBLA 111 (May 23, 1983)

APPEALS--Continued

The Board of Land Appeals will not consider a general protest against a regulation where appellant has not shown how the appealed decision applied or implemented the regulation.

Boyer, Ltd., 74 IBLA 139 (July 6, 1983) 90 I.D. 289

Where the Bureau of Land Management refers a complaint about the issuance of a crossing permit under 43 CFR 4130.4-3 directly to an Administrative Law Judge for hearing, without taking any action, the decision of the Administrative Law Judge must be vacated.

Jones & Sandy Livestock, Inc., 75 IBLA 40 (Aug. 5, 1983)

Failure by appellant to point to some error in a decision or to show that agency action has deprived him or some right subjects his appeal to dismissal.

Contention by appellant that the agency generally conducted a competitive oil and gas lease sale so as to deprive appellant of information needed to compile a reasonable competitive bid is inadequate to support an appeal where it fails to specify how any agency conduct complained of operated to appellant's detriment or how appellant is entitled to relief claimed.

R. H. Northcutt, 75 IBLA 305 (Aug. 30, 1983)

A decision of the Board of Land Appeals holding that the signature requirement of 43 CFR 3111.1-1(a) is met when the offeror signs one offer form in ink and photocopies four exact reproductions of the front page of the offer form, including the signature, is not an abrupt departure from other Board rulings nor a retroactive application of a new rule, but is merely the initial interpretation and application of an existing regulation to this specific factual circumstance.

Richard F. Carroll (On Reconsideration), 76 IBLA 151 (Sept. 27, 1983) 90 I.D. 432

Where a simultaneous oil and gas lease application is submitted by a filing service on behalf of a client, and such application is subsequently rejected by the Bureau of Land Management for being improperly completed, the filing service is not authorized under 43 CFR 1.3 to represent the client in an appeal to the Board.

Donald E. Hook, 76 IBLA 367 (Oct. 25, 1983)

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file timely a statement of reasons and no reason for maintaining the action is apparent.

Village & City Council of Alakanuk, May E. Olson, Lawrence Murphy, Sr., 77 IBLA 130 (Nov. 15, 1983)

The Board of Land Appeals has no jurisdiction to hear an appeal by a mining claimant from a BLM decision classifying land for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), which has become a final order of the Secretary.

Ronald E. Graham, Dorothy L. Graham, 77 IBLA 174 (Nov. 17, 1983)

APPEALS--Continued

Where, in its statement of reasons for appeal, appellant fails to allege a cognizable interest which has been adversely affected, appellant will be considered to lack standing, and the appeal will be dismissed.

BLM classifications of land as suitable for disposition by public sale are not subject to appeal to the Board of Land Appeals. Likewise, BLM's dismissal of a protest against a resource management plan is not appealable to the Board. In each instance, other provisions for agency review have been made by regulations.

Oregon Natural Resources Council, 78 IBLA 124 (Dec. 27, 1983)

Notice of appeal must be filed within 30 days from the date that the party appealing receives the decision from which the appeal is taken. A timely filing of the notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal.

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed. However, dismissal is not mandatory and each case will be considered on its own merits.

Score International, 78 IBLA 142 (Dec. 29, 1983)

The Board of Indian Appeals has jurisdiction under 25 CFR 2.19(c)(2) to review decisions of the Deputy Assistant Secretary--Indian Affairs (Operations) rendered under the administrative appeal regulations of 25 CFR Part 2 that are not based solely on the exercise of discretion. A decision that requires the application of general legal principles to a specific fact situation involves an interpretation of law and is not solely discretionary. Therefore, it can be reviewed by the Board.

The characterization of a decision rendered by the Deputy Assistant Secretary--Indian Affairs (Operations) under 25 CFR Part 2 as discretionary is a legal conclusion subject to review by the Board of Indian Appeals.

A decision by the Deputy Assistant Secretary--Indian Affairs (Operations) under 25 CFR Part 2 that is not timely appealed to the Board of Indian Appeals is final for the Department.

25 CFR 2.19 contemplates that, within 30 days after an appeal taken to the Deputy Assistant Secretary--Indian Affairs (Operations) under 25 CFR Part 2 becomes ripe for decision, the appeal will either be decided by a written decision or referred to the Board of Indian Appeals for decision.

Upon the expiration of the 30-day time period for decision established by 25 CFR 2.19(b), the Board of Indian Appeals has jurisdiction over an appeal filed with the Deputy Assistant Secretary--Indian Affairs (Operations). However, the Board will not act in the matter unless the appellant invokes the Board's jurisdiction by filing with the Board a separate notice of appeal, motion to assume jurisdiction, or other document alleging Board jurisdiction. The original filing under 25 CFR 2.11(a) is insufficient to invoke the Board's jurisdiction automatically after the expiration of the time period.

Clayton J. Wray v. Deputy Assistant Secretary--Indian Indian Affairs (Operations), 12 IBIA 146 (Jan. 27, 1984) 91 I.D. 43

APPEALS--Continued

Where the Bureau of Land Management assesses the cumulative impacts of approving multiple permits to drill for oil and gas in a wilderness study area and wild horse range and makes an area-wide determination to permit such oil and gas development because it would have no significant effect on the area, an appeal of that determination challenging the adequacy of the environmental assessment of the cumulative impacts is not premature.

Animal Protection Institute of America, Sierra Club, Colorado Open Space Council, 79 IBLA 94 (Feb. 17, 1984) 91 I.D. 115

Where a counsel moves to reopen a Board decision and the motion is granted, and the parties are given a period substantially in excess of the time requested in which to submit additional evidence but both fail to do so, the Board is entitled to dispose of the case by a summary affirmation of the original decision.

Jean Rodgers et al. (On Reconsideration), 5 OHA 266 (Feb. 24, 1984)

If an assignment is approved by BLM after BLM has received notice that a private dispute exists as to the validity or effect of the assignment, but before resolution of the private dispute, fairness dictates that the assignment be vacated to restore status quo pending resolution of the dispute.

Charles H. Dorman et al. (Appellants), Robert L. Berger, Roger B. Hanger (Appellees), 79 IBLA 209 (Feb. 28, 1984)

The Board of Indian Appeals has jurisdiction under 25 CFR 2.19(c)(2) to review decisions of the Deputy Assistant Secretary--Indian Affairs (Operations) rendered under the administrative appeal regulations of 25 CFR Part 2 that are not based solely on the exercise of discretion. A decision that requires the application of general legal principles to a specific fact situation involves an interpretation of law and is not solely discretionary. Therefore, it can be reviewed by the Board.

The characterization of a decision rendered by the Deputy Assistant Secretary--Indian Affairs (Operations) under 25 CFR Part 2 as discretionary is a legal conclusion subject to review by the Board of Indian Appeals.

Upon the expiration of the 30-day time period for decision established in 25 CFR 2.19(b), the Board of Indian Appeals has jurisdiction over an appeal filed with the Deputy Assistant Secretary--Indian Affairs (Operations). However, the Board will not act in the matter unless the appellant invokes the Board's jurisdiction by filing with the Board a separate notice of appeal, motion to assume jurisdiction, or other document alleging Board jurisdiction.

Oliver Redfield v. Deputy Ass't Secretary--Indian Affairs (Operations), 12 IBIA 190 (Mar. 2, 1984)

A decision by an officer of the BLM which does not fall within any of the enumerated exceptions in 43 CFR 4.410 is subject to appeal to the Board of Land Appeals and a BLM officer is without authority to state otherwise.

Utah Wilderness Ass'n, 80 IBLA 64 (Mar. 30, 1984) 91 I.D. 165

APPEALS--Continued

An organization appealing a Bureau of Land Management decision will be considered a "party to a case" having standing to appeal an adverse decision of an officer of the Bureau of Land Management where the organization uses the lands in question and actively and extensively participates in the formulation of land use plans for the lands in question.

Desert Survivors, 80 IBLA 111 (Apr. 3, 1984)

A decision by an Administrative Law Judge setting aside a BLM decision rejecting the grazing preference application of the longstanding holder of a temporary nonrenewable license because of the equities in favor of the applicant will be set aside on appeal and remanded so that BLM may consider whether the applicant is entitled to a grazing permit for the additional forage within a particular allotment in accordance with 43 CFR 4110.3-1 and 4110.5.

Ray Pergball v. Bureau of Land Management, 80 IBLA 168 (Apr. 13, 1984)

The conclusion of proceedings under the Freedom of Information Act, as amended, 5 U.S.C. § 552 (1982), to acquire information related to the rationale for the production royalty set in a competitive coal lease does not constitute a final decision by BLM subject to an appeal to the Board, challenging the royalty. The appellant only had a right to protest the royalty set in the notice of the lease sale and to appeal from any denial of that protest.

Coastal States Energy Co., 80 IBLA 274 (May 4, 1984)

When a party appeals a BLM decision, it is the obligation of the appellant to show that the determination is erroneous. Unless a statement of reasons shows adequate reasons for appeal and the allegations are supported with evidence showing error, the appeal cannot be afforded favorable consideration.

Howard J. Hunt, Howard B. Hunt, 80 IBLA 396 (May 14, 1984)

Where the resolution of an appeal depends on the determination of disputed issues of fact, the Board of Land Appeals will often refer the case for an evidentiary hearing on the record before an administrative law judge. However, when the administrative record appears to include nearly all of the available evidence, and affords an adequate basis for decision, and other circumstances indicate that an oral hearing would be unlikely to contribute substantially to the existing record, the Board may determine the facts and decide the appeal on the basis of the record before it.

State of Alaska, Mary Frances DeBart, 82 IBLA 165 (Aug. 6, 1984)

A notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Where an applicant for a trade and manufacturing site alleges that she timely mailed a notice of appeal of a decision setting forth estimated cost of survey but there is no evidence to indicate that it was ever

APPEALS--Continued

received by the proper Bureau of Land Management office, the applicant must bear the consequences.

Donna J. Waidlow, 82 IBLA 247 (Aug. 28, 1984)

A hearing is not necessary in the absence of a material issue of fact, which, if proven, would alter the disposition of the matter. An oral hearing on a color-of-title application will be denied where there are no allegations of fact which would establish the color-of-title claim.

Kim C. Evans, 82 IBLA 319 (Sept. 6, 1984)

Where a certificate of ineligibility for status as a Native group was not sent by the Bureau of Indian Affairs to the person authorized in the record by the members of a Native group to be their agent for any and all legal effects for the group but was sent instead to a member of the Native group, at an incorrect address, the provisions of 43 CFR 2653.6(a)(6) were not followed, and the certificate of ineligibility was not served on the Native group.

Where the record in a case establishes that the person authorized by a Native group to act as its agent had actual notice of a certificate of ineligibility for such group, and that the notice of appeal was not transmitted within 30 days of such notice, the notice of appeal must be dismissed. The timely filing of a notice of appeal is jurisdictional, and the Board has no authority to waive a jurisdictional requirement.

Kaktagas Native Corp., Inc. (On Reconsideration), 83 IBLA 82 (Sept. 28, 1984)

A second hearing will not be afforded to an Alaska Native allotment applicant where the applicant was afforded an initial hearing in accordance with due process, and where nothing has been submitted which suggests that an additional hearing would produce a different result. Where an applicant fails to introduce all relevant evidence at an initial hearing when such evidence was available and could have been submitted, he waives his right to introduce that evidence. A further hearing is not necessary in the absence of a material issue of fact which, if proven, would alter the disposition of the appeal.

Ozinkie Native Corp. v. Edward B. Ophim, 83 IBLA 225 (Oct. 19, 1984)

Where a 1974 decision to issue a highway right-of-way is not challenged on appeal until 1980, the doctrine of administrative finality bars consideration of the legal basis for the 1974 right-of-way grant.

Where a village land selection conveyance under the Alaska Native Claims Settlement Act is made subject to a highway right-of-way for a maintenance site held by a state agency, the Department of the Interior retains jurisdiction to determine whether the right-of-way should continue or be canceled.

Bering Straits Native Corp., Council Native Corp., 83 IBLA 280 (Oct. 25, 1984)

The Board of Land Appeals has no jurisdiction to hear appeals from BLM decisions denying petitions for classification.

State of Utah, Division of Wildlife Resources, 83 IBLA 298 (Oct. 26, 1984)

APPEALS--Continued

A motion to dismiss an appeal on the grounds that the appellant failed to file a timely notice of appeal within 30 days of actual notice of the BLM decision will be denied where there is no evidence in the record of when the appellant had such notice.

A person who is a party to a case and who has a cognizable interest which has been adversely affected will be considered to have standing to appeal pursuant to 43 CFR 4.410(a). Where the appellant's interest is only that of a deeply concerned citizen, the appeal must be dismissed for lack of standing.

Sharon Long et al., 83 IBLA 304 (Oct. 30, 1984)

Under the express terms of 43 CFR 4.411(a), a person who wishes to appeal a decision to the Board of Land Appeals must file his notice of appeal in the office of the officer who made the decision (not the Board). This requirement is strictly enforced. Thus, where a notice of appeal from a decision by a state office of BLM is filed only with the Board of Land Appeals and the Field Solicitor's Office, not with BLM, an appeal is not initiated, and, if no other notice is timely filed in the correct office, the appeal must be dismissed.

San Juan Coal Co., 83 IBLA 379 (Nov. 16, 1984)

The burden to prove a BLM decision erroneous is upon the appellant, where her appeal is based upon allegations that the first-drawn lease applicant is disqualified to hold a Federal lease.

Joan Lieberman, 84 IBLA 85 (Dec. 6, 1984)

Under 43 CFR 4.1271, notice of appeal must be filed on or before 30 days from date of receipt of the order or decision sought to be reviewed. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

William B. Johnson v. Office of Surface Mining Reclamation & Enforcement, 84 IBLA 169 (Dec. 19, 1984)

Where the Interior Board of Land Appeals sets aside a BLM decision because on appeal the appellant has pointed out ambiguities and inconsistencies in the record and BLM does not come forward to clarify them, the Board ordinarily will not entertain a postdecision brief seeking reconsideration and setting forth such clarifications.

Sierra Club, The Hope Lake Committee (On Reconsideration), 84 IBLA 175 (Dec. 19, 1984)

APPLICATIONS AND ENTRIES

GENERALLY

It is a proper exercise of discretionary authority for a Bureau of Land Management office to suspend action on an oil and gas lease offer pending resolution of similar cases on appeal to the Board of Land Appeals and a court proceeding. However, where the court case is remanded to the Department of the Interior for further consideration and the Board has resolved cases with substantive issues similar to those in the case under consideration, it will set aside the Bureau's decision, and dismiss the protest and remand the case for action in accord with those rulings. Where there are no disputed factual issues controlling resolution of the case, the protestant's request for a hearing

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

will be denied as well as his request for further suspension of the case.

Jack Buchanan, 45 IBLA 337 (Feb. 7, 1980)

A permit allowing free use of mineral materials does not segregate the subject lands from further appropriation; rather, subsequent claims and entries are subject to the terms of the permit.

It is well established that an entry on public land under the laws of the United States segregates the land from the public domain, appropriates it to private use, and withdraws it from subsequent entry or acquisition until that entry is finally cancelled. Applications for interest in public lands must be rejected if the lands are not available for the requested disposition at the time they are filed or considered. Where a right-of-way was granted to lands subject at the time to a valid homestead entry, BLM properly declares the grant null and void ab initio.

State of Alaska, 46 IBLA 12 (Feb. 20, 1980)

The BLM may not summarily reject a mineral patent application on the face of the record for reasons related to disputed issues of fact without notice and an opportunity for hearing.

Big Horn Limestone Co., 46 IBLA 98 (Feb. 28, 1980)

The rejection of an application for a lease under the Recreation and Public Purposes Act for land to be used as a rifle range is a proper exercise of the Secretary's discretion where the facts show that size and topography of the land are not suitable for such range and the site is not safe, notwithstanding the fact that the land had been classified for lease under the Recreation and Public Purposes Act.

Town of Kremmling, 46 IBLA 213 (Mar. 27, 1980)

Having determined that the lands in question were withdrawn for national defense purposes during the selection period, BLM was required to reject appellant's selection application for such lands pursuant to regulations in 43 CFR 2091.1.

Appeal of Tanacross, Inc., 4 ANCAB 173 (Apr. 7, 1980)
87 I.D. 123

Appeal of Northway Natives, Inc., 4 ANCAB 207 (Apr. 21, 1980)

Where Native allotment applicants who were 8 years and older at the date land was segregated from entry assert independent use and occupancy of the land then, the Bureau of Land Management should contest their applications, affording them notice and an opportunity for a hearing to prove the adequacy and independence of their use and occupancy, rather than reject the applications without a hearing simply because of the applicant's age on the segregative date.

William Bouvens et al., 46 IBLA 366 (Apr. 8, 1980)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

An application for permit to drill for oil and gas in a "potash enclave" in a designated "Potash Area" is properly denied where the applicant fails to show that its application comes within either of the two exceptions to the policy in favor of potash development enunciated in an order of the Secretary dated Oct. 7, 1975, 40 FR 51486 (Nov. 5, 1975).

Bass Enterprises Production Co., 48 IBLA 11 (May 27, 1980)

An application for an Indian allotment, filed on behalf of a minor child, pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which is unaccompanied by the certificate of eligibility required by 43 CFR 2531.1(b) and (d), is properly rejected.

Genoiva Nell Haston Smith et al., 48 IBLA 199 (June 16, 1980)

Nolia Fern Bicker, Clyde Lloyd Atwater, 48 IBLA 373 (July 11, 1980)

An application for an Indian allotment, filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(b) and (d) or the petition for classification required by 43 CFR 2531.2 may be rejected.

Don Stokes et al., 48 IBLA 365 (July 11, 1980)

Tammy Lou Bicker Smith et al., 49 IBLA 251 (Aug. 18, 1980)

Roy B. Miller, Jr., 52 IBLA 52 (Jan. 6, 1981)

An application for millsite patent which does not comply with the clear and unequivocal requirements of the regulations in 43 CFR Part 3860 relating to millsites must be rejected.

Morrill A. Nielson, 48 IBLA 398 (July 11, 1980)

Action on a protest against issuance of a lease to the first-drawn offeror, a client of Resource Service Company, a leasing service, and issuance of the lease, shall be suspended pending appropriate action by BLM to determine whether there has been a violation of the regulations requiring disclosure of interests in a lease, when an offer is filed, and prohibiting against the multiple filings of lease offers in a simultaneous filing, arising from the RSC's client referral program whereby client A, for whom RSC files offers, can share in the proceeds of RSC's commission on a sale of client B's oil and gas lease negotiated by RSC if client B was referred to RSC by client A.

Lloyd Chemical Sales, Inc., 49 IBLA 392 (Sept. 5, 1980)

Where a prospecting permit applicant is required to furnish evidence of its qualifications to hold the permit, proper reference to its corporate qualifications statement on file in any Bureau of Land Management office fully satisfies the requirements of 43 CFR 3502.1-3.

Leon P. Scully, Jr., Eileen Scully, 50 IBLA 19 (Sept. 9, 1980)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

To establish the mineral character of lands, it must be shown that the known conditions are such as to engender the belief that the lands contain mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end. The mineral character of land may be established by inference without the exposure of the mineral deposit for which the land is supposed to be valuable. Lands containing mineral of such quantity and value as to warrant a prudent man in the expenditure of his time and money with a reasonable expectation of developing a paying mine are disposable only under the mining laws.

Edith Beard, Beulah Roth, 50 IBLA 61 (Sept. 15, 1980)

Where consideration of an application to participate in the Government royalty oil sales program filed after the deadline could interfere with the rights of other applicants and would unduly interfere with the orderly conduct of the program, the application is properly rejected.

Allied Materials Corp., 50 IBLA 353 (Oct. 16, 1980)

Where it appears that there may have been a violation of the disclosure and/or interest regulations (43 CFR 3102.7 and 3112.5-2) asserted by a protest, the adjudication of the appeal stemming from the dismissal of the protest is properly suspended pending appropriate action by BLM to determine whether there has been a violation of those regulations.

Geosearch, Inc., 50 IBLA 409 (Oct. 24, 1980)

Action on a protest against issuance of a lease to the first-drawn offeror, a client of Resource Service Company, a leasing service, and issuance of the lease, properly is suspended pending appropriate action by BLM to determine whether there has been a violation of the disclosure and interest regulations. BLM will investigate a filing service's relationship with the offeror where it appears that the disclosure and interest regulations may have been violated by a referral program offered by the filing service.

Geosearch, Inc., 51 IBLA 59 (Oct. 31, 1980)

Applications for Indian allotment on the public domain pursuant to sec. 4, General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which are unaccompanied by the certificate of eligibility required by 43 CFR 2531.1 are properly rejected.

Applications for Indian allotment on the public domain filed pursuant to sec. 4 of the General Allotment Act, as amended 25 U.S.C. § 334 (1976), which are not accompanied by the petition for classification required by 43 CFR 2531.2 are properly rejected.

Robert Dale Marston et al., 51 IBLA 115 (Nov. 20, 1980)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

where the segregative use so noted is void, voidable, or has terminated.

Stephen Kearns et al., 51 IBLA 368 (Dec. 30, 1980)

Where an applicant for a mineral patent has been requested to provide additional information and has not done so after 10 months, the Bureau of Land Management may properly deny his request for a further extension of time to submit that information and reject his mineral patent application without prejudice to applicant's right to file a proper application in the future. But when the pendency of an appeal from that decision has stayed its effectiveness beyond the time needed by the applicants to obtain the necessary information, the Board may give the applicants 10 additional days to file the information with BLM before the rejection of their application becomes effective.

Wilbur G. Hollaway et al., 52 IBLA 202 (Jan. 26, 1981)

An employee's uncorroborated affidavit stating that a separate statement concerning parties in interest was sent for each oil and gas lease offer is insufficient to rebut the legal presumption that administrative officials have properly discharged their duties and have not misplaced or lost the document in issue.

A copy of a document is not considered to be among the number filed if it is only received and date-stamped and returned to an applicant as evidence of receipt. Such acknowledgement of receipt by Bureau of Land Management personnel does not constitute a determination that the filing was complete or that all the documents recited in the cover letter were included. BLM is not required to retain that copy of the document, contrary to an applicant's instructions, in order to make the filing complete.

Metro Energy, Inc., 52 IBLA 369 (Feb. 19, 1981)

Applications for Indian allotments on the public domain pursuant to sec. 4, General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which are unaccompanied by the certificate of eligibility required by 43 CFR 2531.1, are properly rejected.

Samuel Lee Gifford et al., 53 IBLA 23 (Feb. 26, 1981)

Wanda Lois Lee McKinney et al., 53 IBLA 279 (Mar. 24, 1981)

BLM properly rejects an application to purchase mineral rights where the record shows that these rights were previously sold to a private party. In the absence of any proof to the contrary, it is presumed that the sale of these interests was regularly consummated by the issuance of a deed or other appropriate instrument of conveyance to the private party.

Perkins Hutcheson Building Co., Inc., 54 IBLA 137 (Apr. 17, 1981)

An application for land withdrawn from appropriation under the public land laws is properly rejected and not held pending possible future availability of the land.

An application for land filed but not adjudicated prior to restoration of the land to appropriation under the public land laws under a public land order which expressly provides that all applications filed prior

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

to restoration shall be considered as simultaneously filed as of the date of restoration may be considered as filed as of the date of restoration.

Vaughn K. Leavitt et al., 55 IBLA 59 (May 29, 1981)

An application to purchase offshore royalty oil, submitted in response to a notice published in the Federal Register on Jan. 14, 1980, is properly rejected where the applicant's runs to stills per calendar day exceed the applicant's refining capacity per calendar day.

Quitman Refining Co., 57 IBLA 53 (Aug. 17, 1981)

An Indian allotment application is properly rejected where it requests lands which are not available for entry because they have previously been noted on BLM plats under a recreational and public purposes classification pursuant to 43 U.S.C. § 869 (1976).

Marjorie M. Underwood, 58 IBLA 21 (Sept. 16, 1981)

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard E. Tingley, 62 IBLA 315 (Mar. 19, 1982)

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so within the time prescribed by a Bureau of Land Management decision, BLM may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 129 (May 20, 1982)

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so after 10 years, the Bureau of Land Management may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 132 (May 20, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

trade and manufacturing site in Alaska does not trigger that statutory mechanism.

United States v. Evelyn M. Rauch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

Where petitions for classification and applications for Indian allotments are filed together, it is improper to reject the applications without first ruling on the petitions.

Where applications for Indian allotments are not accompanied by petitions for classification of the lands, the applications must be rejected.

Sec. 4 of the General Allotment Act of Feb. 8, 1887, As Amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the Federal Register.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald H. Kraniff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

A waiver of mineral rights pursuant to 30 U.S.C. §§ 121-123 (1976) is properly required where there is a finding that land within a reclamation homestead entry is valuable for one of the minerals specified in that Act prior to the submission of reclamation final proof and other compliance with the law, even though ordinary homestead final proof was accepted many years before. Where the entryman or his successor in interest executed the waiver rather than appeal the decision requiring it, the waiver is binding on all successors in interest.

Vincent Hayward, 66 IBLA 100 (Aug. 4, 1982)

Where petitions for classification and applications for Indian allotments are filed together, it is improper to reject the applications without first ruling on the petitions.

Where applications for Indian allotments are not accompanied by petitions for classification of the lands, the applications must be rejected.

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

Where applications for Indian allotments are not accompanied by a certificate of eligibility of the applicant, the applications must be rejected.

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the Federal Register.

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Where Congress has authorized the Secretary to administer reconveyed Coos Bay Wagon Road lands in accordance with a perpetual timber yield policy, and where the Secretary classified them as timber lands in 1947 and they remain so today, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

Under relevant enabling statutes, the Secretary is without authority to classify reconveyed Coos Bay Wagon Road lands as suitable for Indian allotments under the General Allotment Act.

Mary Margaret Mask et al., 67 IBLA 8 (Sept. 1, 1982)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Paiute Oil & Mining Corp., 67 IBLA 17 (Sept. 3, 1982)

Irvin D. Bird, Jr., 73 IBLA 210 (May 27, 1983)

Shiny Rock Mining Corp., 75 IBLA 136 (Aug. 15, 1983)

Shiny Rock Mining Corp. (On Reconsideration), 77 IBLA 261 (Nov. 30, 1983)

Where the Secretary by appropriate notice in the Federal Register has classified certain lands for multiple use management and such lands are thereby segregated from desert land entry, which classification has not been terminated by either a reclassification or publication in the Federal Register of termination of classification, an application for desert land entry is properly denied.

Bill F. Ivarsley, Nikolee B. Ivarsley, 67 IBLA 97 (Sept. 13, 1982)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

Where Congress has withdrawn lands for use of the Air Force, and thereby segregated them from all forms of disposal under the public land laws, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

The Secretary is without authority to classify lands withdrawn for Hollis Air Force Base by Congress in the Act of Sept. 26, 1961, as suitable for Indian allotments under sec. 4 of the General Allotment Act.

Lewis Quentin Garver, 67 IBLA 140 (Sept. 16, 1982)

Where a petition for classification and an application for Indian allotment are filed together, it is improper to reject the application without first ruling on the petition.

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the Federal Register.

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

Where land has been segregated from all forms of disposition under the public land laws pursuant to an Act of Congress, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act, and are not available for Indian allotment.

Where a petition for classification and an application for Indian allotment are filed together, for land not "otherwise appropriated," it is improper to reject the application without first ruling on the petition.

Gary Lester Gray, Grace Marie Barfield Gray, 67 IBLA 184 (Sept. 22, 1982)

An application for an Indian allotment filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), for land which has not been classified for such disposition, and which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(b) or the petition for classification required by 43 CFR 2531.2 is properly rejected.

Kathryn F. Wright Bolton, 68 IBLA 179 (Nov. 8, 1982)

Where petitions for classification and applications for Indian allotments are filed together, it is improper to reject the applications on the ground that the land is not classified as suitable for such disposition without first ruling on the petitions.

Swallen Gay Stewart Wilson, 70 IBLA 165 (Jan. 19, 1983)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

Where land has been withdrawn from lease or disposal under the public land laws pursuant to an Executive order, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act, and are not available for Indian allotment.

Applications for Indian allotment on the public domain pursuant to sec. 4, General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which are unaccompanied by the certificate of eligibility required by 43 CFR 2531.1, are properly rejected.

George L. Clay Lee et al., 70 IBLA 196 (Jan. 21, 1983)

An application for an Indian allotment filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), for land which has not been classified for such disposition, and which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(b) or the petition for classification required by 43 CFR 2531.2 is properly rejected.

Phyllis Inez Maston Bartlett, Daniel Walker Taylor, 71 IBLA 1 (Feb. 9, 1983)

BLM decisions rejecting mineral patent applications for numerous deficiencies, uncertainties, and inconsistencies therein, will be affirmed where appellant fails to point out how the decisions are in error, subject to the applicant's right to submit proper and correct applications in the future.

Donald L. Clark, 71 IBLA 169 (Mar. 10, 1983)

A mineral patent applicant must support his application with a certificate or abstract of title. 43 CFR 3862.1-3(a).

Where an applicant for a mineral patent has been requested to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so within the time prescribed by a Bureau of Land Management decision, BLM may properly reject the application without prejudice to applicant's right to submit a proper and complete application in the future.

Oyrhee Calcium Products, Inc., 72 IBLA 235 (Apr. 26, 1983)

Where land has been designated for specific disposal pursuant to statutory authority, the land is "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act, and not available for Indian allotment.

An application for Indian allotment on the public domain pursuant to sec. 4, General Allotment Act, that is unaccompanied by the certificate of eligibility required by 43 CFR 2531.1(b) is properly rejected.

Ellis Eugene Hardcastle, 74 IBLA 20 (June 24, 1983)

Ella Mae Jones, 76 IBLA 205 (Oct. 11, 1983)

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

A withdrawal of a simultaneous oil and gas lease application received over the signature of the applicant takes effect from the moment it is filed, and all rights under the application are at an end no instants.

John H. Trigg, 74 IBLA 246 (July 19, 1983)

An application for an Indian allotment filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), for land which has not been classified for such disposition, and which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(b) or the petition for classification required by 43 CFR 2531.2(a) is properly rejected.

James O. Jones, 75 IBLA 192 (Aug. 22, 1983)

BLM must reject an Indian allotment application filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), where the land has been segregated from all forms of entry under the public land laws pursuant to sec. 3 of the Act of Mar. 6, 1958, P.L. 85-339, 72 Stat. 31 (1958), and reserved for acquisition by the Colorado River Commission of the State of Nevada. The land remains segregated even where the segregation has expired by its terms, but it is still reflected on the public land records of BLM.

Regina Anne Jones, Claudia Lee Jones, 76 IBLA 17 (Sept. 6, 1983)

A decision rejecting an application, filed at a time when the land was withdrawn, pursuant to the tract book or notation rule may be reversed where the application remained pending unadjudicated until after termination of the withdrawal (and thus no administrative burden would be avoided by rejection) and where consideration of the application would not give the applicant any preference right in the land over the general public to which he was not otherwise entitled.

Cook Inlet Region, Inc., 77 IBLA 383 (Dec. 9, 1983)
90 I.D. 543

Where the Secretary of the Interior, or his delegate, by appropriate notice has classified certain lands for retention, an application for a permit to use land so classified is properly rejected.

Ronald L. Swafford, 78 IBLA 379 (Jan. 31, 1984)

The failure of a desert land entry applicant to promptly notify the authorizing BLM officer of a change of address does not, in itself, constitute an adequate basis for rejecting the application.

Keith L. McCann, Jr., 81 IBLA 314 (June 18, 1984)

The Secretary of the Interior has the discretionary authority to grant an application for public lands under the Recreation and Public Purposes Act, 43 U.S.C. §§ 869 to 869-4 (1982). A decision rejecting such an application for land to be used for wildlife habitat management will be affirmed where it is based on a

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

policy reasonably related to the public interest and appellant has shown no error therein.

State of Utah, Division of Wildlife Resources, 83 IBLA 298 (Oct. 26, 1984)

The failure of a desert land entry applicant to promptly notify the Bureau of Land Management of a change of address does not, in itself, constitute an adequate basis for rejecting the application.

Merlin G. Tullis, 84 IBLA 202 (Dec. 27, 1984)

AMENDMENTS

The Bureau of Land Management has no authority to correct an error in a description of land sought under a geothermal lease application. An amendment of the land description in a noncompetitive geothermal lease application received after the close of the monthly filing period in which the initial offer was filed will not be allowed.

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such section.

Diane B. Katz, 47 IBLA 1 (Apr. 10, 1980)

Where lands sought in a Native allotment application are described by metes and bounds despite their having been previously surveyed, and thereafter an amended application is filed subsequent to Dec. 18, 1971, seeking lands in a different township, the amended application is properly rejected as untimely.

Edith Sneed, Beulah Roth, 50 IBLA 61 (Sept. 15, 1980)

Normally, a noncompetitive geothermal lease application which fails to include all available lands within surveyed or protracted sections, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such sections. However, where an applicant files for all the lands shown to be available on the BLM leasing plat, but immediately thereafter discovers and proves the plat to be in error because other lands are available in those sections, and covers the omissions by filing "companion" applications which, when combined with the originals encompass all the lands actually available, the "combined" applications will be deemed acceptable in the peculiar circumstances of that particular case.

Caithness Corp., 72 IBLA 350 (Apr. 29, 1983)

When Arizona filed its original application for selection of land as part of its entitlement to compensation for deficiencies for school trust lands pursuant to its enabling act, the Department did not have segregation authority to protect the selections. During the promulgation of 43 CFR 2091.2-6, Arizona submitted a request to have the previous applications withdrawn, consolidated, and amended to include additional lands. This will be deemed a reapplication under the circumstances of this case, the filing of which enabled the Department to segregate the lands described therein under 43 CFR 2091.2-6. Mining claims subsequently initiated on lands that were segregated by the

APPLICATIONS AND ENTRIES--Continued

AMENDMENTS--Continued

reapplication were properly declared null and void ab initio.

Amoco Minerals Co., 81 IBLA 23 (May 15, 1984)

FILING

Where a State Office rejects a Native allotment application because it was not timely filed and did not have the required certification and land description, and where it is shown such deficiencies were beyond applicant's control, the case will be remanded to the State Office to allow 60 days for the deficiencies to be cured, and for the State Office, if it finds substantial compliance with the law, to apply doctrine of equitable adjudication and then to accept the application with the late filing, proper certification, and amended land description, all else being regular.

Herbert Herrmann, 45 IBLA 43 (Jan. 14, 1980)

Where consideration of an application to participate in the Government royalty oil sales program filed after the deadline could interfere with the rights of other applicants and would unduly interfere with the orderly conduct of the program, the application is properly rejected.

Allied Materials Corp., 50 IBLA 353 (Oct. 16, 1980)

BLM properly applied amended regulations, the effective date for which is June 16, 1980, to a drawing of simultaneous noncompetitive lease offers held in July 1980.

Under 43 CFR 3112.2-2(b) (1980), a single remittance is acceptable for a group of filings of drawing entry cards. However, if the remittance was insufficient to cover the $10 filing fee per card, BLM properly determined that the entire group was unacceptable and returned the filings to the offerors.

An applicant is required to submit a filing fee for every ostensible application whether or not it is completed as required under the regulations. Thus, a failure to remit enough money to cover all of the fees due for a group of filings is not excused because one of the filings may not have been properly completed.

Federal Energy Corp., 51 IBLA 144 (Nov. 24, 1980)

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

James B. Pasley, 53 IBLA 1 (Feb. 26, 1981)

Guy B. Matthews, 58 IBLA 246 (Oct. 6, 1981)

Carl B. Anderson, 61 IBLA 4 (Dec. 29, 1981)

Under 43 CFR 3112.2-2(b) (1980), a single remittance is acceptable for a group of filings of drawing entry cards. However, if the remittance was insufficient to meet the $10 filing fee per card, BLM properly determined that the entire group was unacceptable and returned the filings to the offerors.

Orderly administration of the oil and gas leasing program demands that filing fees be paid to BLM in a manner consonant with administrative convenience and in accordance with the regulations. This necessarily requires that BLM cannot, without prior written

APPLICATIONS AND ENTRIES--Continued

FILING--Continued

instruction, transfer money paid for one purpose to another use, e.g., money paid for one month's simultaneous drawing to another month's simultaneous drawing.

Stewart Capital Corp., 53 IBLA 369 (Mar. 30, 1981)

Under 43 CFR 3112.2-2(b) (1980), a single remittance is acceptable for a group of filings of drawing entry cards. However, if the remittance was insufficient to cover the $10 filing fee per card, BLM properly determined that the entire group was unacceptable and returned the filings to the offerors.

Allen H. Taylor, 56 IBLA 143 (July 28, 1981)

Filing is accomplished only when a document is delivered to and received by the proper BLM office during business hours and depositing a document in the mails does not constitute filing. Mail received in the post office box designated by BLM as its address of record prior to BLM's close of business on a given day is properly considered as received by BLM on that date and failure of BLM to pick up the mail cannot alter this result. However, where the evidence establishes that a document was not placed in the BLM post office box until after the deadline, the filing is not timely.

Golden Monarch Mining Corp. et al., 61 IBLA 120 (Jan. 15, 1982)

It is improper for the Bureau of Land Management to reject a noncompetitive oil and gas lease offer for acquired lands where the offer is an "exact reproduction" of the approved offer form except that it is on white, rather than yellow, paper and it bears a notation stating that it is a reproduction.

Texas Oil and Gas Corp., 61 IBLA 312 (Feb. 4, 1982)

Under 43 CFR 3112.2-2(b), a single remittance is acceptable for a group of simultaneous oil and gas lease applications, but the remittance submitted must be sufficient to cover all filings. If the remittance is insufficient, the entire group is unacceptable and BLM properly returns the filings to the applicants.

Where simultaneous oil and gas lease applicants assert that their filings included sufficient fees and were grouped separately from another group of filings with insufficient fees that was transmitted in the same parcel, but fail to submit sufficient evidence to prove the separate grouping, the decision of the BLM to return all filings because of insufficient fees will be affirmed.

Fred L. Engle et al., 66 IBLA 94 (Aug. 4, 1982)

Under 43 CFR 3501.1-6, the Bureau of Land Management must reject applications for prospecting permits that are filed for lands not available for prospecting.

Irvin D. Bird, Jr., 73 IBLA 210 (May 27, 1983)

APPLICATIONS AND ENTRIES--Continued

FILING--Continued

The Department of the Interior is authorized to approve only Native allotment applications that were pending before the Department on or before Dec. 18, 1971. Where the evidence shows that an application was delivered to the Bureau of Indian Affairs before that date but was not transmitted to the Bureau of Land Management until after that date, the application was timely. Where there are factual questions concerning the pendency of an application they must be resolved at a hearing.

A Native allotment application was pending before the Department of the Interior on Dec. 18, 1971, if it was filed in any bureau, division, or agency of the Department on or before that date. The Bureau of Land Management is the proper agency to adjudicate all Native allotment applications, however.

Ketzeiland, Inc., et al., 77 IBLA 347 (Dec. 5, 1983)

Prior to the promulgation of 43 CFR 2091.2-6, the filing of a state indemnity selection application did not segregate the identified lands from operation of the mining laws prior to classification of the lands as suitable for indemnity selection.

Leo Rhea Partnership, 80 IBLA 1 (Mar. 27, 1984)

When Arizona filed its original application for selection of land as part of its entitlement to compensation for deficiencies for school trust lands pursuant to its enabling act, the Department did not have segregation authority to protect the selections. During the promulgation of 43 CFR 2091.2-6, Arizona submitted a request to have the previous applications withdrawn, consolidated, and amended to include additional lands. This will be deemed a reapplication under the circumstances of this case, the filing of which enabled the Department to segregate the lands described therein under 43 CFR 2091.2-6. Mining claims subsequently initiated on lands that were segregated by the reapplication were properly declared null and void ab initio.

Apoco Minerals Co., 81 IBLA 23 (May 15, 1984)

An Alaska Native allotment application is deemed pending before the Department of the Interior on Dec. 18, 1971, if it was filed in any bureau, division, or agency of the Department on or before Dec. 18, 1971. Evidence of pendency before the Department on or before Dec. 18, 1971, shall be satisfied by any bureau, division, or agency time stamp, or by affidavit of any bureau, division, or agency officer that the application was received on or before Dec. 18, 1971.

Ouzinkie Native Corp. v. Edward B. Orbeck, 83 IBLA 225 (Oct. 19, 1984)

INHERITABILITY

Where an applicant with first priority dies after filing an oil and gas lease application, but prior to issuance of the lease, his personal representative, heirs, or devisees are entitled to the lease provided there is filed an offer to lease in compliance with 43 CFR 3102.8.

Estate of Isidor Bonner, 63 IBLA 217 (Apr. 13, 1982)

APPLICATIONS AND ENTRIES--Continued

PRIORITY

Where, under 43 CFR 3102.7, evidence of qualifications to hold a prospecting permit must be submitted simultaneously with other application materials and such evidence is not submitted with the application, the application is deficient, the filing is ineffective, and no priority attaches. However, where an applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3502.7 is satisfied, an effective filing occurs, and priority attaches on the date of the cure.

Leon F. Scully, Jr., Eileen Scully, 50 IBLA 19 (Sept. 9, 1980)

Where, under 43 CFR 3102.2-5, evidence of a corporation's qualifications to hold an oil and gas lease must be submitted simultaneously with the lease offer or reference be made to the BLM serial number where the material has earlier been filed, and where such information is not submitted with the offer, the offer is deficient, the filing ineffective, and no priority attaches. However, where the applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3102.2-5 is satisfied, an effective filing occurs, and priority attaches on the date the deficiency is cured.

Peter D. Van Der Hart, 65 IBLA 56 (June 23, 1982)

Where, under 43 CFR 3102.2-5 (1981), evidence of a corporation's qualifications to hold an oil and gas lease must be submitted simultaneously with the lease offer or reference be made to the BLM serial number where the material has earlier been filed, and where such information is neither submitted with the offer nor referenced thereon by serial number, the offer is deficient, the filing ineffective, and no priority attaches. However, where the applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3102.2-5 (1981) is satisfied, an effective filing occurs, and priority attaches on the date the deficiency is cured.

Issaco Oil Co., 74 IBLA 260 (July 22, 1983)

The Alaska Native Allotment Act, 43 U.S.C. § 270-1 (1970), granted to qualified applicants a preference right to the land occupied which gives the applicant first choice in the land.

Village & City Council of Akhiok, Mary E. Clark, Lawrence Wright, Sr., 77 IBLA 130 (Nov. 15, 1983)

REINSTATEMENT

Where an applicant under the Mining Claims Occupancy Act of Oct. 23, 1962, as amended, 30 U.S.C. §§ 701-709 (1976), fails to respond to a request from BLM to submit within a prescribed period of time specific information necessary to determine whether the applicant is qualified, the case is properly closed by BLM, and a petition filed by the applicant 10 years later seeking to reinstate his application is properly denied, there being no provision for reinstatement of such an application and the statutory deadline for filing an application having passed.

Robert T. Watts, 63 IBLA 279 (Apr. 28, 1982)

APPLICATIONS AND ENTRIES--Continued

RELINQUISHMENT

In order for an heir to relinquish an allotment application, he or she must be the sole heir or have the authority to act on behalf of all heirs. Where, as in this case, the widow of a Native allotment applicant, who is not the sole heir, acting on her own behalf relinquishes his application and refiles for the same allotment; the relinquishment is ineffective.

Upon the death of a Native allotment applicant, BIA may file evidence of use and occupancy for the benefit of the applicant's heirs so long as the applicant has fulfilled all other requirements for allotment. However, BIA has no authority to relinquish the applicant's allotment during the period for filing evidence of use and occupancy.

Estate of Guy C. Groat, Jr., Violet Roehl, 46 IBLA 165 (Mar. 21, 1980)

VALID EXISTING RIGHTS

Where the holder of a coal prospecting permit completes his exploration and applies for a preference right coal lease in 1973, the application must be adjudicated on the basis of the applicant's subsequent conformity with regulations amended in 1976 with retroactive effect. However, where the application is summarily rejected solely for the reason that the applicant's supplemental submission is "inadequate," without identifying the deficiency, the decision will be vacated and the case remanded for readjudication.

Kin-Ark Corp., 45 IBLA 159 (Jan. 23, 1980) 87 I.D. 14

Where the holder of a coal prospecting permit completes his exploration and applies for a preference right coal lease in 1971, the application must be adjudicated on the basis of the applicant's subsequent conformity with regulations, amended in 1976 and 1979, with retroactive effect.

Jesse H. Knight, 53 IBLA 300 (Mar. 24, 1981)

Where a homestead entry is on land within a second-form reclamation withdrawal, and compliance with the provisions of the reclamation laws is still required, the mere filing of ordinary homestead final proof is not sufficient to vest the entryman with equitable title.

The revocation of a second-form reclamation withdrawal is effective upon the date specified in the order of revocation, regardless of whether the land had ever been suitable for the purpose for which it was withdrawn. Where an entryman has complied with all the requirements of the ordinary homestead law, but not with the requirements of the reclamation law, the revocation of the reclamation withdrawal does not operate retroactively to vest equitable title in the entryman as of the time final proof under the ordinary homestead law was submitted. Such equitable title cannot be deemed to have vested prior to the effective date of the revocation of the withdrawal.

Vincent Barkley, 66 IBLA 100 (Aug. 4, 1982)

VESTED RIGHTS

The filing of a phosphate prospecting permit application creates no vested rights in the applicant, and the application must be rejected if the

APPLICATIONS AND ENTRIES--Continued

VESTED RIGHTS--Continued

land described therein is determined to be within a known phosphate leasing area subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the phosphate bed underlying the applied for land, which finding requires competitive leasing of the land.

Christian P. Barker, 57 IBLA 333 (Sept. 1, 1981)

Christian P. Barker, 75 IBLA 232 (Aug. 23, 1983)

The filing of a phosphate prospecting permit application creates no vested rights in the applicant and the application must be rejected if the land described therein is determined by Geological Survey to be within a known phosphate leasing area and to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the underlying phosphate bed, which finding requires competitive leasing of the land.

J. R. Simplot Co., 58 IBLA 305 (Oct. 14, 1981)

John D. Archer et al., 75 IBLA 128 (Aug. 15, 1983)

Earth Sciences, Inc., 80 IBLA 28 (Mar. 28, 1984)

Public land may be "appropriated" to a public project or purpose by a Federal or state agency if such appropriation is under authority of law and there is a physical devotion of the land to such use on the ground. Such an appropriation does not segregate or withdraw the land, but creates an easement which is protected, and any subsequent entry, claim, or location is subject thereto. Where a free-use material site permit with a fixed date of expiration is held by a state agency and the site is later included in a homestead entry application, after the rights of the entryman are vested the free-use permit may not be converted to a material site right-of-way with an indefinite term, but the homestead entry remains subject to the permit until it expires.

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

APPLICATIONS AND ENTRIES--Continued

VESTED RIGHTS--Continued

The mere filing of a small tract application does not create in the applicant any right or interest in the land. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1976), cannot acquire any right or interest in the land by virtue of administrative delay in processing the application. When the current fair market value of the land has been determined in accordance with accepted procedures, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error.

Leon H. Rockwell et al., 72 IBLA 373 (May 4, 1983)

John Billingham et al., 73 IBLA 156 (May 24, 1983)

Retha McConkey, Robert L. Cook, 74 IBLA 4 (June 21, 1983)

The mere filing of a small tract application does not create in the applicant any right or interest in the land. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1976), cannot acquire any right or interest in the land by virtue of administrative delay in processing the application.

Gladys Ionich, Doris L. Hartley, 74 IBLA 285 (July 25, 1983)

Anthony Chiarenza et al., 74 IBLA 350 (July 28, 1983)

Russell P. Gilson, 76 IBLA 20 (Sept. 6, 1983)

The mere filing of a small tract application did not create in the applicant any right or interest in the land sought. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1970), did not acquire any right or interest in the land embraced in his application by virtue of administrative delay in processing the application.

R. Lawrence Berk, 81 IBLA 366 (June 27, 1984)

An applicant for a phosphate prospecting permit under sec. 9(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 211(b) (1982), acquires no vested right to a permit by virtue of an inordinate delay in adjudication of the application, even where a permit might have issued when the application was originally filed.

Elizabeth R. Archer et al., 82 IBLA 14 (July 5, 1984)

APPRAISALS

When the Bureau of Land Management has appraised the damages for a mineral trespass under 43 CFR Part 9230, an appraisal will be sustained in the absence of an offer of specific substantial evidence that it is incorrect.

Pacific Power & Light Co., 65 IBLA 127 (Jan. 23, 1980)

Appraisals of rights-of-way for communication sites will be upheld where an appellant fails to demonstrate by convincing evidence that the appraisal methods used by the Bureau of Land Management are in error or that the charges are excessive.

APPRAISALS--Continued

Pursuant to 43 CFR 2802.1-7(3) increased charges may not be imposed retroactively, but are only to be imposed by the authorized officer after reasonable notice and opportunity for hearing, beginning with the next charge year after the officer's decision.

A grantee of a communications site right-of-way is properly held in default and his right-of-way is properly cancelled pursuant to 43 CFR 2802.1-7(d) where grantee has failed to pay proper amount of rental for 4 years.

James V. Smith, 46 IBLA 233 (Mar. 27, 1980)

Where BLM purportedly has appraised the property on which appellant allegedly has an occupancy lease issued pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732 (1976), and appellant submits evidence which raises a question as to whether the correct property was appraised, supported by a statement from an independent real estate appraiser, and presents other data which challenges the validity of the appraisal, the State Office decision will be vacated and the case remanded to BLM for consideration of whether a new appraisal is warranted.

James T. Brown, 46 IBLA 265 (Mar. 27, 1980)

Where the current fair rental value of a small tract lease has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error.

Bratt Lake Homeowners Ass'n, 48 IBLA 159 (June 9, 1980)

The comparable lease method of appraisal of communication sites, which compares rental data from comparable leased sites with data from the subject site, is the preferred method of determining the fair market rental value of the right-of-way where there is sufficient comparable data available.

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

B & H Service, Inc., 48 IBLA 233 (June 17, 1980)

The comparable lease method of appraisal of communication sites, which compares rental data from comparable leased sites with data from the subject site, is the preferred method of determining the fair market rental value of the right-of-way where there is sufficient comparable data available.

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

The relevant regulation, 43 CFR 2802.1-7(d), does not absolutely prohibit acceptance of partial payments of past due rentals in all circumstances.

Northwestern Colorado Broadcasting Co., 49 IBLA 23 (July 15, 1980)

APPRAISALS--Continued

Comparison of the subject communications site right-of-way with other similar sites under lease is an appropriate appraisal method for determining fair market value when current and reliable rental data for comparable sites is available.

Appraisals of rights-of-way for communications sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and appellant fails to show by convincing evidence that the charges are excessive.

Dwight L. Kyndel, 55 IBLA 218 (June 18, 1981)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

American Telephone and Telegraph Co., 57 IBLA 215 (Aug. 27, 1981)

Under the Uniform Appraisal Standards for Federal Land Acquisitions (1973), evidence of sums paid by condemning authorities for similar properties, regardless of whether condemnation proceedings have begun, is inadmissible to determine the fair market value of a particular property.

Where the current fair rental value of a communications site right-of-way has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error. However, where the lessee has provided sufficient evidence on appeal to engender substantial doubt as to the data utilized and the conclusion reached in the appraisal report, the matter will be remanded for reconsideration.

Denver and Rio Grande Western Railroad Co., 58 IBLA 4 (Sept. 15, 1981)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Mountain States Telephone & Telegraph, 60 IBLA 221 (Nov. 30, 1981)

An appraisal of a right-of-way for a natural gas pipeline, granted pursuant to the Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), will be upheld on appeal if no error is shown in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive. However, where the Bureau has determined the highest and best use of the land in order to evaluate the comparability of other lands, and an appellant raises sufficient doubt as to the accuracy of that determination, the case may be remanded for the

APPRAISALS--Continued

Bureau to reconsider whether a further appraisal or adjustments in the appraised values should be made.

Western Slope Gas Co., 61 IBLA 57 (Dec. 31, 1981)

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

Francis H. Gifford, 62 IBLA 393 (Mar. 24, 1982)

Where the current fair rental value of a cabin site has been determined in accordance with accepted appraisal procedures and the permittee contends that the rental is excessive, the burden is upon the permittee to prove by positive, substantial evidence that the appraisal is in error.

Homer A. Strand et al., 4 OHA 257 (Apr. 9, 1982)

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Appraisals of rights-of-way for industrial pond sites will be upheld where there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the comparable sales data used by BLM was invalid or that the charges derived are excessive.

Pacific Power & Light Co., 65 IBLA 50 (June 23, 1982)

The "going rate" approach for appraising rights-of-way for natural gas pipelines granted pursuant to the Mineral Leasing Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), may be used by the Bureau of Land Management in determining the fair market rental value for such grants where there are sufficient market data available to evidence sales of similar right-of-way grants by private landowners.

In determining fair market rental value for a right-of-way for a natural gas pipeline granted pursuant to the Mineral Leasing Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), the Bureau of Land Management may consider market data concerning acquisition of similar rights-of-way across private lands even though the party acquiring those rights-of-way had the power of eminent domain.

Where the record shows that the Bureau of Land Management took into consideration differences between pipeline rights-of-way granted by the Bureau and those granted by private land owners in determining an adjustment factor to be applied to the going rate to arrive at the fair market rental value, in challenging that adjustment figure the right-of-way holder must show by positive and substantial evidence either that the Bureau failed to analyze the proper differences or that the adjustment factor failed reasonably to reflect the amount of those differences.

Northwest Pipeline Corp., 65 IBLA 245 (July 9, 1982)

APPRAISALS--Continued

Where rental charges for a reservoir right-of-way are based upon an appraisal report that does not comport with Departmental standards, the decision determining rental charges will be vacated and the case remanded for a new appraisal.

Paradise Oil, Water & Land Development, Inc., 68 IBLA 268 (Nov. 17, 1982)

An appraisal of a right-of-way for an irrigation ditch, granted pursuant to sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1976), will be upheld on appeal if no error is shown in the appraisal method used by BLM and the appellant fails to show by convincing evidence that the annual rental charge is excessive.

Herring Livestock Co., 69 IBLA 110 (Nov. 30, 1982)

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show convincing evidence that the charges are excessive.

Donald H. Clark, 70 IBLA 39 (Jan. 10, 1983)

Where the reasonable rental value of Government-furnished quarters has been determined in accordance with accepted appraisal procedures pursuant to Departmental directives, and the occupant alleges that his rent is excessive in relation to rates prevailing in the local community, the burden is on the occupant to prove by positive, specific, and substantial evidence that the appraisal is in error.

Barry C. Wilson, 5 OHA 79 (Jan. 18, 1983)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure. A BLM decision informing appellant of its right to file a request for a hearing with the Board of Land Appeals after BLM has determined the rental does not meet the requirements of 43 CFR 2802.1-7(e) (1979).

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

U.S. Steel Corp., 71 IBLA 88 (Feb. 24, 1983)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Where the current fair rental value of a communications site right-of-way has been determined in accordance with accepted appraisal procedures but where the lessee has provided sufficient evidence on appeal

APPRAISALS--Continued

to engender substantial doubt as to the data utilized and the conclusion reached in the appraisal report, the matter will be remanded for reconsideration.

Denver & Rio Grande Western Railroad Co., 71 IBLA 352 (Mar. 28, 1983)

Appraisals of fair market value made in accordance with accepted procedures will not be disturbed in the absence of positive, substantial evidence that the appraisal is in error.

Leon H. Rockwell et al., 72 IBLA 373 (May 4, 1983)

John Dillingham et al., 73 IBLA 156 (May 24, 1983)

Anthony Chiarenza et al., 74 IBLA 350 (July 28, 1983)

An appraisal of a right-of-way for a powerline will be upheld where no error is shown in the appraisal method used by the Bureau of Land Management. Where, however, sufficient doubt exists as to the validity of BLM's determination, the case may be remanded to the Bureau to reconsider whether a further appraisal or adjustment in the appraisal value should be made.

Black Hills Power & Light Co., 73 IBLA 199 (May 26, 1983)

The mere filing of a small tract application does not create in the applicant any right or interest in the land. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1976), cannot acquire any right or interest in the land by virtue of administrative delay in processing the application. When the current fair market value of the land has been determined in accordance with accepted procedures, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error.

Retha McConkey, Robert L. Cook, 74 IBLA 4 (June 21, 1983)

Where an appellant establishes that an appraisal of the value of sand and gravel removed from land patented under the Stock-Raising Homestead Act, as amended, 43 U.S.C. § 291 (1970), did not consider the rights to compensation of the surface owner in its determination of trespass damages, the case may be referred to the Hearings Division for a fact-finding hearing.

Brooke-Tankersley (Trust), 76 IBLA 48 (Sept. 19, 1983)

Where, while a petition for reconsideration is pending before the Board of Land Appeals, BLM acknowledges petitioner's contention that there are conflicting and inconsistent practices within BLM as to the appraisal method used to determine fair market rental values for natural gas pipeline rights-of-way, granted pursuant to the Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), and BLM proposes to resolve the conflicts and inconsistencies by means of a study team to develop and recommend an acceptable method for arriving at the estimated fair market annual rental for BLM rights-of-way grants, the Board may set aside its prior decision and the BLM decisions under appeal and remand the cases to BLM to apply the approved appraisal method adopted following the completion of the study team report.

Northwest Pipeline Corp., [On Reconsideration], 77 IBLA 44 (Nov. 1, 1983)

APPRAISALS--Continued

The preferred method for appraising the fair market value of nonlinear rights-of-way, including microwave transmission sites, is the comparable lease method of appraisal where there is sufficient comparable rental data and appropriate adjustments are made for differences between the subject site and other leased sites.

Where either the comparable lease or comparable sale method is used to ascertain fair market value of a communications site, such method automatically includes consideration of residual damages and benefits; therefore, the "before and after" test cannot properly be applied in conjunction with either method.

American Telephone & Telegraph Co. et al., 77 IBLA 110 (Nov. 14, 1983)

The holder of a right-of-way issued pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), is required to pay annually, in advance, the fair market value of the grant. Appellant's contention that it should not pay annual rental is properly rejected where appellant's flood control project is completed but the right-of-way grant remains in effect and the land is being used for a dam, spillway, and reservoir.

Ranch Lake Irrigation Co., 78 IBLA 305 (Jan. 12, 1984)

The preferred method for appraising the fair market value of nonlinear rights-of-way, including microwave transmission sites, is the comparable lease method of appraisal where there is sufficient comparable rental data and appropriate adjustments are made for differences between the subject sites and other leased sites.

Mountain States Telephone & Telegraph Co., 79 IBLA 5 (Feb. 2, 1984)

Where BLM has determined the fair market rental values of a communications site right-of-way in accordance with accepted appraisal procedures but on appeal the grantee presents a summary of evidence that, if proven, would establish that the charge is excessive, the matter will be referred for a hearing at the BLM State Office in accordance with the basic procedural standards set forth in Circle L, Inc., 36 IBLA 260 (1978).

Colorado-Ute Electric Ass'n, Inc., 79 IBLA 53 (Feb. 9, 1984)

An appraisal of a right-of-way for a haul road, granted pursuant to sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1976), will be upheld on appeal if no error is shown in the appraisal method used by BLM and the appellant fails to show by convincing evidence that the annual rental charge is excessive.

Lone Star Steel Co., 79 IBLA 345 (Mar. 22, 1984)

Where the BLM granted a communications site right-of-way pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), subject to future appraisal, collection of a rental deposit at the time of the grant with a later adjustment in the annual rental charges upon receipt of an approved fair market value appraisal is not a prohibited imposition of a retroactive rental.

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the

APPRAISALS--Continued

appraisal methods used by the Bureau of Land Management and the appellant fails to show convincing evidence that the charges are excessive.

Mountain States Telephone & Telegraph Co., 80 IBLA 128 (Apr. 5, 1984)

Where there is no appraisal to support a readjusted rental rate for a water pipeline right-of-way, a decision imposing the readjusted rate must be reversed.

A. Keith Barben, 81 IBLA 332 (June 19, 1984)

An appraisal of fair market rental for a communication site right-of-way will not be set aside on appeal if an appellant fails to show error in the appraisal methods used or fails to show by convincing evidence that the charges are excessive.

Southern California Gas Co., 81 IBLA 358 (June 27, 1984)

Under 43 CFR 2802.1-7(e) (1974), which provided that charges for use and occupancy of a right-of-way may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure where the right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and has not been conformed to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1982).

Where BLM appraises a parcel of land subject to a communication site right-of-way for direct sale to the holder of the grant pursuant to sec. 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1713 (1982), it is proper for BLM to appraise the parcel as if unencumbered, since the right-of-way is extinguished upon the right-of-way holder's acquisition of the fee title.

Cole Industries, Inc., 82 IBLA 289 (Aug. 31, 1984)

Where sufficient doubt is raised about the method of an appraisal of fair market rental value for a residential occupancy permit, the case may be remanded for the Bureau of Land Management to conduct a further appraisal or adjust the appraised value.

Clinton Impson, 83 IBLA 72 (Sept. 28, 1984)

Inasmuch as the Uniform Appraisal Standards, developed by the Interagency Land Acquisition Conference, expressly cautions against cumulative appraisals of different estates in land where the entire fee is being acquired, an appraisal conducted in violation thereof is invalid, absent express justification for the deviation and a specific adjustment to avoid overvaluation of the total estate.

The appraised market value of a parcel of land sought under the Color of Title Act is properly adjusted to subtract the value of the applicant's improvements. The amount properly deducted, however, is not controlled by the applicant's expenditures, but rather is dependent upon the enhancement in value to the tract created by such improvements.

Benton C. Cavin, 83 IBLA 107 (Oct. 5, 1984)

APPRAISALS--Continued

Where the Bureau of Land Management proposes to resolve the conflicts and inconsistencies in its appraisal method used to determine fair market rental values for natural gas pipeline rights-of-way, granted pursuant to the Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1982), the Board will not rule on the legality of the going rate method of appraisal, since the Bureau of Land Management should be allowed to explore the full range of options available in developing the proper appraisal method.

During the interim period until the Bureau of Land Management develops an approved appraisal method to determine fair market value for natural gas pipeline rights-of-way, new rights-of-way should not be appraised using the going rate method of appraisal. The Bureau of Land Management should proceed to charge a reasonable estimate of the fair market value subject to subsequent appraisal in accordance with 43 CFR 2803.1-2(b).

During the interim period until the Bureau of Land Management develops an approved appraisal method to determine fair market value for natural gas pipeline rights-of-way, reappraisal of existing rights-of-way should be deferred, and the Bureau of Land Management should continue to charge the original rental fee or last uncontested rental fee.

Northwest Pipeline Corp. (On Reconsideration), 83 IBLA 204 (Oct. 18, 1984)

ASPHALT AND BITUMEN LEASES

An asphalt prospecting permit application which was pending at the time of the passage of the Combined Hydrocarbon Leasing Act of 1981, 95 Stat. 1070 (1981), must be rejected because that Act amended the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (Supp. V 1981), to include a definition for "oil" that encompasses asphalt. One seeking to extract hydrocarbons from asphalt after Nov. 16, 1981, in an area other than a "special tar sand area" must file a noncompetitive oil and gas lease offer. The holder of an oil and gas lease issued on or after Nov. 16, 1981, may develop all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons).

Cooper Petroleum, Inc., 73 IBLA 295 (June 7, 1983)

ATTORNEY'S FEES

GENERALLY

The Board of Indian Appeals is without jurisdiction to grant a request for attorney's fees that is not supported by a properly approved contract or statutory basis therefor.

Edmond B. Burns & Mark Hammons v. Anadarko Area Director, Bureau of Indian Affairs (On Reconsideration), 11 IBIA 133 (Mar. 22, 1983)

In considering a petition for the award of attorney fees in an Indian probate proceeding, the Board will examine the itemized list of services provided to the client to determine whether each item is allowable.

In re Attorney Fees Request of Joanne Foster & In re Attorney Fees Request of P. J. Sferra, 12 IBIA 172 (Feb. 10, 1984)

ATTORNEY'S FEES--Continued

EQUAL ACCESS TO JUSTICE ACT

An administrative appeal not required by statute to be adjudicated according to the provisions of 5 U.S.C. § 554 (1976) is not covered by the attorney's fees provisions of the Equal Access to Justice Act.

In re Attorney's Fees Request of Nadelon Plug, 9 IBIA 281 (May 11, 1982) 89 I.D. 241

Pro bono representation and representation by a legal services organization do not constitute "special circumstances" within the meaning of 5 U.S.C. § 504(a)(1) (Supp. V 1981) so as to make an award of attorney's fees under the Equal Access to Justice Act unjust.

An award of attorney's fees under the Equal Access to Justice Act may include compensation for work performed before Oct. 1, 1981, the effective date of the Act.

In re Attorney's Fees Request of DNA--People's Legal Services, Inc., 11 IBIA 285 (Sept. 9, 1983) 90 I.D. 389

Decision of appeal from an adverse determination concerning a Native land selection made pursuant to Alaska Native Claims Settlement Act is not an "adversary adjudication" so as to entitle Native corporations to payment of claimed attorneys fees and costs.

Bering Straits Native Corp., Council Native Corp., 83 IBLA 280 (Oct. 25, 1984)

INDIAN CHILD WELFARE ACT OF 1978

Under the circumstances of this case, there is no authority under the Indian Child Welfare Act of 1978 to pay attorney's fees to appellant.

In re Attorney's Fees Request of Ronald Clabaugh, 9 IBIA 294 (May 26, 1982) 89 I.D. 257

ATTORNEYS

Qualifications to practice before the Department of the Interior are prescribed by regulations. Where an appeal is brought by a corporation that does not appear to fall within any of the categories of persons authorized to practice, the appeal is subject to dismissal.

Allen Duncan, 53 IBLA 101 (Mar. 4, 1981) 88 I.D. 345

Failure to obtain counsel at a hearing into the validity of a mining claim will afford the mining claimant no greater rights on appeal than if he had obtained counsel.

United States v. John Burt et al., 59 IBLA 326 (Nov. 5, 1981)

The Government is under no obligation to provide counsel for a mining claimant at an administrative hearing. Failure of the claimant to have counsel at a hearing into the validity of mining claims will afford

ATTORNEYS--Continued

the claimant no greater rights on appeal than if he had obtained counsel.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

The fact that an individual participating in a Departmental Indian probate proceeding is not represented by counsel does not entitle him to special rights not enjoyed by individuals who are so represented.

Estate of Wesley Emmett Anton, 12 IBIA 139 (Jan. 23, 1984)

Qualifications to practice before the Department of the Interior are prescribed by regulations. Where an appeal is brought by an individual who does not appear to fall within any of the categories of persons authorized to practice, the appeal is subject to dismissal.

Robert R. Caldwell, 79 IBLA 141 (Feb. 22, 1984)

AUTHORITY TO BIND GOVERNMENT

The United States may not be bound by its officers when they enter into an agreement to do or cause to be done what the law does not sanction or permit.

Estate of Guy C. Groat, Jr., Violet Boehl, 46 IBLA 165 (Mar. 21, 1980)

BALD EAGLE PROTECTION ACT

Only those groups which have received Federal acknowledgement of their Indian tribal status constitute Indian tribes, for purposes of sec. 2 of the Bald Eagle Protection Act.

Indian Tribal Status under the Bald Eagle Protection Act, M-36934 (Feb. 26, 1981) 88 I.D. 338

BOARD OF INDIAN APPEALS

GENERALLY

On Nov. 16, 1982, the Board of Indian Appeals entered an order in Burnette v. Deputy Assistant Secretary--Indian Affairs (Operations), 10 IBIA 464, dismissing the appeal on grounds of mootness. Although it is not a normal practice of Departmental appeals boards to publish in the I.D.'s any matter which is not a full opinion complete with headnotes, the Burnette order is included for publication because it disapproves, in part, a previous decision of the Board of Indian Appeals in Roger St. Pierre v. Commissioner, 9 IBIA 203, 89 I.D. 132 (1982).

Robert Burnette (Appellant) v. Deputy Assistant Secretary--Indian Affairs (Operations) (Appellee), 10 IBIA 464 (Nov. 16, 1982) 89 I.D. 609

BOARD OF INDIAN APPEALS--Continued

JURISDICTION

The jurisdiction of the Board of Indian Appeals is governed by 43 CFR 4.330(a) and (b).

The jurisdiction of the Board of Indian Appeals is not determined by the characterization or descriptive title placed on agency action by the deciding official.

The characterization of a decision as "discretionary" is a legal conclusion and the product of a legal analysis.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

The Board has jurisdiction to determine whether a decision by an official of the BIA is properly characterized as discretionary.

Aleutian/Pribilof Islands Ass'n, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 254 (Apr. 9, 1982) 89 I.D. 196

The Board does not have jurisdiction to review decisions of the Assistant Secretary for Indian Affairs except as those decisions may be referred to it on a case-by-case basis or by appropriate rulemaking.

An appeal from a decision of a BIA Area Director or the Commissioner of Indian Affairs (or Deputy Assistant Secretary--Indian Affairs (Operations)) may be properly before the Board even though a related matter has been decided by the Assistant Secretary for Indian Affairs. However, when the parties in the case before the Board are similarly situated, and the issues arise from the same transaction and are identical to those decided by the Assistant Secretary, the Board, as a matter of comity, will defer to the Assistant Secretary's decision because the appellant has already received a decision by a Secretarial official of the Department.

Kenneth Willie et al. v. Commissioner of Indian Affairs and Anne Begay v. Commissioner of Indian Affairs, 10 IBIA 135 (Oct. 12, 1982)

Under 25 CFR 2.19(a) and (b), when the Commissioner of Indian Affairs, or the official of the BIA exercising the Commissioner's review authority under 25 CFR Part 2, does not issue a decision within 30 days of the filing of all pleadings, the Board of Indian Appeals acquires jurisdiction over the case.

Matthew Allen v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 146 (Oct. 15, 1982) 89 I.D. 508

Wilbur Barton v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 173 (Oct. 15, 1982)

Henry W. Begay v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 189 (Oct. 15, 1982)

Johnny Begay v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 205 (Oct. 15, 1982)

Bessie Benally v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 221 (Oct. 15, 1982)

Arlette Bischoff v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 237 (Oct. 15, 1982)

Irving Clark v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 253 (Oct. 15, 1982)

BOARD OF INDIAN APPEALS--Continued

JURISDICTION--Continued

Pearlene Davis v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 269 (Oct. 15, 1982)

Janet Gordon v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 285 (Oct. 15, 1982)

Leo Green v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 301 (Oct. 15, 1982)

Francis Harvey v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 318 (Oct. 15, 1982)

June Jones v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 334 (Oct. 15, 1982)

Thomas Kee v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 350 (Oct. 15, 1982)

Lester Kolwood v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 366 (Oct. 15, 1982)

Juanita Paddock v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 382 (Oct. 15, 1982)

Ivan Shirley v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 399 (Oct. 15, 1982)

Charity Tsosie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 416 (Oct. 15, 1982)

Leo Willie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 432 (Oct. 15, 1982)

Francis Yazzie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 448 (Oct. 15, 1982)

The Board has jurisdiction to review a decision of the Deputy Assistant Secretary--Indian Affairs (Operations) that is based upon an application of facts to law.

Wesley Nishkeno et al. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 21 (Dec. 30, 1982) 89 I.D. 655

The Board of Indian Appeals is not a court of general jurisdiction and has only those powers delegated to it by the Secretary of the Interior. It has not been delegated authority to award money damages against the Bureau of Indian Affairs.

Lillian Lord, a.k.a. Lillian George v. Comm'r of Indian Affairs, 11 IBIA 51 (Feb. 9, 1983)

Where an appeal raises legal questions, these matters are reviewable by the Board. Insofar as the issues raised involve matters committed solely to the discretion of the Secretary, the Board is bound by the exercise of Secretarial discretion. In this case, the ultimate decision, whether to approve a unit cooperative agreement affecting Indian oil and gas leases, was discretionary. The appeal raises certain legal issues, however, and it is appropriate for the Board to resolve those questions notwithstanding that deference must be given to BIA's discretionary authority.

Cheyenne & Arapaho Tribes of Western Oklahoma v. Deputy Assistant Secretary--Indian Affairs (Operations), Reading & Bates Petroleum Co., & Woods Petroleum Corp., 11 IBIA 54 (Feb. 10, 1983) 90 I.D. 61

BOARD OF INDIAN APPEALS--Continued

JURISDICTION--Continued

The area of discretionary authority vested in the Bureau of Indian Affairs and over which the Board of Indian Appeals has no jurisdiction, unless the case is specially referred to it, involves those situations in which there is no law to apply.

The characterization of a decision as discretionary rather than based upon an interpretation of law is a legal conclusion reached through legal analysis. The determination of whether a decision is properly characterized as discretionary is within the Board's review jurisdiction.

Although the ultimate decision on whether to select a particular proposal for grant funding under the Indian Child Welfare Act and its implementing regulations is discretionary, the regulations provide certain legal guidelines and requirements that must be followed in reaching that decision. An alleged violation of these guidelines and requirements could serve as the basis for Board jurisdiction limited to the alleged violations of law.

Billings American Indian Council v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 142 (Apr. 1, 1983)

The Board of Indian Appeals has jurisdiction to review legal questions arising from the alleged violation of regulatory requirements that are prerequisites to the exercise of discretionary authority vested in the Bureau of Indian Affairs.

When a decision in an appeal to the Deputy Assistant Secretary--Indian Affairs (Operations) is not rendered within 30 days from receipt of all pleadings, the Board of Indian Appeals acquires jurisdiction over the case under 25 CFR 2.19.

Because the Board of Indian Appeals has no independent knowledge of the expiration of the 30-day deadline established in 25 CFR 2.19 for the issuance of a decision in an appeal brought to the Deputy Assistant Secretary--Indian Affairs (Operations), the appellant must inform the Board of the expiration of that period through either a notice of appeal or a motion for the Board to assume jurisdiction. Upon receipt of such information, the Board will docket the appeal and request the transmittal of the administrative record from the Deputy Assistant Secretary.

Urban Indian Council, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 146 (Apr. 4, 1983)

Although the Board of Indian Appeals does not have general review jurisdiction over decisions of the Assistant Secretary for Indian Affairs, 43 CFR 4.330 permits the Assistant Secretary to refer any matter concerning Indians to the Board.

Juanita Belshaimer v. Assistant Secretary for Indian Affairs, 11 IBIA 155 (Apr. 14, 1983) 90 I.D. 165

Teresa L. Garrett v. Ass't Secretary for Indian Affairs, 13 IBIA 8 (Aug. 21, 1984) 91 I.D. 262

The Board of Indian Appeals has no jurisdiction to review decisions of the Acting Assistant Secretary for Indian Affairs except as those decisions may be referred to it on a case-by-case basis or through rulemaking.

Ute Mountain Ute Tribe v. Acting Assistant Secretary for Indian Affairs, 11 IBIA 168 (Apr. 19, 1983) 90 I.D. 169

BOARD OF INDIAN APPEALS--Continued

JURISDICTION--Continued

Unless or until the Office of Indian Education Programs promulgates regulations providing for administrative review of its decisions, the Office is adhering to the regulations in 25 CFR Part 2. These regulations include an appeal to the Board of Indian Appeals in those cases in which the decision being appealed is based on an interpretation of law.

Under 25 CFR 2.19, when a decision in an appeal is not issued by the Director of the Office of Indian Education Programs within 30 days from the expiration of the time for the filing of all pleadings, the Board of Indian Appeals acquires jurisdiction over the appeal.

Diane Zarr v. Acting Deputy Director, Office of Indian Education Programs, 11 IBIA 174 (Apr. 21, 1983) 90 I.D. 172

An appeal before the Board of Indian Appeals will not be dismissed on the grounds that the Board lacks authority to grant the relief requested when the appeal seeks review of legal prerequisites to the exercise of discretionary authority vested in the Bureau of Indian Affairs.

Idaho Rising Corp. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 249 (July 29, 1983) 90 I.D. 329

The Board of Indian Appeals does not have authority to declare a duly promulgated regulation of the Department to be invalid.

Transwestern Pipeline Co. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 49 (Oct. 28, 1983) 90 I.D. 474

The timely filing of a notice of appeal from an order denying reopening of an Indian decedent's estate is a jurisdictional prerequisite.

Estate of Ralph James (Elmer) Hall, 12 IBIA 62 (Nov. 10, 1983)

In reviewing a decision of the Assistant Secretary for Indian Affairs referred to the Board of Indian Appeals by the Secretary of the Interior under 43 CFR 4.220(a)(2), the Board has the full authority of the Secretary to review questions both of law and of discretion.

Pueblo of Laguna v. Assistant Secretary for Indian Affairs, 12 IBIA 80 (Dec. 7, 1983) 90 I.D. 521

The Board of Indian Appeals has jurisdiction under 25 CFR 2.19(c)(2) to review decisions of the Deputy Assistant Secretary--Indian Affairs (Operations) rendered under the administrative appeal regulations of 25 CFR Part 2 that are not based solely on the exercise of discretion. A decision that requires the application of general legal principles to a specific fact situation involves an interpretation of law and is not solely discretionary. Therefore, it can be reviewed by the Board.

The characterization of a decision rendered by the Deputy Assistant Secretary--Indian Affairs (Operations) under 25 CFR Part 2 as discretionary is a legal conclusion subject to review by the Board of Indian Appeals.

A decision by the Deputy Assistant Secretary--Indian Affairs (Operations) under 25 CFR Part 2 that is

BOARD OF INDIAN APPEALS--Continued

JURISDICTION--Continued

not timely appealed to the Board of Indian Appeals is final for the Department.

Upon the expiration of the 30-day time period for decision established by 25 CFR 2.19(b), the Board of Indian Appeals has jurisdiction over an appeal filed with the Deputy Assistant Secretary--Indian Affairs (Operations). However, the Board will not act in the matter unless the appellant invokes the Board's jurisdiction by filing with the Board a separate notice of appeal, motion to assume jurisdiction, or other document alleging Board jurisdiction. The original filing under 25 CFR 2.11(a) is insufficient to invoke the Board's jurisdiction automatically after the expiration of the time period.

Clayton J. Gray v. Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 146 (Jan. 27, 1984) 91 I.D. 43

The Board of Indian Appeals has jurisdiction under 25 CFR 2.19(c)(2) to review decisions of the Deputy Assistant Secretary--Indian Affairs (Operations) rendered under the administrative appeal regulations of 25 CFR Part 2 that are not based solely on the exercise of discretion. A decision that requires the application of general legal principles to a specific fact situation involves an interpretation of law and is not solely discretionary. Therefore, it can be reviewed by the Board.

The characterization of a decision rendered by the Deputy Assistant Secretary--Indian Affairs (Operations) under 25 CFR Part 2 as discretionary is a legal conclusion subject to review by the Board of Indian Appeals.

Upon the expiration of the 30-day time period for decision established in 25 CFR 2.19(b), the Board of Indian Appeals has jurisdiction over an appeal filed with the Deputy Assistant Secretary--Indian Affairs (Operations). However, the Board will not act in the matter unless the appellant invokes the Board's jurisdiction by filing with the Board a separate notice of appeal, motion to assume jurisdiction, or other document alleging Board jurisdiction.

Oliver Redfield v. Deputy Ass't Secretary--Indian Affairs (Operations), 12 IBIA 190 (Mar. 2, 1984)

The Board of Indian Appeals does not have jurisdiction to review a decision of the Bureau of Indian Affairs that is based on the exercise of discretion.

Cheyenne & Arapaho Tribes of Western Oklahoma v. Deputy Ass't Secretary--Indian Affairs (Operations), Reading & Bates Petroleum Co., & Woods Petroleum Corp. (On Reconsideration), 12 IBIA 241 (May 18, 1984) 91 I.D. 229

Neither the Board of Indian Appeals nor the Department of the Interior has review authority over matters entrusted to state, Federal, or tribal courts.

Neither the Board of Indian Appeals nor the Department of the Interior is the proper forum for consideration of questions relating to nontrust property held by Indians.

Estate of Alice Mae Sasse, 12 IBIA 281 (June 25, 1984)

BOARD OF INDIAN APPEALS--Continued

JURISDICTION--Continued

Although the ultimate decision on whether to select a particular proposal for grant funding under the Indian Child Welfare Act and its implementing regulations is discretionary, the regulations provide certain legal guidelines and requirements that must be followed in reaching that decision. An alleged violation of these guidelines and requirements could serve as the basis for Board jurisdiction limited to the alleged violations of law.

Hanks Pueblo v. Deputy Ass't Secretary--Indian Affairs (Operations), 13 IBIA 53 (Dec. 7, 1984)

BOARD OF LAND APPEALS

As precedents, decisions of the Board of Land Appeals should be cited by the volume and page number given on the bottom of the page of the decision and not to the IBLA docket number shown on the top of the decision.

Decisions of the Interior Board of Land Appeals are indexed, digested, and available for public inspection pursuant to published Departmental regulations. They meet the requirements of the Administrative Procedure Act and serve as binding Departmental precedents. However, adjudicative decisions by local Bureau of Land Management offices do not meet requirements of the Administrative Procedure Act and are not binding precedents.

Cheyenne Resources, Inc., 46 IBLA 277 (Mar. 27, 1980) 87 I.D. 110

As the Department's final review authority on decisions relating to the public lands, the Board of Land Appeals exercises all the powers which the Department would have in making an initial decision.

Frederick H. Larson v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

Where a protest filed against the issuance of an oil and gas lease alleges several specific reasons why the lease should not issue, and BLM dismisses the protest after due consideration of the reasons recited, and on appeal from such dismissal the protestant raises additional arguments and issues, the Board of Land Appeals need not adjudicate the issues raised for the first time on appeal, but may confine its review to the merits of those matters addressed in the decision which is the subject of the appeal.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

Monty Cranston, 67 IBLA 364 (Oct. 7, 1982)

BOARD OF LAND APPEALS--Continued

Upon assuming jurisdiction of an appeal, the Board of Land Appeals has full authority to consider the entire record in making a decision, and its review is not limited to the theories of law upon which the parties have proceeded.

R. Jay Kidd, 66 IBLA 71 (July 29, 1982)

Shiny Rock Mining Corp. (On Reconsideration), 77 IBLA 261 (Nov. 30, 1983)

The regulations governing procedures before the Board of Land Appeals provide for the filing of a statement of reasons for appeal by appellant and an answer by an adverse party within certain time limits (subject to extension). Proper practice requires that all issues deemed relevant by the parties be briefed at that time because, as a general rule, the Board does not issue interlocutory decisions on issues which are not dispositive of the appeal.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982) 89 I.D. 496

The Board of Land Appeals is the arbiter of its jurisdiction, and neither employees of BLM nor attorneys of the Solicitor's office may create or deny the right of appeal to the Board. Where a notice published by BLM erroneously includes a provision for appeal to the Board, the Board is not thereby bound, and an appeal filed in response to such notice is subject to dismissal.

The authority of BLM state directors to designate the boundaries of wilderness study areas derives from the Secretary, and their determinations are appealable to the Board of Land Appeals, which is empowered to decide such appeals as fully and finally as might the Secretary. The Board, therefore, may affirm, reverse or modify such boundary designations on appeal with finality, and BLM's ministerial implementation of such final decisions will not create a new right of appeal.

Phelps Dodge Corp. et al., 72 IBLA 226 (Apr. 26, 1983)

The Board of Land Appeals is not a court of general jurisdiction and has only those powers delegated to it by the Secretary of the Interior. It has not been delegated authority to award money damages against the Bureau of Land Management.

E. H. Northcutt, 75 IBLA 305 (Aug. 30, 1983)

BLM classifications of land as suitable for disposition by public sale are not subject to appeal to the Board of Land Appeals. Likewise, BLM's dismissal of a protest against a resource management plan is not appealable to the Board. In each instance, other provisions for agency review have been made by regulations.

Oregon Natural Resources Council, 78 IBLA 124 (Dec. 27, 1983)

A duly promulgated Departmental regulation has the force and effect of law and is binding upon all officials of the Department, including the Board of Land Appeals and the Secretary, and may not be waived.

A. Z. Shows, 82 IBLA 86 (July 17, 1984)

Joseph J. C. Paine, 83 IBLA 145 (Oct. 9, 1984)

BOARD OF LAND APPEALS--Continued

While it is within the province of the judicial branch to adjudicate the constitutionality of statutes, it is outside the jurisdiction of the Board. The legislative history of the Act of July 6, 1960, shows Congress fully considered the constitutionality of the compensation provisions therein. The Department is bound to follow those provisions.

Judy D. Rutledge et al., 82 IBLA 89 (July 17, 1984)

Where the resolution of an appeal depends on the determination of disputed issues of fact, the Board of Land Appeals will often refer the case for an evidentiary hearing on the record before an administrative law judge. However, when the administrative record appears to include nearly all of the available evidence, and affords an adequate basis for decision, and other circumstances indicate that an oral hearing would be unlikely to contribute substantially to the existing record, the Board may determine the facts and decide the appeal on the basis of the record before it.

State of Alaska, Mary Frances DeMark, 82 IBLA 165 (Aug. 6, 1984)

To the extent a management plan decision for the Yaquina Head Outstanding Natural Area is the final implementation decision on certain actions, it is a decision appealable to the Board of Land Appeals under 43 CFR Part 4.

Oregon Shores Conservation Coalition, Bruce Waugh, 83 IBLA 1 (Sept. 17, 1984)

The Board of Land Appeals has been delegated full authority by the Secretary of the Interior to review decisions rendered by Departmental officials relating to the use and disposition of public lands. Where, on appeal to the Board, BLM admits the existence of errors and omissions in its decision, but declines to delineate the nature and effect of such errors and omissions, the Board may, in its discretion, determine de novo any factual or legal question necessary for the adjudication of the appeal.

Benton C. Cavin, 83 IBLA 107 (Oct. 5, 1984)

Where a village land selection conveyance under the Alaska Native Claims Settlement Act is made subject to a highway right-of-way for a maintenance site held by a state agency, the Department of the Interior retains jurisdiction to determine whether the right-of-way should continue or be canceled.

Bering Straits Native Corp., Council Native Corp., 83 IBLA 280 (Oct. 25, 1984)

BOUNDARIES
(See also Accretion, Avulsion, Public Lands, Reliction, Surveys of Public Lands--if included in this Index.)

Where riparian public land has been eroded away entirely by the actions of a navigable river and the river subsequently returns to its original banks, restoring the eroded land through accretion, title to the accreted land is deemed to be in the remote riparian owner to whose land the accretion attaches, rather than the United States.

Ralph F. Rosenbaum et al., 66 IBLA 374 (Aug. 30, 1982) 89 I.D. 415

Where riparian public land has been completely eroded away by the actions of a navigable river, title is lost to the United States and, where said land is subsequently restored through accretion by the continued action of the river, title belongs to the riparian owner.

David A. Provines, 81 IBLA 148 (May 31, 1984)

BUREAU OF INDIAN AFFAIRS
(See also Indian Probate--it included in this Index.)

GENERALLY

Only reservations listed in 25 CFR 11.1(a) are governed by the law and order provisions codified in secs. 11.1 through 11.87 of 25 CFR Part 11. Because the Blackfeet Reservation is not listed thereunder, the Blackfeet Tribe may remove a tribal judge from its tribal court without regard to the procedural requirements found at 25 CFR 11.4.

The fact that judges of the Blackfeet Tribal Court, which is not a CFR court, are financed in part by Federal funds, does not render such judges subject to the law and order regulations found at 25 CFR 11.1(d) and 25 CFR 11.4. The Blackfeet Tribe has its own ordinance governing the removal of judges, which has been approved by the Secretary, and such ordinance is exclusively controlling in such matters.

Lenore Salois v. Area Director, Billings Area Office, 8 IBIA 283 (May 15, 1981)

The Board of Indian Appeals will remand a case to the Bureau of Indian Affairs under 43 CFR 4.337(b) when legislation is passed during the pendency of an appeal that potentially gives the BIA discretionary authority to take action relative to the basis for the appeal.

Dora Joyce Prieto v. Acting Area Director, Sacramento Area Office, Bureau of Indian Affairs, 11 IBIA 124 (Mar. 22, 1983)

ADMINISTRATIVE APPEALS

Generally

In reviewing action of the Bureau of Indian Affairs in raising grazing rental rates, the Board of Indian Appeals should overturn the action only if it is found to be unreasonable. As long as the Bureau's action is supported in law and by substantial evidence, it would be an inappropriate intrusion into the Bureau's function for the Board to substitute its judgment for the agency's.

Fort Berthold Land and Livestock Ass'n v. Area Director, Aberdeen Area Office, Bureau of Indian Affairs, 8 IBIA 230 (Feb. 20, 1981) 88 I.D. 315

While it is true that the Klamath Termination Act, Aug. 13, 1954, 68 Stat. 718, 25 U.S.C. §§ 564-564x (1976), rendered inapplicable to Klamath tribal members the Secretary's usual jurisdiction over Indian heirship determinations as set forth in 25 U.S.C. §§ 372-373 (1976) (see 25 U.S.C. § 564h), Congress, by the more recent Act of Oct. 1, 1965, 79 Stat. 897, 25 U.S.C. §§ 565-565g (1976), specifically empowered the Secretary of the Interior to determine the rightful heirs of deceased Klamath enrollees entitled to a share of judgment funds payable from the United States

ADMINISTRATIVE APPEALS--Continued

Generally--Continued

for the limited purpose of seeing that such funds are distributed to the heir or heirs so determined.

The Secretary has no statutory authority to pay creditors' claims against estates of deceased Klamath Indians out of judgment funds distributable by the Secretary under the Act of Oct. 1, 1965, 79 Stat. 897.

Gertrude R. Sherman v. Acting Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 25 (June 29, 1981) 88 I.D. 619

Although the Klamath Termination Act of Aug. 13, 1954, 68 Stat. 718, 25 U.S.C. §§ 564-564x (1976), rendered the Secretary's usual probate jurisdiction inapplicable to Klamath Indians, the Act of Oct. 1, 1965, 79 Stat. 897, 25 U.S.C. §§ 565-565g (1976), gave the Secretary limited jurisdiction to determine the heirs of deceased Klamath enrollees pursuant to his duty to distribute judgment funds.

Yvonne Weiner et al. v. Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 76 (Sept. 29, 1981)

Appellant business lessee of tribal trust lands held not to be an interested party affected by a final administrative action of an official of the Bureau of Indian Affairs within the meaning of Interior Board of Indian Appeals practice rule sec. 4.331 (46 FR 7337 (Jan. 23, 1981)) so as to be entitled to seek review of agency determination that lessor Indian tribe had failed to legally enact a tribal law and order code.

Marlin D. Kuykendall v. Comm'r of Indian Affairs and Yavapai-Prescott Tribe, 9 IBIA 90 (Oct. 23, 1981)

An appellant has standing to appeal a decision of a Bureau of Indian Affairs official granting fee patent title to Indian trust land only if it can be shown that the decision adversely affects his or her enjoyment of a legally protected interest.

Roland Redfield v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 176 (Feb. 18, 1982) 89 I.D. 67

The Board of Indian Appeals is bound by statutes, regulations, case law, and principles of judicial self-restraint not to interfere with substantive decisions of the BIA issued under its discretionary authority.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

Following repeal of tribal law permitting appeal to the Department, appellant election candidate at Navajo tribal election held not entitled to appeal to the Secretary from adverse determination by tribal council.

Donald Benally v. Navajo Area Director, Bureau of Indian Affairs, & Navajo Tribe, 9 IBIA 284 (May 26, 1982) 89 I.D. 252

BUREAU OF INDIAN AFFAIRS--Continued

ADMINISTRATIVE APPEALS--Continued

Generally--Continued

The Board of Indian Appeals declines to hold that a decision issued by the Deputy Assistant Secretary--Indian Affairs (Operations) after the expiration of the 30-day period established in 25 CFR 2.19 is void when the appellant acquiesces in the delay.

Urban Indian Council, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 146 (Apr. 4, 1983)

The Board of Indian Appeals has jurisdiction under 25 CFR 2.19(c)(2) to review decisions of the Deputy Assistant Secretary--Indian Affairs (Operations) rendered under the administrative appeal regulations of 25 CFR Part 2 that are not based solely on the exercise of discretion. A decision that requires the application of general legal principles to a specific fact situation involves an interpretation of law and is not solely discretionary. Therefore, it can be reviewed by the Board.

The characterization of a decision rendered by the Deputy Assistant Secretary--Indian Affairs (Operations) under 25 CFR Part 2 as discretionary is a legal conclusion subject to review by the Board of Indian Appeals.

25 CFR 2.19 contemplates that, within 30 days after an appeal taken to the Deputy Assistant Secretary--Indian Affairs (Operations) under 25 CFR Part 2 becomes ripe for decision, the appeal will either be decided by a written decision or referred to the Board of Indian Appeals for decision.

Upon the expiration of the 30-day time period for decision established by 25 CFR 2.19(b), the Board of Indian Appeals has jurisdiction over an appeal filed with the Deputy Assistant Secretary--Indian Affairs (Operations). However, the Board will not act in the matter unless the appellant invokes the Board's jurisdiction by filing with the Board a separate notice of appeal, motion to assume jurisdiction, or other document alleging Board jurisdiction. The original filing under 25 CFR 2.11(a) is insufficient to invoke the Board's jurisdiction automatically after the expiration of the time period.

Clayton J. Wray v. Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 146 (Jan. 27, 1984) 91 I.D. 43

A determination under 25 CFR 2.17 as to whether an appeal should be dismissed or decided on the merits when an appellant has failed to submit supporting argumentation must be based on the facts of each case.

M.S.C. Logging, Inc. v. Acting Deputy Ass't Secretary--Indian Affairs (Operations), 12 IBIA 181 (Mar. 1, 1984)

The Board of Indian Appeals has jurisdiction under 25 CFR 2.19(c)(2) to review decisions of the Deputy Assistant Secretary--Indian Affairs (Operations) rendered under the administrative appeal regulations of 25 CFR Part 2 that are not based solely on the exercise of discretion. A decision that requires the application of general legal principles to a specific fact situation involves an interpretation of law and is not solely discretionary. Therefore, it can be reviewed by the Board.

The characterization of a decision rendered by the Deputy Assistant Secretary--Indian Affairs (Operations) under 25 CFR Part 2 as discretionary is a legal conclusion subject to review by the Board of Indian Appeals.

Upon the expiration of the 30-day time period for decision established in 25 CFR 2.19(b), the Board of Indian Appeals has jurisdiction over an appeal filed with the Deputy Assistant Secretary--Indian Affairs (Operations). However, the Board will not act in the matter unless the appellant invokes the Board's jurisdiction by filing with the Board a separate notice of appeal, motion to assume jurisdiction, or other document alleging Board jurisdiction.

Oliver Redfield v. Deputy Ass't Secretary--Indian Affairs (Operations), 12 IBIA 190 (Mar. 2, 1984)

Acts of Agents of the United States

Where review is sought of action by BIA officials disbursing IIM account funds pursuant to agency regulation, their handling of the disbursements is reviewable by the IBIA under 25 CFR 2.3.

Clarence Runs After v. Aberdeen Area Director, Bureau of Indian Affairs, and Cheyenne River Sioux Tribe, 8 IBIA 170 (Oct. 27, 1980) 87 I.D. 501

A decision not to honor a setoff request against an Individual Indian Money account for a debt owed to another agency of the Federal Government is not arbitrary, capricious, or an abuse of discretion when it is based on an examination of the funds potentially available for setoff, the basic necessities of the individual involved, and the interest of the United States in collecting judgment claims.

United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Celina Young Bear Bossette; and United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Geraldine Van Dyke, 9 IBIA 151 (Jan. 8, 1982) 89 I.D. 49

When a plan for disbursement of funds in an Individual Indian Money account has been approved, under 25 CFR 104.9 the Bureau of Indian Affairs is obligated to disburse funds in accordance with the provisions of that plan. The denial of a request to release all funds in violation of an approved plan is, therefore, neither arbitrary, capricious, nor an abuse of discretion.

Garrett Connovichsah v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

Discretionary Decisions

The Board of Indian Appeals does not have jurisdiction to review a decision of the Bureau of Indian Affairs that is based on the exercise of discretion.

Cheyenne & Arapaho Tribes of Western Oklahoma v. Deputy Ass't Secretary--Indian Affairs (Operations), Reading & Bates Petroleum Co., & Woods Petroleum Corp. (On Reconsideration), 12 IBIA 241 (May 18, 1984) 91 I.D. 229

BUREAU OF INDIAN AFFAIRS--Continued

ADMINISTRATIVE APPEALS--Continued

Discretionary Decisions--Continued

The Board of Indian Appeals will refer a case to the Bureau of Indian Affairs in accordance with 43 CFR 4.337(b) when the decision involves the exercise of discretion committed to the Secretary.

Teresa L. Garrett v. Asst Secretary for Indian Affairs, 13 IBIA 8 (Aug. 21, 1984) 91 I.D. 262

Filing

Mandatory Time Limit

Because Departmental regulations setting mandatory time limits for filing appeals notices in administrative matters before the Bureau of Indian Affairs may not be relaxed to permit late filing, where appellant failed to give timely notice of appeal from decision to raise rental rate on leased trust lands, his subsequent attempts to appeal by seeking review of enforcement orders requiring payment of the increased rental were ineffective.

Ross Haslip v. Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 76 (June 12, 1981)

Leases

A decision of the Bureau of Indian Affairs that cancels a lease of Indian trust lands generally involves an interpretation of the lease provisions, relevant Federal regulations governing cancellation procedures, and applicable Federal, state, and tribal case and statutory law. Such a decision cannot properly be characterized under 25 CFR 2.19 as solely discretionary.

Clayton J. Gray v. Deputy Assistant Secretary--Indian Indian Affairs (Operations), 12 IBIA 146 (Jan. 27, 1984) 91 I.D. 43

BUREAU OF LAND MANAGEMENT
(See also Mineral Leasing Act--if included in this Index.)

Decisions of the Interior Board of Land Appeals are indexed, digested, and available for public inspection pursuant to published Departmental regulations. They meet the requirements of the Administrative Procedure Act and serve as binding Departmental precedents. However, adjudicative decisions by local Bureau of Land Management offices do not meet requirements of the Administrative Procedure Act and are not binding precedents.

Cheyenne Resources, Inc., 46 IBLA 277 (Mar. 27, 1980) 87 I.D. 110

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated.

Stephen Kenyon et al., 51 IBLA 368 (Dec. 30, 1980)

BUREAU OF LAND MANAGEMENT--Continued

The Federal Land Policy and Management Act of 1976 requires the Secretary of the Interior to manage public lands under principles of "multiple use" and "sustained yield," and the statutory definition of these concepts recognizes the need for latitude and discretion in their implementation. As the Secretary's delegate, BLM has the responsibility of administering such policies and programs, and BLM must be accorded correlative powers of reasoned discretion in discharging these duties. Therefore, so long as the BLM policy or implementing action is based on a consideration of all relevant factors and is supported by the record, the Board will not disturb it absent a clear showing that it is contrary to statute or regulation or otherwise erroneous.

A.C.O.I.S., 60 IBLA 1 (Nov. 12, 1981)

Each request for an extension of time to file a document must be carefully considered on its own merits, with due regard for and consideration of the rights of the parties involved.

F. Peter Zoch, 60 IBLA 150 (Nov. 24, 1981)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Paiute Oil & Mining Corp., 67 IBLA 17 (Sept. 3, 1982)

Irvin D. Bird, Jr., 73 IBLA 210 (May 27, 1983)

Established and longstanding Departmental interpretations relating to issuance of oil and gas leases are binding on all Departmental employees until such time as they are changed by competent authority.

Champlin Petroleum Co., 68 IBLA 142 (Oct. 29, 1982) 89 I.D. 561

BLM is without jurisdiction to consider an application for the lease of public land near or adjacent to a hot springs where the land is within a national forest and the Act of Feb. 28, 1899, as amended, 16 U.S.C. § 495 (1976), vests the Secretary of Agriculture with exclusive jurisdiction with respect to the issuance of such leases.

Donn Hopkins, 68 IBLA 184 (Nov. 8, 1982)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof

BUREAU OF LAND MANAGEMENT--Continued

that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

Although 6 months passed before the Bureau of Land Management notified claimants that their claims were null and void ab initio, the claimants were not entitled to a refund of the expenses incurred developing the claims. The Bureau of Land Management has no affirmative obligation to mineral locators to promptly check the status of their mining claims.

Bill & Judy Bass et al., 84 IBLA 233 (Dec. 31, 1984)

BUREAU OF RECLAMATION
(See also Irrigation Claims--if included in this Index.)

GENERALLY

Under the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. §§ 351-59 (1976), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a service or bureau within the Department of the Interior, such as the Bureau of Reclamation (now the Water and Power Resources Service), the consent of the Secretary of the Interior is necessary under the Act for leasing of the land.

Where the Bureau of Land Management, based on the recommendation of the Bureau of Reclamation (now the Water and Power Resources Service) requires the execution of a special stipulation prohibiting all drilling operations on any of the lands described in the lease as a condition to issuance of an oil and gas lease, such stipulation must be supported by valid reasons weighed with due regard for the public interest, including evidence that less stringent alternatives would not adequately accomplish the intended purpose.

Mardan Exploration, Inc., 52 IBLA 296 (Feb. 9, 1981)

Where an acquired lands noncompetitive oil and gas lease offer is partially rejected on the basis of a recommendation made by the Bureau of Reclamation and merely concurred in by the Forest Service and on appeal the offeror alleges that the present policy of the Bureau of Reclamation is to lease with appropriate stipulations and the record fails to support adequately the original recommendation, the case will be remanded in order to determine whether a lease may issue for such lands.

Rodney K. Bartley, 57 IBLA 293 (Aug. 31, 1981)

Under the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-59 (1976 and Supp. V 1981), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a bureau within the Department of the Interior, such as the Bureau of Reclamation, the consent of the Secretary of the Interior or his proper delegate is necessary under the Act for leasing of the land.

Where the Bureau of Land Management, based on the recommendation of the Bureau of Reclamation, requires the execution of a special stipulation prohibiting all drilling operations on any of the lands described in the lease as a condition to issuance of an oil and gas lease, the record must reflect that such stipulation is supported by valid reasons weighed with due regard for the public interest, including evidence that less

BUREAU OF RECLAMATION--Continued

GENERALLY--Continued

stringent alternatives would not adequately accomplish the intended purpose.

Gary D. Aakins, 74 IBLA 12 (June 24, 1983)

ENVIRONMENT

The exemption under sec. 404(f) for an otherwise Federal project is available for projects receiving contributory financing from state or local entities, provided that the other conditions for the exemption are met and the project remains in Federal control.

Federal Water Pollution Control Act - Sec. 404 Compliance for Projects Funded in Part by State and Local Entities, M-36915 (Supp. I), (June 2, 1983) 90 I.D. 255

CLAIMS BY THE UNITED STATES

Nothing in the Federal Claims Collection Act of 1966, 31 U.S.C. §§ 951-953 (1976), and its implementing regulations in 4 CFR Chapter II repeals or overrides the authority of the Secretary of the Interior to approve or disapprove the use of funds in an Individual Indian Money account for the payment of debts of the Indian owner.

A decision not to honor a setoff request against an Individual Indian Money account for a debt owed to another agency of the Federal Government is not arbitrary, capricious, or an abuse of discretion when it is based on an examination of the funds potentially available for setoff, the basic necessities of the individual involved, and the interest of the United States in collecting judgment claims.

United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Celina Young Bear Bossette; and United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Geraldine Van Dyke, 9 IBIA 151 (Jan. 8, 1982) 89 I.D. 89

CLASSIFICATION AND MULTIPLE USE ACT OF 1964

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected land to the extent indicated in the notice, and applications for such land must be rejected.

Robert Dale Barston et al., 51 IBLA 115 (Nov. 20, 1980)

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected lands to the extent indicated in the notice, and subsequent Indian allotment applications for such lands must be rejected.

Samuel Lee Gifford et al., 53 IBLA 23 (Feb. 26, 1981)

Wanda Lois Lee McKinney et al., 53 IBLA 279 (Mar. 24, 1981)

Jan Christian Sykes, 55 IBLA 23 (May 26, 1981)

Terry Burl Prykryl, 58 IBLA 94 (Sept. 24, 1981)

Marvin Coy Gifford et al., 58 IBLA 98 (Sept. 24, 1981)

Lula Lorene McCracken Slowey, 58 IBLA 202 (Sept. 29, 1981)

CLASSIFICATION AND MULTIPLE USE ACT OF 1964--Continued

Betsy Romaine Bovill, 58 IBLA 260 (Oct. 6, 1981)

William Milton, Jr., Cordell Eldon Eugene Morgan, Myrna June Morgan, Jackie Lavern Jarman, 59 IBLA 182 (Oct. 27, 1981)

Publication in the Federal Register of a classification for multiple use management pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. § 1411 (1976), will segregate the affected land to the extent indicated in the notice, and applications for such land pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), must be rejected.

Dorothy L. Standridge et al., 55 IBLA 131 (June 3, 1981)

Gladys Lee Cardwell Gifford, Betty Ann Gifford Jarman, 55 IBLA 332 (June 26, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the Federal Register.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

Where the Secretary by appropriate notice in the Federal Register has classified certain lands for multiple use management and such lands are thereby segregated from desert land entry, which classification has not been terminated by either a reclassification or publication in the Federal Register of termination of classification, an application for desert land entry is properly denied.

Bill K. Yearsley, Nilalee H. Yearsley, 67 IBLA 97 (Sept. 13, 1982)

COAL LEASES AND PERMITS
(See also Mineral Leasing Act--if included in this Index.)

GENERALLY

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency, U.S., the United States Army Corps of Engineers, having jurisdiction of acquired land described in a lease offer be obtained prior to the issuance of an acquired lands lease for such land. The Department of the Interior has no authority to lease such land where the consent is withheld.

Jacobs Contracting Corp., 45 IBLA 40 (Jan. 14, 1980)

COAL LEASES AND PERMITS--Continued

GENERALLY--Continued

Where the holder of a coal prospecting permit completes his exploration and applies for a preference right coal lease in 1973, the application must be adjudicated on the basis of the applicant's subsequent conformity with regulations amended in 1976 with retroactive effect. However, where the application is summarily rejected solely for the reason that the applicant's supplemental submission is "inadequate," without identifying the deficiency, the decision will be vacated and the case remanded for readjudication.

Kin-Ark Corp., 45 IBLA 159 (Jan. 23, 1980) 87 I.D. 14

Where an applicant for preference right coal leases fails to present information sufficient to show that there is coal in commercial quantities on the areas for which he holds prospecting permits as required by 43 CFR 3430.1, and where he does not submit specific information showing the quantity and quality of the coal deposits in these areas, as required by 43 CFR 3430.2, his applications are properly rejected.

H. H. Cunningham, 47 IBLA 193 (May 7, 1980)

Under the provisions of 30 U.S.C. § 188a (1976) accrued rentals on mineral leases are to be prorated on a monthly basis where the failure to file a timely surrender was not due to a lack of reasonable diligence on the part of the lessee.

Garland Coal & Mining Co., 52 IBLA 60 (Jan. 9, 1981) 88 I.D. 24

Where the holder of a coal prospecting permit completes his exploration and applies for a preference right coal lease in 1971, the application must be adjudicated on the basis of the applicant's subsequent conformity with regulations, amended in 1976 and 1979, with retroactive effect.

A coal prospecting permittee who applies for a coal lease is entitled to a hearing before an Administrative Law Judge before his application is rejected, where the permittee alleges that the application contains data that commercial quantities of coal exist on the lands; however, where the permittee alleges that there is coal in commercial quantities in certain lands as measured by the mining industry standard BLM and Survey should have the opportunity to consider whether commercial quantities as measured by the mining industry is sufficient to comply with commercial quantities as defined in 43 CFR 3430.1-2.

Jesse H. Knight, 53 IBLA 300 (Mar. 20, 1981)

Where title to lignite in a certain tract of land is disputed, and a Bureau of Land Management determination that the United States owns the lignite by virtue of its ownership of the surface is not supported by the record, the Bureau of Land Management's decision to include the tract in a competitive lignite lease sale is improper and must be reversed.

City of San Antonio, Texas, 65 IBLA 326 (July 15, 1982)

COAL LEASES AND PERMITS--Continued

GENERALLY--Continued

Because sec. 4 of the Federal Coal Leasing Amendments Act of 1976, amending 30 U.S.C. § 201(b) (1976), repealed the Secretary's authority to issue a coal prospecting permit on Federal lands, a coal prospecting permit application filed Oct. 18, 1979, is properly rejected. 30 U.S.C. § 201(b) (1976) and 43 CFR 3410 provide for the issuance of coal exploration licenses for lands subject to leasing.

Ronald E. Barr, Sr., Paul Brown, Sr., 65 IBLA 359 (July 20, 1982)

When the Secretary changes his construction of an ambiguous statutory provision for reasons of policy and law, the new construction operates prospectively only, and does not operate to invalidate actions (issuance of leases and approval of lease transfers) previously taken.

Railroad Affiliates & Coal Leasing, M-36945 (Dec. 6, 1982) 89 I.D. 610

Where an assignment of a coal lease has been approved by BLM without notice of a controversy regarding an alleged prior assignment to a third party and BLM subsequently receives a protest from the third party, a decision dismissing the protest and declining to disturb existing conditions will be affirmed in the absence of evidence of resolution of the dispute between the parties through agreement or litigation.

Manootis Sheep Co., Resource Properties, Inc., 71 IBLA 312 (Mar. 22, 1983)

A Federal coal lease which is modified subsequent to enactment of the Federal Coal Leasing Amendments Act must be conformed to the terms required by that statute. 30 U.S.C. § 203 (1982). The crediting of rental payments against the royalty obligation due under a Federal coal lease is not authorized by the Act.

Spring Creek Coal Co., Bridger Coal Co., 83 IBLA 159 (Oct. 10, 1984)

APPLICATIONS

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency, e.g., the United States Army Corps of Engineers, having jurisdiction of acquired land described in a lease offer be obtained prior to the issuance of an acquired lands lease for such land. The Department of the Interior has no authority to lease such land where the consent is withheld.

Jacobs Contracting Corp., 45 IBLA 40 (Jan. 14, 1980)

Where BLM has rejected an application for a competitive coal lease in accordance with a court injunction and thereafter said injunction expires, BLM shall reconsider appellant's application and apply thereto newly promulgated regulations set forth at 43 CFR Part 3400.

Shell Oil Co., 47 IBLA 4 (Apr. 10, 1980)

COAL LEASES AND PERMITS--Continued

APPLICATIONS--Continued

Because sec. 4 of the Federal Coal Leasing Amendments Act of 1976, amending 30 U.S.C. § 201(b) (1976), repealed the Secretary's authority to issue a coal prospecting permit on Federal lands, a coal prospecting permit application filed Oct. 18, 1979, is properly rejected. 30 U.S.C. § 201(b) (1976) and 43 CFR 3410 provide for the issuance of coal exploration licenses for lands subject to leasing.

Ronald E. Barr, Sr., Paul Brown, Sr., 65 IBLA 359 (July 20, 1982)

Pursuant to 43 CFR 3410.2-1(d) an applicant for a coal exploration license is required to provide an opportunity for other parties to participate in exploration under the license on a pro rata cost sharing basis. Where a party seeks to participate, it is required to submit information about its exploration plans such that BLM can determine whether such a party has legitimate exploration needs that must be accommodated. Thus, BLM determines whether to allow participation; arrangements concerning participation are then left to the parties.

James W. Taylor & Associates, Inc., 69 IBLA 1 (Nov. 24, 1982)

Where emergency leasing regulations have been amended after BLM adjudicated an application to lease coal lands competitively, BLM on remand should apply the amended regulations to the applications at issue.

Glenn H. Johnson, Western Coal Co., 71 IBLA 96 (Feb. 24, 1983)

"Dredging." Dredging to recover coal from a lake or river is a surface coal mining operation as defined in the Surface Mining Control and Reclamation Act of 1977. A coal lease application to dredge a river and lake in a national forest is properly rejected where it does not meet the criteria set out in sec. 522(e) of that Act and 43 CFR 3461.1(a)(2)(i).

Brentwood, Inc., 76 IBLA 73 (Sept. 21, 1983) 90 I.D. 421

The Bureau of Land Management may properly decline a request to participate in coal exploration licenses where the licenses are close to expiration; the land in question is selected by a Native corporation; and publication of a proposed withdrawal segregating the land and conveyance of the land to the Native corporation is imminent.

James W. Taylor & Associates, Inc., 76 IBLA 102 (Sept. 21, 1983)

The regulation at 43 CFR 3430.4-1(c) allows a coal preference right lease applicant 90 days in which to respond to a Bureau of Land Management request for final showing of the existence of commercial quantities of coal. A decision rejecting a preference right lease application on the ground that the information was filed after the 90-day period will be reversed where applicant requested an extension of time, there is no evidence of bad faith on the part of the applicant, and no indication that the late filing unduly interfered with the administration of the public lands.

Peabody Coal Co., 79 IBLA 58 (Feb. 9, 1984)

COAL LEASES AND PERMITS--Continued

CANCELLATION

An ambiguous regulation relating to "the proper office" in which to file a relinquishment of a coal lease should not be interpreted to the detriment of a coal lessee who sought to comply with its provisions.

The Boards of Appeal of the Department of the Interior have no authority to declare invalid a duly promulgated regulation of this Department. Where, however, the regulation was not properly promulgated, is lacking in statutory basis, and has been consistently ignored in actual practice, that regulation will be accorded no force or effect.

Under the provisions of 30 U.S.C. § 188a (1976) accrued rentals on mineral leases are to be prorated on a monthly basis where the failure to file a timely surrender was not due to a lack of reasonable diligence on the part of the lessee.

Garland Coal & Mining Co., 52 IBLA 60 (Jan. 9, 1981)
88 I.D. 24

DILIGENCE

Although Congress revised the provision governing readjustment of federal coal leases in 1976, the deletion of the clause "unless otherwise provided by law at the time of expiration of such periods" from sec. 7 of the MLA (30 U.S.C. § 207) did not alter the Secretary's obligation not to establish any lease terms contrary to law in readjusting a coal lease.

The legislative history of sec. 6 of the Federal Coal Leasing Amendments Act shows that the revision of sec. 7 of the MLA (30 U.S.C. § 207) was not retroactive, but applied to new leases and to "old" leases upon readjustment. The ten-year production period and revised royalty rates of amended sec. 7 must be imposed on "old" coal leases at readjustment. The legislative history to the 1978 coal leasing revisions (Act of Oct. 30, 1978) discloses that Congress understood and acted on the assumption that the amended sec. 7 royalty rates did apply to all "old" leases upon readjustment.

Whether Leases Issued Prior to August 4, 1976, Subject to Readjustment after that Date must be Readjusted to Conform to the Federal Coal Leasing Amendments Act of 1976, M-36939 (Sept. 17, 1981) 88 I.D. 1003

LEASES

Where BLM has rejected an application for a competitive coal lease in accordance with a court injunction and thereafter said injunction expires, BLM shall reconsider appellant's application and apply thereto newly promulgated regulations set forth at 43 CFR Part 3400.

Shell Oil Co., 47 IBLA 4 (Apr. 10, 1980)

Where an applicant for preference right coal leases fails to present information sufficient to show that there is coal in commercial quantities on the areas for which he holds prospecting permits as required by 43 CFR 3430.1, and where he does not submit specific information showing the quantity and quality of the coal deposits in these areas, as required by 43 CFR 3430.2, his applications are properly rejected.

H. B. Cunningham, 47 IBLA 193 (May 7, 1980)

COAL LEASES AND PERMITS--Continued

LEASES--Continued

Under 43 CFR 3451.1(a)(2) and 3473.3-2, BLM is required during readjustment of coal leases to impose a minimum royalty of 12-1/2 percent as a term of all leases subject to readjustment. Once the rate is imposed, the lessee may seek its reduction by application for relief to the Geological Survey under 43 CFR 3473.3-2(d).

Where Geological Survey has not yet taken any adverse action on a coal lessee's request under 43 CFR 3473.3-2(d) to reduce royalty due on a coal lease, it is premature for the Board of Land Appeals to consider whether such reduction is appropriate. Rather, the lessee must wait for GS to take action and then, if it is adverse, it may pursue its appeal through normal procedures.

Garland Coal & Mining Co., 49 IBLA 400 (Sept. 5, 1980)

In the context of a readjustment of the terms of a coal lease under the Mineral Leasing Act, the Bureau of Land Management erred in rejecting a lessee's attempts to negotiate the new proposed terms of a lease ripe for readjustment under the provisions of the Act solely on the ground that the lessee's objections to the proposed terms were received 3 days after the regulatory deadline.

United States Steel Corp., 50 IBLA 252 (Sept. 30, 1980)

A coal prospecting permittee who applies for a coal lease is entitled to a hearing before an Administrative Law Judge before his application is rejected, where the permittee alleges that the application contains data that commercial quantities of coal exist on the lands; however, where the permittee alleges that there is coal in commercial quantities in certain lands as measured by the mining industry standard BLM and Survey should have the opportunity to consider whether commercial quantities as measured by the mining industry is sufficient to comply with commercial quantities as defined in 43 CFR 3430.1-2.

Jesse H. Knight, 53 IBLA 300 (Mar. 24, 1981)

Coalbed gas is not included in a coal lease under the MLA. In the coal leasing provision of the MLA, Congress did not provide for a coal lessee's extraction of minerals related to or associated with coal. 30 U.S.C. § 201 (Supp. II 1978). This provision does not authorize a coal lessee's extraction of coalbed gas, other than the venting of the gas required by mine health and safety laws and regulations.

Ownership of and Right to Extract Coalbed Gas in Federal Coal Deposits, M-36935 (May 12, 1981)
88 I.D. 538

A coal prospecting permittee who applies for a coal lease, alleging with supportive data that there is coal in commercial quantities within certain lands in its permit, is entitled to a hearing conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 554 (1976), before its application may be finally rejected because it has not shown coal in commercial quantities.

A preference right lease applicant must be allowed to perform additional drilling tests to prove that it discovered commercial quantities of coal during the term of its prospecting permit even though that permit has expired, where the record reflects that a satisfactory demonstration of such discovery was made under the regulatory standards in effect during the term of

COAL LEASES AND PERMITS--Continued

LEASES--Continued

the permit and revised regulations imposing more stringent requirements of proof of the discovery are applied to the lease application after expiration of the permit.

Hiko Bell Mining and Oil Co., 55 IBLA 324 (June 26, 1981)

Where a coal lease issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provides that the lessor may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease, and thereafter at the end of each succeeding 20-year period during the continuance of the lease, the adjustment in the royalty rate and other terms and conditions must be made when the 20-year period expires and not at some later time.

Kaiser Steel Corp. et al., 63 IBLA 363 (Apr. 29, 1982)

Franklin Real Estate Co., 71 IBLA 13 (Feb. 10, 1983)

Northern Minerals Co., Northern Coal Co., 71 IBLA 129 (Mar. 7, 1983)

Where coal leases issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provide that the United States may readjust their terms and conditions at the end of 20 years, a decision by BLM to include additional requirements will be affirmed where each of the readjusted provisions objected to by the lessee is mandated by statute and/or regulation.

Lone Star Steel Co., 65 IBLA 147 (June 29, 1982)

Lone Star Steel Co., 71 IBLA 92 (Feb. 24, 1983)

Where a coal lease issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provides that the lessor may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease, and thereafter at the end of each succeeding 30-year period during the continuance of the lease, the adjustment in the royalty rate and other terms and conditions must be made when the 20-year period expires and not at some later date.

Sunoco Energy Development Co., 65 IBLA 323 (July 15, 1982)

Where title to lignite in a certain tract of land is disputed, and a Bureau of Land Management determination that the United States owns the lignite by virtue of its ownership of the surface is not supported by the record, the Bureau of Land Management's decision to include the tract in a competitive lignite lease sale is improper and must be reversed.

City of San Antonio, Texas, 65 IBLA 326 (July 15, 1982)

The Board of Land Appeals will not reverse an unreasonable a readjustment of an underground coal lease establishing a royalty of 8 percent, since the lessee may seek further rate relief under 30 U.S.C. § 209 (1976) if needed.

COAL LEASES AND PERMITS--Continued

LEASES--Continued

A decision proposing a provision in a readjustment coal lease for suspension of continued operations upon the payment of advance royalty will not be reversed merely because it makes the terms and conditions of the payments the subject of a future agreement.

The Bureau of Land Management may properly include provisions requiring submission of new mining and exploration plans in a readjusted coal lease even though a mining plan has been approved, since new or revised plans may be needed for other mineable coalbeds or because rock conditions may require mining changes.

A provision in a readjusted coal lease requiring the lessee to conduct operations so as to avoid damage "to non-Federal lands in the vicinity of the leased lands," and "where practicable, to repair" such damage as does occur, subject to the approval of the lessor, is improper, unenforceable, and void.

It is proper to include in a readjusted coal lease a provision requiring the lessee to conduct at its own expense a survey and inventory archaeological and paleontological values prior to approval of a mining plan or any activity that would disturb the surface of the land.

It is proper to include a provision in a readjusted coal lease which reserves to the United States the right to authorize other uses of the leased lands that do not unreasonably interfere with the exploration and mining operations of the lessee, even though it contains no express provision for notification to the lessee, since any authorized use would be subject to the lease.

Under 30 U.S.C. § 187 (Supp. II, 1978), a coal lease must include a provision requiring twice-monthly payment of wages in the absence of a showing that compliance with the provision would place the lessee in violation of state law.

A readjusted coal lease may properly require that buildings and surface structures be painted in a color which conforms or blends with the natural color of the surrounding area in order to mitigate negative visual impacts in a nearby recreation area where the lessee fails to establish that compliance with the requirement is not infeasible.

Blackhawk Coal Co., 68 IBLA 96 (Oct. 26, 1982)

The position that only companies actually operating common carrier railroads and their "alter egos" are prohibited from holding federal coal leases by sec. 2(c) of the Mineral Lands Leasing Act and the position that affiliates of such companies are also prohibited are both reasonable, judicially defensible constructions of an ambiguous provision of law. The legislative history of sec. 2(c) fails to answer clearly the question whether affiliates of railroad companies are included in or excluded from the coverage of sec. 2(c).

Railroad Affiliates & Coal Leasing, M-36945 (Dec. 6, 1982) 89 I.D. 610

Where notice of intent to readjust a coal lease is given to a lessee prior to expiration of the period allowed for readjustment, such notice satisfies the statutory requirements for readjustment, and BLM may subsequently provide the specific terms or conditions for readjustment.

Coal leases issued prior to Aug. 4, 1976, the date of enactment of the Federal Coal Leasing Amendments Act

LEASES--Continued

of 1976, are at the time of readjustment subject to the requirements of that Act and regulations promulgated pursuant to that Act.

Where coal leases issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 207 (1976), provide that the United States may readjust their terms and conditions at the end of 20 years, a decision by BLM to include additional requirements will be affirmed where the readjusted provisions objected to by the lessee are mandated by statute and/or regulation or where such provisions are in accordance with the proper administration of the lands.

Coastal States Energy Co., 70 IBLA 386 (Feb. 9, 1983)

Where emergency leasing regulations have been amended after BLM adjudicated an application to lease coal lands competitively, BLM on remand should apply the amended regulations to the applications at issue.

Glenn H. Johnson, Western Coal Co., 71 IBLA 96 (Feb. 24, 1983)

A decision by the Bureau of Land Management to readjust a coal lease will be affirmed where the readjusted provisions appealed by the lessee are mandated by statute or regulation, or where such provisions are in accordance with proper administration of the lands.

Where notice of intent to readjust a coal lease is given to a lessee prior to expiration of the period allowed for readjustment, such notice satisfies the statutory requirements for readjustment, and BLM may subsequently provide the specific terms or conditions for readjustment.

The Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. §§ 201-209 (1976), governs the terms and conditions that the Department may impose upon readjustment of leases issued prior to the amendments.

It is proper to include in a readjusted coal lease a provision stating that the lease is subject to the provisions of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§ 1201-1328 (Supp. V 1981) (SMCRA). By making the lease subject to the provisions of SMCRA, a violation of that Act is also a violation of the lease, so the remedies available to the United States as lessor are added to its remedies under SMCRA.

It is proper to include in a readjusted coal lease a provision requiring the lessee to conduct at its own expense a survey and inventory of archaeological and paleontological values prior to approval of a mining plan or any activity that would disturb the surface of the land.

It is proper to include a provision in a readjusted coal lease which reserves to the United States the right to authorize other uses of the leased lands that do not unreasonably interfere with the exploration and mining operations of the lessee.

Under 43 CFR 3451.2, readjustment of a coal lease becomes effective 60 days after the lessee is notified of the readjusted terms, except where the authorized officer has required the lessee to furnish information specified in 43 CFR 3422.3-4 for review by the Attorney General. While compliance may be postponed pending review of a lessee's objections, liability for increased rental or royalty accrues from 60 days after initial notification of the readjusted terms.

Gulf Oil Corp., Pittsburg & Midway Coal Mining Co., 73 IBLA 328 (June 8, 1983)

LEASES--Continued

Coal lease issued prior to the enactment of the Federal Coal Leasing Amendments Act is at the time of readjustment subject to the requirements of that Act and regulations promulgated pursuant to that Act. A decision by BLM to readjust coal leases to include requirements mandated by statute and regulation will be affirmed.

Where the Bureau of Land Management has provided the lessee with a notice of intent to readjust a coal lease and specific terms and conditions of the readjusted lease, and has established that the effective date of those readjustments shall be the twentieth anniversary date of the lease, postponing administration of those terms and conditions pending review of the lessee's protest is not inconsistent with requirements for readjustment or untimely application of the terms and conditions by BLM.

A coal lease clause which implements a statutory benefit is not ambiguous where the terms to be applied are expressed in a regulation which is cited in that clause. Where there is no allegation that the applicable process is erroneous or that a cognizable interest has been adversely affected, the proposed clause of the readjusted lease will be affirmed.

PMC Corp., 74 IBLA 389 (July 29, 1983)

At the time of readjustment of the terms of an underground coal lease, BLM may, consistent with the policy of the Minerals Management Service, set the royalty rate at 8 percent and refuse to consider a reduction of the rate to 5 percent, under the discretionary authority embodied in 43 CFR 3473.3-2(a)(3).

National Ring Coal, Inc., 76 IBLA 124 (Sept. 26, 1983)

A decision by the Bureau of Land Management to readjust a coal lease will be affirmed where the readjusted provisions appealed by the lessee are mandated by statute or regulation, or where such provisions are in accordance with proper administration of the lands.

The Board of Land Appeals will not reverse as unreasonable a readjustment of an underground coal lease establishing a royalty of 8 percent, since the lessee may seek further rate relief under 30 U.S.C. § 209 (1976) if needed.

The Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. §§ 201-209 (1976), governs the terms and conditions that the Department may impose upon readjustment of leases issued prior to the amendments.

It is proper to include a provision in a readjusted coal lease which reserves to the United States the right to authorize other uses of the leased lands that do not unreasonably interfere with the exploration and mining operations of the lessee, since any authorized use would be subject to the lease.

Mid-Continent Coal & Coke Co., 74 IBLA 312 (Oct. 19, 1983)

Where a notice of intent to readjust a coal lease is given to a lessee prior to expiration of the period allowed for readjustment, such notice satisfies the statutory requirements, and BLM may subsequently provide the specific terms or conditions for readjustment.

Coal leases issued prior to enactment of the Federal Coal Leasing Amendments Act of 1976 are, at the

COAL LEASES AND PERMITS--Continued

LEASES--Continued

time of readjustment, subject to the requirements of that Act and regulations promulgated pursuant to that Act.

When notice of intent to readjust a coal lease is given to a lessee prior to expiration of the period allowed for readjustment, and such notice prescribes a specific date when readjusted lease terms shall be transmitted to the lessee, BLM's subsequent failure to transmit the readjusted lease terms within the time specified in the notice constitutes a waiver of the right to readjust the lease.

Kaiser Steel Corp., 76 IBLA 387 (Oct. 27, 1983) 90 I.D. 470

Where in a previous appeal the Board has considered and decided appellant's objections to several provisions incorporated in the readjusted terms of a coal lease, a second appeal based upon appellant's objection to still another provision in the same lease readjustment will be dismissed as untimely. Also, where the appeal concerns only potential adverse effects which might result if certain regulation changes were promulgated in the future, the appeal will be dismissed for want of appellant's standing to appeal.

Lone Star Steel Co., 77 IBLA 96 (Nov. 14, 1983)

A decision by the Bureau of Land Management to readjust a coal lease will be affirmed where the readjusted provisions appealed by the lessee are mandated by statute or regulation, or where such provisions are in accordance with proper administration of the public lands.

The Board of Land Appeals will not reverse as unreasonable a readjustment of an underground coal lease establishing a royalty of 8 percent, since the lessee may seek further rate relief under 30 U.S.C. § 209 (1976) if needed.

The Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. §§ 201-209 (1976), governs the terms and conditions that the Department may impose upon readjustment of leases issued prior to the amendments.

It is proper to include a provision in a readjusted coal lease which reserves to the United States the right to authorize other uses of the leased lands that do not unreasonably interfere with the exploration and mining operations of the lessee, since any authorized use would be subject to the lease.

Mid-Continent Coal & Coke Co., 78 IBLA 178 (Jan. 4, 1984)

Departmental regulation 43 CFR 3473.3-2(a)(1) and (a)(3) implementing 30 U.S.C. § 207(a) (1976), provides that a royalty rate as low as 5 percent may be established for an underground coal mine at lease issuance if conditions warrant such reduced royalty rate. A BLM decision overruling a coal lessee's objection to a provision in readjusted coal leases establishing a royalty rate of 8 percent will be set aside and remanded where, on appeal, BLM requests that the Board remand the cases to BLM to allow the lessee the opportunity to establish that the conditions warrant a royalty rate of less than 8 percent.

Utah Power & Light Co., 80 IBLA 180 (Apr. 16, 1984)

COAL LEASES AND PERMITS--Continued

LEASES--Continued

The conclusion of proceedings under the Freedom of Information Act, as amended, 5 U.S.C. § 552 (1982), to acquire information related to the rationale for the production royalty set in a competitive coal lease does not constitute a final decision by BLM subject to an appeal to the Board, challenging the royalty. The appellant only had a right to protest the royalty set in the notice of the lease sale and to appeal from any denial of that protest.

The Department is not estopped to dismiss an appeal challenging the production royalty set in a competitive coal lease, where the appellant failed to protest the notice of the lease sale, by virtue of the Department's subsequent refusal to provide information essential to determining the validity of the challenged royalty.

Coastal States Energy Co., 80 IBLA 274 (May 4, 1984)

Where a coal lease issued prior to Aug. 4, 1976, the date of enactment of the Federal Coal Leasing Amendments Act of 1976, provides that the United States can readjust its terms and conditions at the end of 20 years, notice of readjustment or notice of intent to readjust must be given to the lessee at or before the expiration of that 20-year period.

Notice of intent to readjust a Federal coal lease which notice is received by the lessee on Nov. 16, 1978, for a lease whose 20-year readjustment date expired Oct. 1, 1978, is untimely and readjusted terms and conditions may not be imposed pursuant to such notice.

Pitkin Iron Corp. et al., 81 IBLA 81 (May 24, 1984)

BLM is not barred from readjusting the terms and conditions of a coal lease issued prior to enactment of the Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. §§ 201-209 (1976), in accordance with the requirements of the statute and its implementing regulations, where a notice of intent to readjust is filed prior to the end of the 20-year primary term of the lease.

A BLM decision to readjust the terms and conditions of a coal lease to include additional requirements will be affirmed where the requirements are mandated by statute or regulation, or are in accordance with proper administration of the land. However, where the requirements of a coal lease are not in conformance with a statute or regulation or the proper administration of the land, or are in apparent internal conflict or not clear as to their application to existing mining operations, the BLM decision will be set aside to that extent and remanded for amendment.

At the time of readjustment of the terms of a coal lease, BLM may, consistent with the policy of the Minerals Management Service, set the royalty rate at 8 percent for underground operations and refuse to consider a reduction of the rate to 5 percent, under the discretionary authority embodied in 43 CFR 3473.3-2(a)(3).

Coastal States Energy Co., 81 IBLA 171 (May 31, 1984)

A decision by the Bureau of Land Management to readjust a coal lease will be affirmed where the readjusted provisions appealed by the lessee are mandated by statute or regulation, or where such provisions are in accordance with proper administration of the lands.

The mere fact that a readjusted coal lease expressly provides that regulations adopted subsequent

COAL LEASES AND PERMITS--Continued

LEASES--Continued

thereto may be applied does not, ipso facto, make the provisions of the lease fatally indefinite, since it is further provided that express provisions of the lease are not subject to alteration by later regulatory amendments. The applicability to the lease of any specific regulatory provision, however, can only be determined where such regulations have been promulgated and a lessee can show injury in fact in their application.

Where a coal lessee has been timely informed that BLM intends to readjust his lease upon the running of its initial term and has been provided with a copy of the terms which the Government seeks to impose on the lease, the timely filing of a protest prevents the proposed terms from becoming final until BLM has ruled on the protest. BLM may, in ruling on the protest, alter or amend provisions not being protested so long as BLM can provide a reasonable basis in fact for its actions.

The Board of Land Appeals will not reverse as unreasonable a readjustment of an underground coal lease establishing a royalty of 8 percent, since the lessee may seek further rate relief under 30 U.S.C. § 209 (1982) if needed.

The Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. §§ 201-209 (1982), governs the terms and conditions that the Department may impose upon readjustment of leases issued prior to the amendments.

It is proper to include a provision in a readjusted coal lease which reserves to the United States the right to authorize other uses of the leased lands that do not unreasonably interfere with the exploration and mining operations of the lessee, since any other authorized use would be subject to the lease.

Where a coal lessee is informed that his lease is being amended to add additional land thereto, and is expressly advised that the additional land will be considered to have been included in the lease as of the date of issuance of the original lease, a lessee who objects to this must file an appeal within 30 days after being notified or is thereafter barred from litigating the propriety of the amendment within the Department.

Mid-Continent Coal & Coke Co., 83 IBLA 56 (Sept. 25, 1984)

A Federal coal lease which is modified subsequent to enactment of the Federal Coal Leasing Amendments Act must be conformed to the terms required by that statute. 30 U.S.C. § 203 (1982). The crediting of rental payments against the royalty obligation due under a Federal coal lease is not authorized by the Act.

Spring Creek Coal Co., Bridger Coal Co., 83 IBLA 159 (Oct. 10, 1984)

The operation and production requirement imposed on a coal lease may be suspended in the interest of conservation if it is not economically feasible to mine the coal because of current market conditions. Where the record is insufficient to determine whether lease suspension is warranted, the case will be remanded to BLM to determine whether or not the lease qualifies for suspension.

Lone Star Steel Co., 84 IBLA 77 (Dec. 5, 1984)

COAL LEASES AND PERMITS--Continued

LEASES--Continued

Notice of intent to readjust coal leases given to a lessee prior to expiration of the period allowed for readjustment is effective to permit readjustment although BLM does not provide the specific terms or conditions for readjustment until after the expiration of the period.

Coal leases issued prior to enactment of the Federal Coal Leasing Amendments Act of 1976 become, at readjustment, subject to the requirements of that Act and regulations promulgated pursuant to that Act.

A BLM decision to readjust the terms and conditions of a coal lease to include additional provisions is affirmed where the amendments are required by statute or regulation, or for purposes connected with proper lease administration. Provisions not having a basis in law or not shown to be reasonably necessary are disapproved, and leases remanded for appropriate amendment.

Sunoco Energy Development Co., 84 IBLA 131 (Dec. 11, 1984)

PERMITS

Generally

Limitation of a coal prospecting permit to "unclaimed, undeveloped" lands restricts it to lands without valid, vested rights, existing at the time of issuance of the permit, which are adverse to the prospecting permit which is sought, and any preference right lease which may be earned pursuant to such a permit.

A prospecting permit may be issued for coal for which there is no valid, adverse claim at the time of issuance, notwithstanding the existence then of non-adverse claims, entries, or leases.

Issuance of a prospecting permit is presumed to be regular if no valid, adverse interest appeared in the land office records at the time of issuance of the permit.

The Effect of Mining Claims on Secretarial Authority to Issue Prospecting Permits and Preference Right Leases for Coal and Phosphate (Modifying Solicitor's Opinion M-36893 of Aug. 2, 1977, and its Supplement of Nov. 19, 1979, upon the same subject); The "Unclaimed, Undeveloped" Issue, M-36893 (Supp. II) (Jan. 8, 1981)

88 I.D. 247

A coal prospecting permittee who applies for a coal lease is entitled to a hearing before an Administrative Law Judge before his application is rejected, where the permittee alleges that the application contains data that commercial quantities of coal exist on the lands; however, where the permittee alleges that there is coal in commercial quantities in certain lands as measured by the mining industry standard BLM and Survey should have the opportunity to consider whether commercial quantities as measured by the mining industry is sufficient to comply with commercial quantities as defined in 43 CFR 3430.1-2.

Jesse H. Knight, 53 IBLA 300 (Mar. 24, 1981)

A coal prospecting permittee who applies for a coal lease, alleging with supportive data that there is coal in commercial quantities within certain lands in its permit, is entitled to a hearing conducted in

COAL LEASES AND PERMITS--Continued

PERMITS--Continued

Generally--Continued

accordance with the Administrative Procedure Act, 5 U.S.C. § 554 (1976), before its application may be finally rejected because it has not shown coal in commercial quantities.

A preference right lease applicant must be allowed to perform additional drilling tests to prove that it discovered commercial quantities of coal during the term of its prospecting permit even though that permit has expired, where the record reflects that a satisfactory demonstration of such discovery was made under the regulatory standards in effect during the term of the permit and revised regulations imposing more stringent requirements of proof of the discovery are applied to the lease application after expiration of the permit.

Bike Bell Mining and Oil Co., 55 IBLA 324 (June 26, 1981)

READJUSTMENT

Although Congress revised the provision governing readjustment of federal coal leases in 1976, the deletion of the clause "unless otherwise provided by law at the time of expiration of such periods" from sec. 7 of the MLA (30 U.S.C. § 207) did not alter the Secretary's obligation not to establish any lease terms contrary to law in readjusting a coal lease.

The legislative history of sec. 6 of the Federal Coal Leasing Amendments Act shows that the revision of sec. 7 of the MLA (30 U.S.C. § 207) was not retroactive, but applied to new leases and to "old" leases upon readjustment. The ten-year production period and revised royalty rates of amended sec. 7 must be imposed on "old" coal leases at readjustment. The legislative history to the 1978 coal leasing revisions (Act of Oct. 30, 1978) discloses that Congress understood and acted on the assumption that the amended sec. 7 royalty rates did apply to all "old" leases upon readjustment.

Whether Leases Issued Prior to August 4, 1976, Subject to Readjustment after that Date must be Readjusted to Conform to the Federal Coal Leasing Amendments Act of 1976, M-36939 (Sept. 17, 1981) 88 I.D. 1003

At the time of readjustment of the terms of an underground coal lease, BLM may, consistent with the policy of the Minerals Management Service, set the royalty rate at 8 percent and refuse to consider a reduction of the rate to 5 percent, under the discretionary authority embodied in 43 CFR 3473.3-2(a)(3).

National King Coal, Inc., 76 IBLA 124 (Sept. 26, 1983)

BLM is not barred from readjusting the terms and conditions of a coal lease issued prior to enactment of the Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. §§ 201-209 (1976), in accordance with the requirements of the statute and its implementing regulations, where a notice of intent to readjust is filed prior to the end of the 20-year primary term of the lease.

A BLM decision to readjust the terms and conditions of a coal lease to include additional requirements will be affirmed where the requirements are mandated by statute or regulation, or are in accordance with proper administration of the land. However, where the requirements of a coal lease are not in conformance with a statute or regulation or the

COAL LEASES AND PERMITS--Continued

READJUSTMENT--Continued

proper administration of the land, or are in apparent internal conflict or not clear as to their applicatio to existing mining operations, the BLM decision will set aside to that extent and remanded for amendment.

At the time of readjustment of the terms of a coal lease, BLM may, consistent with the policy of th Minerals Management Service, set the royalty rate at 8 percent for underground operations and refuse to consider a reduction of the rate to 5 percent, under the discretionary authority embodied in 43 CFR 3473.3-2(a)(3).

Coastal States Energy Co., 81 IBLA 171 (May 31, 1984)

A Federal coal lease which is modified subsequen to enactment of the Federal Coal Leasing Amendments A must be conformed to the terms required by that statute. 30 U.S.C. § 203 (1982). The crediting of rental payments against the royalty obligation due under a Federal coal lease is not authorized by the Act.

Spring Creek Coal Co., Bridger Coal Co., 83 IBLA 159 (Oct. 10, 1984)

The operation and production requirement imposed on a coal lease may be suspended in the interest of conservation if it is not economically feasible to mi the coal because of current market conditions. Where the record is insufficient to determine whether lease suspension is warranted, the case will be remanded to BLM to determine whether or not the lease qualifies f suspension.

Long Star Steel Co., 84 IBLA 77 (Dec. 5, 1984)

A BLM decision to readjust the terms and conditions of a coal lease to include additional provisions is affirmed where the amendments are required by statute or regulation, or for purposes connected with proper lease administration. Provisions not having a basis in law or not shown to be reasonably necessary are disapproved, and leases remanded for appropriate amendment.

Sunoco Energy Development Co., 84 IBLA 131 (Dec. 11, 1984)

RENTALS

An ambiguous regulation relating to "the proper office" in which to file a relinquishment of a coal lease should not be interpreted to the detriment of a coal lessee who sought to comply with its provisions.

Garland Coal & Mining Co., 52 IBLA 60 (Jan. 9, 1981) 88 I.D. 24

A Federal coal lease which is modified subsequent to enactment of the Federal Coal Leasing Amendments Ac must be conformed to the terms required by that statute. 30 U.S.C. § 203 (1982). The crediting of rental payments against the royalty obligation due under a Federal coal lease is not authorized by the Act.

Spring Creek Coal Co., Bridger Coal Co., 83 IBLA 159 (Oct. 10, 1984)

COAL LEASES AND PERMITS--Continued

ROYALTIES

Under 43 CFR 3451.1(a)(2) and 3473.3-2, BLM is required during readjustment of coal leases to impose a minimum royalty of 12-1/2 percent as a term of all leases subject to readjustment. Once the rate is imposed, the lessee may seek its reduction by application for relief to the Geological Survey under 43 CFR 3473.3-2(d).

Where Geological Survey has not yet taken any adverse action on a coal lessee's request under 43 CFR 3473.3-2(d) to reduce royalty due on a coal lease, it is premature for the Board of Land Appeals to consider whether such reduction is appropriate. Rather, the lessee must wait for GS to take action and then, if it is adverse, it may pursue its appeal through normal procedures.

Garland Coal & Mining Co., 49 IBLA 400 (Sept. 5, 1980)

Where coal leases for Indian lands state that the applicable royalty rate is to be based on gross realization, which is further defined as the gross sales price at the mining site without any deduction therefrom of overhead sales costs or any other business expense, this royalty base includes the amount of the reclamation fee imposed by the Surface Mining Control and Reclamation Act of 1977 where the selling price is increased by that amount or where the seller is reimbursed for that amount by the buyer.

The rulemaking procedures in 5 U.S.C. § 553 (1976) do not apply to administrative interpretations which conclude that the amount of the reclamation fee imposed by the Surface Mining Control and Reclamation Act of 1977 is to be included as part of the royalty base under Indian coal leases.

Peabody Coal Co., 53 IBLA 261 (Mar. 23, 1981)

Although Congress revised the provision governing readjustment of federal coal leases in 1976, the deletion of the clause "unless otherwise provided by law at the time of expiration of such periods" from sec. 7 of the MLA (30 U.S.C. § 207) did not alter the Secretary's obligation not to establish any lease terms contrary to law in readjusting a coal lease.

The legislative history of sec. 6 of the Federal Coal Leasing Amendments Act shows that the revision of sec. 7 of the MLA (30 U.S.C. § 207) was not retroactive, but applied to new leases and to "old" leases upon readjustment. The ten-year production period and revised royalty rates of amended sec. 7 must be imposed on "old" coal leases at readjustment. The legislative history to the 1978 coal leasing revisions (Act of Oct. 30, 1978) discloses that Congress understood and acted on the assumption that the amended sec. 7 royalty rates did apply to all "old" leases upon readjustment.

Whether Leases Issued Prior to August 4, 1976, Subject to Readjustment after that Date must be Readjusted to Conform to the Federal Coal Leasing Amendments Act of 1976, M-36939 (Sept. 17, 1981) 88 I.D. 1003

Where coal leases for Indian lands state that the applicable royalty rate is to be based on gross realization, which is defined as the gross sales price at the mining site without any deduction of overhead sales costs or any other business expense, gross realization includes the amounts of the reclamation fee imposed by the Surface Mining Control and Reclamation Act, the tax imposed by the Black Lung Benefits Revenue Act of 1977, and the Arizona State mining tax, since the selling

COAL LEASES AND PERMITS--Continued

ROYALTIES--Continued

price is increased by these amounts and the seller is reimbursed for that amount by the buyer.

It is proper to deduct the amount of fixed minimum royalty from the gross sales price of coal before calculating royalty due, where an amount representing the higher, percentage-based royalty is added instead, since the latter entirely replaces the former.

Where a coal purchase agreement provides that the purchase price of coal from the holder of an Indian lease shall be reduced by an amount reflecting the percentage of variation from an agreed minimum heat value of coal, and where the adjustment also reduces the purchase price by an amount reflecting the costs of transporting noncalorific material, this adjustment is properly allowed to reduce the gross realization and, as a result, the royalty due to Indian tribes which own the coal, because the low heat value of the coal is intrinsic to the material being "sold" by the tribes, and because the value of the material sold is reduced by the amount spent by the ultimate purchaser of the coal to transport low heat value coal.

Owing to its fiduciary obligation to protect the interests of the Indian tribes, the Department, through officials of the Geological Survey who supervise tribal mineral lease accounts, has the authority to impose late payment charges where equity requires them. Late payment charges are not penalties; rather, they represent the time value of money owed to the tribes, but not paid. Accordingly, they may be imposed even where the lessee files a bona fide appeal of the underlying royalty determination. The lessee is protected from overpayment where the late payment charges are recalculated after final Departmental administrative review to correspond to the amount of royalty ultimately found to be due.

Peabody Coal Co., Hopi Indian Tribe, 72 IBLA 337 (Apr. 29, 1983)

Guidelines issued by Geological Survey, dated Apr. 23, 1980, fixing the amount of a coal lease bond at three times monthly production, are not subject to the notice and comment provisions of 5 U.S.C. § 553(b) (1976).

Guidelines fixing the amount of a coal lease bond at three times monthly production are not arbitrary and capricious by reason of the fact that the rationale for the guidelines is not set forth therein.

Cambridge Mining Co., 74 IBLA 26 (June 24, 1983)

At the time of readjustment of the terms of an underground coal lease, BLM may, consistent with the policy of the Minerals Management Service, set the royalty rate at 8 percent and refuse to consider a reduction of the rate to 5 percent, under the discretionary authority embodied in 43 CFR 3473.3-2(a)(3).

National King Coal, Inc., 76 IBLA 124 (Sept. 26, 1983)

The conclusion of proceedings under the Freedom of Information Act, as amended, 5 U.S.C. § 552 (1982), to acquire information related to the rationale for the production royalty set in a competitive coal lease does not constitute a final decision by BLM subject to an appeal to the Board, challenging the royalty. The appellant only had a right to protest the royalty set in the notice of the lease sale and to appeal from any denial of that protest.

The Department is not estopped to dismiss an appeal challenging the production royalty set in a competitive coal lease, where the appellant failed to

COAL LEASES AND PERMITS--Continued

ROYALTIES--Continued

protest the notice of the lease sale, by virtue of the Department's subsequent refusal to provide information essential to determining the validity of the challenged royalty.

Coastal States Energy Co., 80 IBLA 274 (May 4, 1984)

At the time of readjustment of the terms of a coal lease, BLM may, consistent with the policy of the Minerals Management Service, set the royalty rate at 8 percent for underground operations and refuse to consider a reduction of the rate to 5 percent, under the discretionary authority embodied in 43 CFR 3473.3-2(a)(3).

Coastal States Energy Co., 81 IBLA 171 (May 31, 1984)

COLOR OR CLAIM OF TITLE

GENERALLY

Where a hearing is held to allow an applicant to introduce extrinsic evidence in a color-of-title proceeding to make definite a description in a quitclaim deed which is ambiguous as to what lands are conveyed, and the applicant does not succeed in providing clear and convincing evidence that the deed did convey color of title or that the grantee had any reasonable basis to believe he was obtaining good title to the applied for land, the application is properly rejected.

Mary C. Pemberton, 47 IBLA 373 (May 21, 1980)

A claim under the Color of Title Act, 43 U.S.C. § 1068 (1976), has not been held in peaceful adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes.

Good faith under the Color of Title Act, 43 U.S.C. § 1068 (1976), requires that a claimant and his predecessors in interest honestly believe there was no defect in the title and the Department may consider whether such a belief was unreasonable in light of the facts actually known or available to claimant or a predecessor.

Where a predecessor in interest to a color-of-title claimant lacked good faith in 1906 because he had reason to know that title to the land remained in the United States, a 1904 withdrawal immediately foreclosed any subsequent color-of-title claim.

John S. Cluett, 52 IBLA 141 (Jan. 16, 1981)

A class 1 color-of-title claim requires good faith, peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years. The claim or color of title must be based upon a document which on its face purports to convey the claimed land to the applicant or the applicant's predecessors. When the applicant fails to produce such a document, the application must be rejected.

Anthony T. Ash, 52 IBLA 210 (Jan. 30, 1981)

Charles M. Schwab, 55 IBLA 8 (May 26, 1981)

COLOR OR CLAIM OF TITLE--Continued

GENERALLY--Continued

A class 2 color-of-title application for an unpatented mining claim may not be rejected where the sole basis for the rejection is the conclusion of the Bureau of Land Management that the three words "entered for patent" contained in an Aug. 13, 1900, deed in the applicant's chain of title constituted constructive knowledge that title was in the United States and that the grantee therefore was not holding in good faith.

Cripple Creek Gold Production Corp., 53 IBLA 188 (Mar. 17, 1981)

Where the record does not show any instrument purporting on its face to convey the land, sought under a color-of-title application pursuant to the Color of Title Act, 43 U.S.C. § 1068 (1976), not later than Jan. 1, 1901, the applicant has not made out a meritorious class 2 color-of-title claim.

Ray Wheeler, Ila Gene Wheeler, 55 IBLA 370 (June 26, 1981)

An applicant under the Color of Title Act, 43 U.S.C. § 1068 (1976), for a patent of Federal land must establish peaceful adverse possession of the land claimed. Where a tract of public land is divided by a fence in place for 40 years, which marks the limit of claimant's possession, his claim is properly limited to the land on the side of the fence which he has occupied and improved.

Grant Howe, 56 IBLA 145 (July 20, 1981)

To satisfy the requirements of a class 1 claim under the Color of Title Act, "valuable improvements" must exist on the land at the time the application is filed, or it must be shown that the land has been reduced to cultivation. If land was once cultivated, but is not cultivated at the time the application was filed and has not been cultivated for 10 years previously, the cultivation requirement of the Act has not been satisfied.

Good faith under the Color of Title Act, 43 U.S.C. § 1068 (1976), requires that a claimant and his predecessors in interest honestly believe there was no defect in the title and the Department may consider whether such a belief was unreasonable in light of the facts actually known or available to the claimant or a predecessor.

Lester and Betty Stephens, 58 IBLA 14 (Sept. 16, 1981)

"Public lands." Lands ceded by the Chippewa Indians under the Act of Feb. 20, 1904, 33 Stat. 46, which were unappropriated under the terms of said Act, and which were restored to tribal ownership in 1945, were never "public lands" within the meaning of the Color of Title Act, 43 U.S.C. § 1068 (1976), and a color-of-title application for such land must be rejected.

Marlyn Haugen et al., 63 IBLA 12 (Mar. 25, 1982)

The failure of applicants to submit tax and title data in support of their class 2 color-of-title application, as required by 43 CFR 2541.2, is an adequate basis for rejection of the application.

Rajneesh Investment Corp., 65 IBLA 307 (July 13, 1982)

COLOR OR CLAIM OF TITLE--Continued

GENERALLY--Continued

The obligation to establish a valid color-of-title claim is upon claimant. Where claimants have not alleged facts which, if proved, would establish the color of title, a request for a fact-finding hearing pursuant to 43 CFR 4.415 will be denied.

Bernard R. Snyder, M. Marie Snyder, 70 IBLA 207 (Jan. 24, 1983)

Acquiring title to Federal lands by tax deed from a local state authority that mistakenly believes it has title to the lands initiates a new title for the purposes of determining when possession under color of title commenced. There is no privity between the person acquiring the tax deed and any previous owner.

No valid class 2 color-of-title claim is presented where the earliest possible date of commencement of adverse possession was long after Jan. 1, 1901.

Where the Board of Land Appeals has previously held that the record did not show that lands were ever open to the operation of the public land laws and concluded accordingly that they were not subject to color-of-title applications, and where the record is subsequently amended to show that the lands were, in fact, reopened to entry, the Board's previous decision will be vacated as will BLM's decision applying it as a basis for rejecting a color-of-title application.

Where color-of-title applications allege facts sufficient to establish entitlement to class 1 claims, and where the claimed lands were apparently open to the operation of the public land laws at all times during the alleged occupancy of the lands, BLM's decision rejecting the applications will be vacated and the matters remanded for adjudication of their merits.

Estate of John C. Brinton, 71 IBLA 160 (Mar. 10, 1983)

An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met. The applicant must establish that each of the requirements for a class 1 claim has been met. A failure to carry the burden of proof with respect to one of the elements is fatal to the application.

Corrine M. Vigil, 74 IBLA 111 (June 30, 1983)

Malcolm C. & Helena M. Huston, 80 IBLA 53 (Mar. 29, 1984)

The obligation to establish a valid color-of-title claim is upon the claimant.

Pedro A. Suazo, Eleanor G. Suazo, 75 IBLA 212 (Aug. 23, 1983)

A class 1 color-of-title claim made under Departmental regulation 43 CFR 2540.0-5(b) must be based upon a document which appears to convey the claimed land to claimant or his predecessors. In the absence of any documentary evidence of claim of title, the Bureau of Land Management correctly rejected claimant's application.

Robert M. Cooper, 75 IBLA 354 (Aug. 31, 1983)

COLOR OR CLAIM OF TITLE--Continued

GENERALLY--Continued

An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met. The applicant must establish that each of the requirements for a class 1 claim has been met. A failure to carry the burden of proof with respect to one of the elements is fatal to the application.

No valid class 2 color-of-title claim is presented where the earliest possible date of commencement of adverse possession was long after Jan. 1, 1901.

A tax title has nothing to do with the previous chain of title and does not in any way connect itself with it. It is a breaking up of all previous titles, legal and equitable.

In order to support a class 1 claim a claimant must establish that the land has been held in good faith and in peaceful adverse possession by the claimant, his ancestors or grantors under claim of title for more than 20 years. If the ancestor's possession is not in good faith, the chain has been broken, the holding period of the ancestor may not be tacked on and the statutory period begins anew.

Hal M. Bennett, 77 IBLA 399 (Dec. 9, 1983)

An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met. The applicant must establish that each of the requirements for a class 1 claim has been met. A failure to carry the burden of proof with respect to any one of the elements is fatal to the application.

A class 1 color-of-title claim must be based upon a document which appears to convey the claimed land to claimants or their predecessors. In the absence of any documentary evidence of claim of title, a color-of-title application is properly rejected by the Bureau of Land Management.

Acquiring title to Federal lands by tax deed from a local authority that mistakenly believes it has title to the lands initiates a new title for the purposes of determining when possession under color of title commenced. Thus, a tax deed is sufficient to support a claim of title if held by claimants or their predecessors at the beginning of the 20-year period for class 1 claims.

Paul Marshall et al., 82 IBLA 298 (Aug. 31, 1984)

An application for a class 1 color-of-title claim requires that the land has been held in good faith, and in peaceful, adverse possession by the claimant or her predecessors in title. Good faith requires that the claimant and her predecessors honestly believe that they were invested with title.

An application for a class 1 color-of-title claim requires that the land be held in good faith for at least 20 years by the claimant or her predecessors in title. If a predecessor in title held the land in good faith, then her time may be tacked onto that of the claimant. A claimant may not rely on the good faith possession of remote predecessors despite the bad faith of her immediate predecessors. Once the chain of good faith possession is broken, it must begin anew.

The obligation of proving a valid color-of-title claim is upon the claimant. A claimant's failure to

COLOR OR CLAIM OF TITLE--Continued

GENERALLY--Continued

carry the burden of proof on one of the elements is fatal to the application.

Kim C. Evans, 82 IBLA 319 (Sept. 6, 1984)

Under the Color of Title Act, each applicant's equities must be considered on their own merits. Among the factors properly considered are the length of an applicant's possession, the price paid and whether such price constituted fair market value, the degree of reasonableness of an applicant's belief that he or she held good title, the length of the chain of title, how the errors were caused, whether and to what extent taxes had been paid on the land, and any other factors which, in a spirit of fairness, a court of equity would recognize.

Upon the filing of a proper class 1 color-of-title application, the applicant's right to purchase the land described in the application vests. Subsequent to such filing, BLM lacks authority to diminish the estate applied for, and, therefore, may not grant a right-of-way to any party, including an agency of the Federal Government.

The extent of an applicant's color-of-title claim is necessarily limited to the land actually described in the conveyance from which the color-of-title originates, regardless of whether or not this description accurately describes all land occupied by the applicant.

Benton C. Cavin, 83 IBLA 107 (Oct. 5, 1984)

A class 1 color-of-title claim requires proof that the land has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. A class 2 color-of-title claim requires proof that the land has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than Jan. 1, 1901, to the date of application, during which time the claimant has paid taxes on the land.

An applicant under the Color of Title Act has the burden of proof to establish to the satisfaction of the Secretary of the Interior that each of the statutory conditions for purchase under the Act has been met. A failure to carry the burden of proof with respect to any one of the elements is fatal to the application.

Richard P. Montoya, Garrett R. Quintana, Vernon O. Nielson, John G. Rogers, Mary Ann Rogers, 84 IBLA 52 (Nov. 29, 1984)

An application for a class 1 color-of-title claim requires that the land has been held in good faith and in peaceful adverse possession by the claimant or his predecessors in title. Good faith requires that the claimant and his predecessors in title honestly believe that they were invested with title. Possession of a grazing lease by an applicant constitutes acknowledgement of Federal ownership which negates the requisite good faith.

In order to establish a class 1 color-of-title claim, an applicant must prove, among other requirements, that valuable improvements have been placed on the land or that some part of the land has been reduced to cultivation.

An applicant under the Color of Title Act has the burden of proof to establish to the satisfaction of the Secretary of the Interior that each of the requirements under the Act has been met. A failure to carry the burden of proof with respect to any one of the requirements is fatal to the application.

Felix F. Vigil, 84 IBLA 182 (Dec. 19, 1984)

ADVERSE POSSESSION

Prescriptive rights cannot be obtained against the Federal Government. Except as provided by the Color of Title Act, 45 Stat. 1069, as amended, 43 U.S.C. § 1068-1068b (1976), no adverse possession of Government property can affect the title of the United States.

The Color of Title Act requires that the claimant have held the subject tract of public land in good faith and in peaceful, adverse possession under claim or color of title for more than 20 years.

Under the Color of Title Act, color or claim of title must be based upon a document from a source other than the United States which purports to convey to the applicant the land for which application is made. Possession and improvement of public land by a color of title applicant in the mistaken belief that he owns it is not sufficient basis for conveying title under the Color of Title Act.

Where appellants have not alleged facts bringing their claims within the Color of Title Act, they are not entitled to land under that statute.

Exclusive possession is required for the possession to be adverse.

Appeal of Theodore J. Albany et al., 4 ANCAB 151 (Feb. 27, 1980) 87 I.D. 81

An applicant under the Color of Title Act, 43 U.S.C. § 1068 (1976), for a patent of Federal land must establish peaceful adverse possession of the land claimed. Where a tract of public land is divided by a fence in place for 40 years, which marks the limit of claimant's possession, his claim is properly limited to the land on the side of the fence which he has occupied and improved.

Grant Howe, 56 IBLA 145 (July 20, 1981)

Adverse possession cannot be asserted against the United States. Mere occupancy of public lands and the making of improvements thereon give no vested right against the United States. An occupant of Federal land must show that he occupies the same under some proceeding or law that at least authorized his right of possession.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

No valid class 2 color-of-title claim is presented where the earliest possible date of commencement of adverse possession was long after Jan. 1, 1901.

Where the Board of Land Appeals has previously held that the record did not show that lands were ever open to the operation of the public land laws and concluded accordingly that they were not subject to color-of-title applications, and where the record is subsequently amended to show that the lands were, in fact, reopened to entry, the Board's previous decision

COLOR OR CLAIM OF TITLE--Continued

ADVERSE POSSESSION--Continued

will be vacated as will BLM's decision applying it as a basis for rejecting a color-of-title application.

Estate of John C. Brinton, 71 IBLA 160 (Mar. 10, 1983)

No valid class 2 color-of-title claim is presented where the earliest possible date of commencement of adverse possession was long after Jan. 1, 1901.

A tax title has nothing to do with the previous chain of title and does not in any way connect itself with it. It is a breaking up of all previous titles, legal and equitable.

Hal H. Bennett, 77 IBLA 399 (Dec. 9, 1983)

APPLICATIONS

Good faith under the Color of Title Act, 43 U.S.C. § 1068 (1976), requires that a claimant and his predecessors in interest honestly believe there was no defect in the title and the Department may consider whether such a belief was unreasonable in light of the facts actually known or available to claimant or a predecessor.

Where a predecessor in interest to a color-of-title claimant lacked good faith in 1906 because he had reason to know that title to the land remained in the United States, a 1904 withdrawal immediately foreclosed any subsequent color-of-title claim.

John S. Cluett, 52 IBLA 141 (Jan. 16, 1981)

A class 1 color-of-title claim requires good faith, peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years. The claim or color of title must be based upon a document which on its face purports to convey the claimed land to the applicant or the applicant's predecessors. When the applicant fails to produce such a document, the application must be rejected.

An instrument of conveyance upon which claimant relies is sufficient to provide color of title only if it describes land conveyed with such certainty that boundaries and identity of land may be ascertained. A color-of-title application is properly rejected where the claimed land is not described in deeds produced to support an applicant's claim.

Anthony T. Ash, 52 IBLA 210 (Jan. 30, 1981)

Charles M. Schwab, 55 IBLA 8 (May 26, 1981)

A class 2 color-of-title application for an unpatented mining claim may not be rejected where the sole basis for the rejection is the conclusion of the Bureau of Land Management that the three words "entered for patent" contained in an Aug. 13, 1900, deed in the applicant's chain of title constituted constructive knowledge that title was in the United States and that the grantee therefore was not holding in good faith.

Cripple Creek Gold Production Corp., 53 IBLA 188 (Mar. 17, 1981)

COLOR OR CLAIM OF TITLE--Continued

APPLICATIONS--Continued

Where the record does not show any instrument purporting on its face to convey the land, sought under a color-of-title application pursuant to the Color of Title Act, 43 U.S.C. § 1068 (1976), not later than Jan. 1, 1901, the applicant has not made out a meritorious class 2 color-of-title claim.

Ray Wheeler, Ila Gene Wheeler, 55 IBLA 370 (June 26, 1981)

Good faith under the Color of Title Act, 43 U.S.C. § 1068 (1976), requires that a claimant and his predecessors in interest honestly believe there was no defect in the title and the Department may consider whether such a belief was unreasonable in light of the facts actually known or available to the claimant or a predecessor.

Lester and Betty Stephens, 58 IBLA 14 (Sept. 16, 1981)

The failure of applicants to submit tax and title data in support of their class 2 color-of-title application, as required by 43 CFR 2541.2, is an adequate basis for rejection of the application.

Rajneesh Investment Corp., 65 IBLA 307 (July 13, 1982)

A color-of-title claim requires peaceful adverse possession in good faith by a claimant or her predecessors in interest under claim or color of title for the prescribed period of time. The claim or color of title must be based upon a document which on its face purports to convey the claimed land to the applicant or the applicant's predecessors and when the applicant fails to produce such a document, the application must be rejected.

Carmen M. Warren, 69 IBLA 347 (Dec. 29, 1982)

Where the Board of Land Appeals has previously held that the record did not show that lands were ever open to the operation of the public land laws and concluded accordingly that they were not subject to color-of-title applications, and where the record is subsequently amended to show that the lands were, in fact, reopened to entry, the Board's previous decision will be vacated as will BLM's decision applying it as a basis for rejecting a color-of-title application.

Where color-of-title applications allege facts sufficient to establish entitlement to class 1 claims, and where the claimed lands were apparently open to the operation of the public land laws at all times during the alleged occupancy of the lands, BLM's decision rejecting the applications will be vacated and the matters remanded for adjudication of their merits.

Estate of John C. Brinton, 71 IBLA 160 (Mar. 10, 1983)

An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met. The applicant must establish that each of the requirements for a class 1 claim has been met. A failure to carry the burden of proof with respect to one of the elements is fatal to the application.

Corrine M. Vigil, 74 IBLA 111 (June 30, 1983)

Hal H. Bennett, 77 IBLA 399 (Dec. 9, 1983)

COLOR OR CLAIM OF TITLE--Continued

APPLICATIONS--Continued

Malcolm C. & Helena B. Huston, 80 IBLA 53 (Mar. 29, 1984)

A class 1 color-of-title claim made under Departmental regulation 43 CFR 2540.0-5(b) must be based upon a document which appears to convey the claimed land to claimant or his predecessors. In the absence of any documentary evidence of claim of title, the Bureau of Land Management correctly rejected claimant's application.

Robert W. Cooper, 75 IBLA 354 (Aug. 31, 1983)

An applicant under the Color of Title Act must establish that the statutory and regulatory conditions for purchase have been met. Failure to carry the burden of proof with respect to any one of the elements of the claim asserted is fatal to the application.

Good faith as that term is used in the Color of Title Act, 43 U.S.C. § 1068 (1982), requires that a claimant and his predecessors in interest reasonably believe that no defect exists in the title to the land claimed. The Department may consider whether a claimant's belief was unreasonable in light of the facts actually known or available to the claimant or a predecessor.

Lawrence T. Abraham et al., 82 IBLA 285 (Aug. 31, 1984)

An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met. The applicant must establish that each of the requirements for a class 1 claim has been met. A failure to carry the burden of proof with respect to any one of the elements is fatal to the application.

A class 1 color-of-title claim must be based upon a document which appears to convey the claimed land to claimants or their predecessors. In the absence of any documentary evidence of claim of title, a color-of-title application is properly rejected by the Bureau of Land Management.

Paul Marshall et al., 82 IBLA 298 (Aug. 31, 1984)

An application for a class 1 color-of-title claim requires that the land has been held in good faith, and in peaceful, adverse possession by the claimant or her predecessors in title. Good faith requires that the claimant and her predecessors honestly believe that they were invested with title.

An application for a class 1 color-of-title claim requires that the land be held in good faith for at least 20 years by the claimant or her predecessors in title. If a predecessor in title held the land in good faith, then her time may be tacked onto that of the claimant. A claimant may not rely on the good faith possession of remote predecessors despite the bad faith of her immediate predecessors. Once the chain of good faith possession is broken, it must begin anew.

The obligation of proving a valid color-of-title claim is upon the claimant. A claimant's failure to carry the burden of proof on one of the elements is fatal to the application.

Kim C. Evans, 82 IBLA 319 (Sept. 6, 1984)

COLOR OR CLAIM OF TITLE--Continued

APPLICATIONS--Continued

A class 1 color-of-title claim requires proof that the land has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. A class 2 color-of-title claim requires proof that the land has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than Jan. 1, 1901, to the date of application, during which time the claimant has paid taxes on the land.

An applicant under the Color of Title Act has the burden of proof to establish to the satisfaction of the Secretary of the Interior that each of the statutory conditions for purchase under the Act has been met. A failure to carry the burden of proof with respect to any one of the elements is fatal to the application.

Richard R. Montoya, Garrett R. Quintana, Vernon O. Nielson, John G. Romero, Mary Ann Romero, 84 IBLA 52 (Nov. 29, 1984)

An application for a class 1 color-of-title claim requires that the land has been held in good faith and in peaceful adverse possession by the claimant or his predecessors in title. Good faith requires that the claimant and his predecessors in title honestly believe that they were invested with title. Possession of a grazing lease by an applicant constitutes acknowledgement of Federal ownership which negates the requisite good faith.

An applicant under the Color of Title Act has the burden of proof to establish to the satisfaction of the Secretary of the Interior that each of the requirements under the Act has been met. A failure to carry the burden of proof with respect to any one of the requirements is fatal to the application.

Felix P. Vigil, 84 IBLA 182 (Dec. 19, 1984)

APPRAISED VALUE

Where the purchase price for a tract of land applied for under the Color of Title Act is based solely upon a Bureau of Land Management appraisal of the fair market value of the land at the date of appraisal, and no allowance is made for equitable factors which appear on the record in favor of the applicant, the case will be remanded to the Bureau of Land Management for consideration of such equities.

Paul B. Scott, Betty P. Scott, 76 IBLA 143 (Sept. 26, 1983)

Under the Color of Title Act, each applicant's equities must be considered on their own merits. Among the factors properly considered are the length of an applicant's possession, the price paid and whether such price constituted fair market value, the degree of reasonableness of an applicant's belief that he or she held good title, the length of the chain of title, how the errors were caused, whether and to what extent taxes had been paid on the land, and any other factors which, in a spirit of fairness, a court of equity would recognize.

Benton C. Cavin, 83 IBLA 107 (Oct. 5, 1984)

COLOR OR CLAIM OF TITLE--Continued

CULTIVATION

To satisfy the requirements of a class 1 claim under the Color of Title Act, "valuable improvements" must exist on the land at the time the application is filed, or it must be shown that the land has been reduced to cultivation. If land was once cultivated, but is not cultivated at the time the application was filed and has not been cultivated for 10 years previously, the cultivation requirement of the Act has not been satisfied.

Lester and Betty Stephens, 58 IBLA 14 (Sept. 16, 1981)

The cultivation requirement of a class 1 color-of-title claim is not satisfied if the land is not reduced to cultivation at the time the application is filed and has not been cultivated for at least 5 years previously.

Bernard R. Snyder, M. Marie Snyder, 70 IBLA 207 (Jan. 26, 1983)

The cultivation requirement of a class 1 color-of-title claim is not satisfied if the land is merely grazed or if the land is not reduced to cultivation at the time the application is filed and no evidence is provided to support compliance with the cultivation requirement.

Gladys Lomax, 75 IBLA 89 (Aug. 11, 1983)

To establish a class 1 color-of-title claim, made under the Color of Title Act, land must be reduced to cultivation at the time of filing the claim application.

Pedro A. Suazo, Eleanor G. Suazo, 75 IBLA 212 (Aug. 23, 1983)

To establish a class 1 color-of-title claim, made under the Color of Title Act, land must be reduced to cultivation at the time of filing the claim application. Although the continued planting of fruit and nut trees on a yearly basis is such activity that may qualify for cultivation of agricultural crops, that activity will not qualify under the Color of Title Act when conducted after the applicant has become aware of the fact that his title to the land is defective.

Malcolm C. & Helena M. Huston, 80 IBLA 53 (Mar. 29, 1984)

The planting of seedlings and the thinning and pruning of coniferous trees are not acts of cultivation under the Color of Title Act but rather the placement of improvements on the land.

Benton C. Cavin, 83 IBLA 107 (Oct. 5, 1984)

In order to establish a class 1 color-of-title claim, the land must be reduced to cultivation at the time of application. Where there has been no effort at tillage of the land or other efforts made to produce a crop for at least 10 years, the cultivation requirement is not satisfied.

Richard P. Montoya, Garrett R. Quintana, Vernon O. Higbee, John G. Romero, Mary Ann Romero, 84 IBLA 52 (Nov. 29, 1984)

COLOR OR CLAIM OF TITLE--Continued

CULTIVATION--Continued

In order to establish a class 1 color-of-title claim, an applicant must prove, among other requirements, that valuable improvements have been placed on the land or that some part of the land has been reduced to cultivation.

Felix P. Vigil, 84 IBLA 182 (Dec. 19, 1984)

DESCRIPTION OF LAND

Where a hearing is held to allow an applicant to introduce extrinsic evidence in a color-of-title proceeding to make definite a description in a quitclaim deed which is ambiguous as to what lands are conveyed, and the applicant does not succeed in providing clear and convincing evidence that the deed did convey color of title or that the grantee had any reasonable basis to believe he was obtaining good title to the applied for land, the application is properly rejected.

Mary C. Pemberton, 47 IBLA 373 (May 21, 1980)

An instrument of conveyance upon which claimant relies is sufficient to provide color of title only if it describes land conveyed with such certainty that boundaries and identity of land may be ascertained. A color-of-title application is properly rejected where the claimed land is not described in deeds produced to support an applicant's claim.

Anthony T. Ash, 52 IBLA 210 (Jan. 30, 1981)

Charles R. Schwab, 55 IBLA 8 (May 26, 1981)

GOOD FAITH

Good faith under the Color of Title Act requires that the claimant possess the land without knowing or having reason to know that title to the land was vested in the United States.

Appeal of Theodore J. Alagay et al., 6 ANCAB 151 (Feb. 27, 1980) 87 I.D. 81

Where a hearing is held to allow an applicant to introduce extrinsic evidence in a color-of-title proceeding to make definite a description in a quitclaim deed which is ambiguous as to what lands are conveyed, and the applicant does not succeed in providing clear and convincing evidence that the deed did convey color of title or that the grantee had any reasonable basis to believe he was obtaining good title to the applied for land, the application is properly rejected.

Mary C. Pemberton, 47 IBLA 373 (May 21, 1980)

Good faith under the Color of Title Act, 43 U.S.C. § 1068 (1976), requires that a claimant and his predecessors in interest honestly believe there was no defect in the title and the Department may consider whether such a belief was unreasonable in light of the facts actually known or available to claimant or a predecessor.

Where a predecessor in interest to a color-of-title claimant lacked good faith in 1906 because he had reason to know that title to the land remained in the United States, a 1904 withdrawal immediately foreclosed any subsequent color-of-title claim.

John S. Cluett, 52 IBLA 141 (Jan. 16, 1981)

COLOR OR CLAIM OF TITLE--Continued

GOOD FAITH--Continued

A class 2 color-of-title application for an unpatented mining claim may not be rejected where the sole basis for the rejection is the conclusion of the Bureau of Land Management that the three words "entered for patent" contained in an Aug. 13, 1900, deed in the applicant's chain of title constituted constructive knowledge that title was in the United States and that the grantee therefore was not holding in good faith.

Cripple Creek Gold Production Corp., 53 IBLA 188 (Mar. 17, 1981)

Good faith under the Color of Title Act, 43 U.S.C. § 1068 (1976), requires that a claimant and his predecessors in interest honestly believe there was no defect in the title and the Department may consider whether such a belief was unreasonable in light of the facts actually known or available to the claimant or a predecessor.

Lester and Betty Stephens, 58 IBLA 14 (Sept. 16, 1981)

"Good faith." As used in the Color of Title Act, 43 U.S.C. § 1068 (1976), and regulation 43 CFR 2540.0-5, a claim is held in good faith where the claimant lacks knowledge that the land is owned by the United States. In determining whether the claimant honestly believed that there was no defect in his title, the Department may consider whether such belief was unreasonable in light of the facts then actually known to him.

Lawrence E. Hillsworth, 64 IBLA 159 (May 25, 1982)

Good faith under the Color of Title Act requires that the claimants and their predecessors in interest honestly believe themselves seised of the title, and the Department may consider whether such a belief was unreasonable in light of the facts actually known or available to the claimants or a predecessor.

Carmen E. Warren, 69 IBLA 347 (Dec. 29, 1982)

In order to support a class 1 claim a claimant must establish that the land has been held in good faith and in peaceful adverse possession by the claimant, his ancestors or grantors under claim of title for more than 20 years. If the ancestor's possession is not in good faith, the chain has been broken, the holding period of the ancestor may not be tacked on and the statutory period begins anew.

Hal W. Bennett, 77 IBLA 399 (Dec. 9, 1983)

Good faith as that term is used in the Color of Title Act, 43 U.S.C. § 1068 (1982), requires that a claimant and his predecessors in interest reasonably believe that no defect exists in the title to the land claimed. The Department may consider whether a claimant's belief was unreasonable in light of the facts actually known or available to the claimant or a predecessor.

Lawrence T. Abraham et al., 82 IBLA 285 (Aug. 31, 1984)

COLOR OR CLAIM OF TITLE--Continued

GOOD FAITH--Continued

An application for a class 1 color-of-title claim requires that the land has been held in good faith, and in peaceful, adverse possession by the claimant or her predecessors in title. Good faith requires that the claimant and her predecessors honestly believe that they were invested with title.

Kim C. Evans, 82 IBLA 319 (Sept. 6, 1984)

An application for a class 1 color-of-title claim requires that the land has been held in good faith and in peaceful adverse possession by the claimant or his predecessors in title. Good faith requires that the claimant and his predecessors in title honestly believe that they were invested with title. Possession of a grazing lease by an applicant constitutes acknowledgement of Federal ownership which negates the requisite good faith.

Felix F. Vigil, 84 IBLA 182 (Dec. 19, 1984)

IMPROVEMENTS

To satisfy the requirements of a class 1 claim under the Color of Title Act, "valuable improvements" must exist on the land at the time the application is filed, or it must be shown that the land has been reduced to cultivation. If land was once cultivated, but is not cultivated at the time the application was filed and has not been cultivated for 10 years previously, the cultivation requirement of the Act has not been satisfied.

Lester and Betty Stephens, 58 IBLA 14 (Sept. 16, 1981)

Improvements relied upon to establish a class 1 color-of-title claim must be present on the land at the time the application is filed and must enhance the value of the land.

Bernard R. Snyder, R. Marie Snyder, 70 IBLA 207 (Jan. 24, 1983)

Where a color-of-title applicant claims that valuable improvements have been constructed, and an investigation reveals that the only improvements existing at the time the application was filed were an abandoned oil well and certain roads or trails providing access to the property, the application was properly rejected for failing to satisfy the requirement for valuable improvements.

Gladys Lomas, 75 IBLA 89 (Aug. 11, 1983)

To establish a class 1 color-of-title claim, made under the Color of Title Act, claimed improvements must enhance the value of the land.

Pedro A. Suazo, Eleanor G. Suazo, 75 IBLA 212 (Aug. 23, 1983)

To establish a class 1 color-of-title claim, made under the Color of Title Act, claimed improvements must enhance the value of the land. A one-lane dirt road that passes through the applied for tract as access to adjacent land cannot be considered a valuable improvement.

Malcolm C. & Helena M. Buston, 80 IBLA 53 (Mar. 29, 1984)

COLOR OR CLAIM OF TITLE--Continued

IMPROVEMENTS--Continued

Where structures on land sought under a color-of-title application clearly enhance the value of the land for uses to which the land may properly be put, such structures constitute improvements of land within the meaning of a class 1 color-of-title claim.

Where the evidence establishes that various structures were destroyed by agents of the Federal Government, the Government will not be heard to argue that such structures did not constitute improvements within the meaning of the Color of Title Act, absent a compelling showing that such structures did not enhance the value of the land at the time of their destruction.

The planting of seedlings and the thinning and pruning of coniferous trees are not acts of cultivation under the Color of Title Act but rather the placement of improvements on the land.

The appraised market value of a parcel of land sought under the Color of Title Act is properly adjusted to subtract the value of the applicant's improvements. The amount properly deducted, however, is not controlled by the applicant's expenditures, but rather is dependent upon the enhancement in value to the tract created by such improvements.

Denton C. Cavin, 83 IBLA 107 (Oct. 5, 1984)

In order to establish a class 1 color-of-title claim, the claimed improvements to the land must have existed on the land at the time the application was filed, and must enhance the value of the land. The lack of valuable improvements will not be fatal to the application if the applicant can prove sufficient cultivation of the land.

Richard P. Montoya, Garrett P. Quintana, Vernon O. Nielson, John G. Romero, Mary Ann Romero, 84 IBLA 52 (Nov. 29, 1984)

In order to establish a class 1 color-of-title claim, an applicant must prove, among other requirements, that valuable improvements have been placed on the land or that some part of the land has been reduced to cultivation.

Felix P. Vigil, 84 IBLA 182 (Dec. 19, 1984)

PRIVITY

Acquiring title to Federal lands by tax deed from a local state authority that mistakenly believes it has title to the lands initiates a new title for the purposes of determining when possession under color of title commenced. There is no privity between the person acquiring the tax deed and any previous owner.

Estate of John C. Brinton, 71 IBLA 160 (Mar. 10, 1983)

Acquiring title to Federal lands by tax deed from a local authority that mistakenly believes it has title to the lands initiates a new title for the purposes of determining when possession under color of title commenced. Thus, a tax deed is sufficient to support a claim of title if held by claimants or their predecessors at the beginning of the 20-year period for class 1 claims.

Paul Marshall et al., 82 IBLA 298 (Aug. 31, 1984)

COMMUNICATION SITES

Appraisals of rights-of-way for communication sites will be upheld where an appellant fails to demonstrate by convincing evidence that the appraisal methods used by the Bureau of Land Management are in error or that the charges are excessive.

Pursuant to 43 CFR 2802.1-7(3) increased charges may not be imposed retroactively, but are only to be imposed by the authorized officer after reasonable notice and opportunity for hearing, beginning with the next charge year after the officer's decision.

James W. Smith, 46 IBLA 233 (Mar. 27, 1980)

"Fair market value." Under the Federal Land Policy and Management Act of 1976 and existing Departmental regulations to the extent practicable, a grantee must pay fair market value for a right-of-way on public land. "Fair market value" is the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

The comparable lease method of appraisal of communication sites, which compares rental data from comparable leased sites with data from the subject site, is the preferred method of determining the fair market rental value of the right-of-way where there is sufficient comparable data available.

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

R & R Service, Inc., 48 IBLA 233 (June 17, 1980)

"Fair market value." Under the Federal Land Policy and Management Act of 1976 and existing Departmental regulations to the extent practicable, a grantee must pay fair market value for a right-of-way on public land. "Fair market value" is the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

The comparable lease method of appraisal of communication sites, which compares rental data from comparable leased sites with data from the subject site, is the preferred method of determining the fair market rental value of the right-of-way where there is sufficient comparable data available.

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

The relevant regulation, 43 CFR 2802.1-7(d), does not absolutely prohibit acceptance of partial payments of past due rentals in all circumstances.

Northwestern Colorado Broadcasting Co., 49 IBLA 23 (July 15, 1980)

COMMUNICATION SITES--Continued

Comparison of the subject communications site right-of-way with other similar sites under lease is an appropriate appraisal method for determining fair market value when current and reliable rental data for comparable sites is available.

Appraisals of rights-of-way for communications sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and appellant fails to show by convincing evidence that the charges are excessive.

Dwight L. Kundel, 55 IBLA 218 (June 18, 1981)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

American Telephone and Telegraph Co., 57 IBLA 215 (Aug. 27, 1981)

Under the Uniform Appraisal Standards for Federal Land Acquisitions (1973), evidence of sums paid by condemning authorities for similar properties, regardless of whether condemnation proceedings have begun, is inadmissible to determine the fair market value of a particular property.

Where the current fair rental value of a communications site right-of-way has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error. However, where the lessee has provided sufficient evidence on appeal to engender substantial doubt as to the data utilized and the conclusion reached in the appraisal report, the matter will be remanded for reconsideration.

Denver and Rio Grande Western Railroad Co., 58 IBLA 4 (Sept. 15, 1981)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

American Telephone and Telegraph Co. (On Reconsideration), 59 IBLA 343 (Nov. 5, 1981)

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

COMMUNICATION SITES--Continued

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), an application for a communication site right-of-way may be accepted or rejected by the Secretary or his duly authorized representative at his discretion. The standard for review of a decision rejecting an application is whether the decision represents a reasoned analysis of pertinent factors with due regard for the public interest. Where the record does not support BLM's decision to reject the application, as amended by subsequent negotiations, it will be remanded for further review.

In connection with an application under FLPMA for a communications site right-of-way, BLM may properly consider site-related technical questions, such as whether and to what degree operation of an FM broadcasting station will result in radio interference with existing uses of the site.

Peregrine Broadcasting Co., 62 IBLA 133 (Mar. 4, 1982)

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

Francis H. Gifford, 62 IBLA 393 (Mar. 24, 1982)

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show convincing evidence that the charges are excessive.

Donald P. Clark, 70 IBLA 39 (Jan. 10, 1983)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure A BLM decision informing appellant of its right to file a request for a hearing with the Board of Land Appeals after BLM has determined the rental does not meet the requirements of 43 CFR 2802.1-7(e) (1979).

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

U.S. Steel Corp., 71 IBLA 88 (Feb. 24, 1983)

COMMUNICATION SITES--Continued

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Where the current fair rental value of a communications site right-of-way has been determined in accordance with accepted appraisal procedures but where the lessee has provided sufficient evidence on appeal to engender substantial doubt as to the data utilized and the conclusion reached in the appraisal report, the matter will be remanded for reconsideration.

Denver & Rio Grande Western Railroad Co., 71 IBLA 352 (Mar. 28, 1983)

The preferred method for appraising the fair market value of nonlinear rights-of-way, including microwave transmission sites, is the comparable lease method of appraisal where there is sufficient comparable rental data and appropriate adjustments are made for differences between the subject site and other leased sites.

Where either the comparable lease or comparable sale method is used to ascertain fair market value of a communications site, such method automatically includes consideration of residual damages and benefits; therefore, the "before and after" test cannot properly be applied in conjunction with either method.

American Telephone & Telegraph Co. et al., 77 IBLA 110 (Nov. 14, 1983)

The preferred method for appraising the fair market value of nonlinear rights-of-way, including microwave transmission sites, is the comparable lease method of appraisal where there is sufficient comparable rental data and appropriate adjustments are made for differences between the subject sites and other leased sites.

Mountain States Telephone & Telegraph Co., 79 IBLA 5 (Feb. 2, 1984)

Where BLM has determined the fair market rental values of a communications site right-of-way in accordance with accepted appraisal procedures but on appeal the grantee presents a summary of evidence that, if proven, would establish that the charge is excessive, the matter will be referred for a hearing at the BLM State Office in accordance with the basic procedural standards set forth in Circle L, Inc., 36 IBLA 260 (1978).

Colorado-Ute Electric Ass'n, Inc., 79 IBLA 53 (Feb. 9, 1984)

Where the BLM granted a communications site right-of-way pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), subject to future appraisal, collection of a rental deposit at the time of the grant with a later adjustment in the annual rental charges upon receipt of an approved fair market value appraisal is not a prohibited imposition of a retroactive rental.

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the

COMMUNICATION SITES--Continued

appraisal methods used by the Bureau of Land Management and the appellant fails to show convincing evidence that the charges are excessive.

Mountain States Telephone & Telegraph Co., 80 IBLA 128 (Apr. 5, 1984)

An appraisal of fair market rental for a communication site right-of-way will not be set aside on appeal if an appellant fails to show error in the appraisal methods used or fails to show by convincing evidence that the charges are excessive.

Southern California Gas Co., 81 IBLA 358 (June 27, 1984)

Under 43 CFR 2802.1-7(e) (1974), which provided that charges for use and occupancy of a right-of-way may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure where the right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and has not been conformed to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1982).

Where BLM appraises a parcel of land subject to a communication site right-of-way for direct sale to the holder of the grant pursuant to sec. 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1713 (1982), it is proper for BLM to appraise the parcel as if unencumbered, since the right-of-way is extinguished upon the right-of-way holder's acquisition of the fee title.

Cole Industries, Inc., 82 IBLA 289 (Aug. 31, 1984)

CONFIDENTIAL INFORMATION
(See also Administrative Procedure: Public Information, Public Records--if included in this Index.)

"Proprietary information." Proprietary information means information which, if disclosed, would do substantial harm to the competitive position of the outside source from which it was obtained and would inhibit the Government's ability to obtain this type of information in the future resulting in a substantial detrimental effect on a Government program. Internally generated Governmental decisions and information are not proprietary.

Southern Union Exploration Co., 51 IBLA 89 (Nov. 5, 1980)

"Proprietary information." Proprietary information means information which, if disclosed, would do substantial harm to the competitive position of the outside source from which it was obtained and would inhibit the Government's ability to obtain this type of information in the future resulting in a substantial detrimental effect on a Government program. Internally generated Governmental conclusions and information are not generally proprietary.

Craig Folson, 82 IBLA 294 (Aug. 31, 1984)

CONSTITUTIONAL LAW

GENERALLY

Department of the Interior, as agency of executive branch of Government, is not a proper forum to decide whether or not the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Alice E. Deetz, 48 IBLA 59 (May 29, 1980)

Abner Weed, 50 IBLA 141 (Sept. 26, 1980)

William O. Bahby, 56 IBLA 190 (July 20, 1981)

Shirley Thompson, Duane E. Thompson, 57 IBLA 154 (Aug. 25, 1981)

Petro-Lewis Corp., Partnership Properties Co., 57 IBLA 300 (Aug. 31, 1981)

The Department of the Interior, as an agency of the executive branch of Government, is not the proper forum to decide whether or not the recordation of mining claims provisions of the Mining in the Parks Act, 90 Stat. 1342, 16 U.S.C. § 1907 (1976), are constitutional.

Elden A. LeRoy, Dorothy A. LeRoy, 49 IBLA 320 (Aug. 20, 1980)

The Interior Board of Surface Mining and Reclamation Appeals is not the proper forum to consider the constitutionality of regulations promulgated by the Secretary.

Amanda Coal Co., 2 IBSMA 395 (Dec. 22, 1980) 87 I.D. 643

The Department of Interior, as agency of Executive Branch of Government, is not the proper forum to decide whether or not the recordation provisions of the Federal Land Policy and Management Act of 1976 relating to mining claims are constitutional.

Marvin E. Brown, Ione E. Brown, 52 IBLA 44 (Jan. 6, 1981)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not the Federal Land Policy and Management Act of 1976 is constitutional.

Lowell L. Potter, 52 IBLA 299 (Feb. 10, 1981)

Hugh A. Johnson, 54 IBLA 144 (Apr. 17, 1981)

Madison D. Locke et al., 55 IBLA 122 (June 25, 1982)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Lynn Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369

Fahey Group Mines, Inc., 56 IBLA 88 (Sept. 24, 1981)

United States Energy Corp., et al., 56 IBLA 159 (Sept. 28, 1981)

Guy A. Matthews, 56 IBLA 246 (Oct. 6, 1981)

Forest Thorne, 56 IBLA 319 (Oct. 16, 1981)

CONSTITUTIONAL LAW--Continued

GENERALLY--Continued

Wayne Cook, 58 IBLA 350 (Oct. 19, 1981)

Edgar W. Cook, Marlene Cook, 58 IBLA 358 (Oct. 20, 1981)

Enterprise Mines, Inc., 58 IBLA 372 (Oct. 20, 1981)

Conoco, Inc., 58 IBLA 390 (Oct. 21, 1981) 88 I.D. 918

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Olive M. Stirland, 65 IBLA 363 (July 20, 1982)

James D. Ross, Maria J. Ross, 72 IBLA 395 (May 5, 1983)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

William Adolph Yonker et al., 54 IBLA 232 (Apr. 27, 1981)

Harwell Mining Co., Wilford F. Montgomery, 56 IBLA 236 (July 22, 1981)

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

Like other entities of the executive branch of the Federal Government, the Board of Land Appeals is not empowered to adjudicate the constitutionality of a statute. That is the province of the judicial system.

David and Boirdon Doreaus, 61 IBLA 367 (Feb. 17, 1982)

The Boards of Appeals of the Department of the Interior do not have the authority to declare duly promulgated Departmental regulations invalid or unconstitutional.

Garrett Conpovichnah v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

The Department of the Interior, as an agency of the executive branch of Government, is not the proper forum to determine the constitutionality of a statute enacted by Congress.

Estate of Mary Martin Mataes Andrew Cave, 9 IBIA 196 (Mar. 15, 1982)

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

CONSTITUTIONAL LAW--Continued

GENERALLY--Continued

Federal statutes governing mineral leasing on the public lands, and regulations duly promulgated pursuant thereto, supersede state laws governing agency relationships to the extent of any inconsistency therewith for purposes of determining the first-qualified offeror for a Federal oil and gas lease.

LSMJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

LSMJ Exploration Group, 74 IBLA 185 (July 18, 1983)

LBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

The Department's mining claim filing regulation providing for filing of information by owners of unpatented mining claims on public domain, and providing consequences for failing to file, does not violate any provision of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Francis Skaw et al., 63 IBLA 235 (Apr. 19, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether a statute enacted by Congress is constitutional.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)

Where a statute limits the Department's authority to consider contests between rival mining claimants, the Department has no authority to consider favorably an argument that it is a denial of equal protection to recognize the right of a nonmineral claimant to contest a mining claim while denying such an opportunity to a rival mining claimant.

Gold Depository & Loan Co., Inc. v. Mary Brock et al., 69 IBLA 194 (Dec. 15, 1982)

The Interior Board of Surface Mining and Reclamation Appeals is not the proper forum to decide constitutional issues.

Gobel Bartley, 4 IBSMA 219 (Dec. 17, 1982) 89 I.D. 628

CONSTITUTIONAL LAW--Continued

GENERALLY--Continued

The Board of Indian Appeals does not have authority to declare a duly promulgated Departmental regulation invalid or to declare an act of Congress unconstitutional.

Diane Zarr v. Acting Deputy Director, Office of Indian Education Programs, 11 IBIA 174 (Apr. 21, 1983) 90 I.D. 172

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether a statute enacted by Congress is unconstitutional.

Joseph A. Barnes et al., 78 IBLA 46 (Dec. 13, 1983) 90 I.D. 550

The Department of the Interior, as an agency of the executive branch of Government, is without authority to waive requirements imposed by statute.

Jerald A. Waters, 78 IBLA 387 (Jan. 31, 1984)

A state retains extensive jurisdiction over Federal lands within its boundary, but Congress is authorized to enact legislation regarding the use and occupancy of the Federal lands. Provisions of state law regarding abandonment of a right-of-way within a reclamation withdrawal must recede where implementation thereof would interfere with the effort of reclamation officials to operate and maintain reclamation facilities as directed by Act of Congress.

County of Imperial, 5 ONA 286 (Mar. 16, 1984)

While it is within the province of the judicial branch to adjudicate the constitutionality of statutes, it is outside the jurisdiction of the Board. The legislative history of the Act of July 6, 1960, shows Congress fully considered the constitutionality of the compensation provisions therein. The Department is bound to follow those provisions.

Andy D. Butledge et al., 82 IBLA 89 (July 17, 1984)

DUE PROCESS

Timely appeal to the Board of Land Appeals suspends the effect of a Bureau of Land Management decision pending outcome of the appeal. Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

State of Alaska, 46 IBLA 12 (Feb. 20, 1980)

Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Alva F. Rockwell and Alva A. Rockwell, 47 IBLA 272 (May 13, 1980)

Max Weiss, 49 IBLA 332 (Aug. 25, 1980)

George H. Ferninore et al., 50 IBLA 280 (Oct. 6, 1980)

CONSTITUTIONAL LAW--Continued

DUE PROCESS--Continued

Wayne M. Mann, 54 IBLA 8 (Apr. 6, 1981)

Earth Sciences, Inc., 80 IBLA 28 (Mar. 28, 1984)

Lamar Burnett et ux., 84 IBLA 166 (Dec. 19, 1984)

Due process consists of notice and an opportunity for hearing. Although the contestee in a Government contest proceeding under the Administrative Procedure Act has a right to be represented by counsel, due process does not require that the Department of the Interior hold a second hearing because appellant did not avail himself of that right at the first hearing.

United States v. Jack McLean, 50 IBLA 290 (Oct. 7, 1980)

Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981) 88 I.D. 31

Pearl C. Barnett, 52 IBLA 273 (Feb. 6, 1981)

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

Robert J. King, L. K. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

John C. and Martha W. Thomas d.b.a. Tungsten Mining Co., 53 IBLA 182 (Mar. 17, 1981)

Faber Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

Rupert Thorne, 58 IBLA 319 (Oct. 16, 1981)

Enterprise Mines, Inc., 58 IBLA 372 (Oct. 20, 1981)

Major G. Atkins, 60 IBLA 284 (Dec. 17, 1981)

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Hugh A. Johnson, 54 IBLA 146 (Apr. 17, 1981)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

Anita Robinson, 71 IBLA 380 (Mar. 29, 1983)

Philip A. Cramer, 74 IBLA 1 (June 21, 1983)

CONSTITUTIONAL LAW--Continued

DUE PROCESS--Continued

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the initial Bureau of Land Management decision, adverse to him, becomes final. Appeal to this Board satisfies the due process requirements.

Gary Willis, 56 IBLA 217 (July 22, 1981)

Mining claimants who have not complied with the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976 have no due process right to an evidentiary hearing before the Department of the Interior to show that their actual intent not to abandon rebuts that section's conclusive presumption of abandonment, since the Department is duty-bound to enforce the conclusiveness of the statute's presumption whenever noncompliance has occurred, and any such hearing would be valueless.

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required preliminary to a decision holding that such claims are invalid.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

John A. Ross, Maxine Lidke, 73 IBLA 16 (May 5, 1983)

B. W. Copeland, 75 IBLA 87 (Aug. 11, 1983)

Shiny Rock Mining Corp. (On Reconsideration), 77 IBLA 261 (Nov. 30, 1983)

Failure to obtain counsel at a hearing into the validity of a mining claim will afford the mining claimant no greater rights on appeal than if he had obtained counsel.

United States v. John Burt et al., 59 IBLA 326 (Nov. 5, 1981)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the adverse Bureau of Land Management decision becomes final. Appeal to this Board satisfies the due process requirements.

Francis Shaw et al., 63 IBLA 235 (Apr. 19, 1982)

An application for an oil and gas lease is a mere hope or expectancy and where a party has no property interest of which it may be deprived there can be no failure of Constitutional due process.

Altex Oil Corp., 73 IBLA 73 (May 17, 1983)

CONSTITUTIONAL LAW--Continued

DUE PROCESS--Continued

An organization which received funding under the Indian Child Welfare Act during one fiscal year has no right to continued funding during a subsequent fiscal year. There is no analogy between the termination of welfare benefits without a hearing and the expiration of a grant under its own terms.

Native Americans for Community Action v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 214 (July 1, 1983) 90 I.D. 283

Due process does not require notice of a right to a prior hearing in every case where an individual may be deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

John D. Archer et al., 75 IBLA 128 (Aug. 15, 1983)

Where one serving as the mayor of a city and village corporation president receives actual notice of and participates in a Native allotment contest proceeding in which the city and village assert an interest, there is no denial of due process as to appellant city and village.

Village & City Council of Aleknagik, May M. Olson, Lawrence Murphy, Sr. (On Reconsideration), 80 IBLA 221 (Apr. 30, 1984)

With respect to a known party claiming a property interest adversely affected by a decision to issue conveyance under the Alaska Native Claims Settlement Act, both the regulations at 43 CFR 2650.7 and the requirements of due process mandate an effort to serve notice of the decision, coupled with a 30-day appeal period from date of service. Where such a party files a notice of appeal within 30 days of service of the decision, but not within 30 days of publication of that decision in the Federal Register, it is error for the Bureau of Land Management to dismiss the appeal as untimely.

Goodnews Bay Mining Co. et al., 81 IBLA 1 (May 14, 1984)

Due process requirements are met so long as notice is given and an opportunity to be heard is granted before deprivation of property becomes final.

Citizens for the Preservation of Knox County, 81 IBLA 209 (June 5, 1984)

CONTESTS AND PROTESTS
(See also Administrative Procedure, Rules of Practice--if included in this Index.)

GENERALLY

Where BLM classifies a 4-acre tract as suitable for disposal under the Small Tract Act, thereby segregating it from acquisition under other public land laws, then grants an individual a lease thereon with option to purchase, pursuant to which the lessee constructs buildings and occupies the tract, the protest and application of an Alaska Native, made for the first time 12 years later, will be rejected, as a matter of law and equity where the Native was claiming 160 acres of different land during the preceding 6 years, and had made no assertion of interest in the small tract, but

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

rather had expressly acknowledged the existence of the leasehold.

Evelyn Alexander, 45 IBLA 28 (Jan. 14, 1980)

The right of appeal is limited to a party to a case adversely affected by a decision of the Bureau of Land Management, and an appeal from a timber sale notice will be remanded to the Bureau of Land Management for treatment as a protest. However, under the circumstances presented here, where the Bureau of Land Management has reviewed the protestant's reasons and, in effect, has made its decision communicating it to the protestant and this Board, no purpose would be served by remanding the case and the Board will consider the matter on its merits.

Julie Adams et al., 45 IBLA 252 (Feb. 4, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, if all else be regular.

Where it appears that a party did not realize that an election of remedies was mandated by Departmental procedures, a decision requiring the initiation of a private contest will be set aside, and the party will be permitted a period of time in which to initiate a private contest or alternatively, waive such private contest and pursue a direct appeal on the question of whether a Government contest should issue.

State of Alaska v. Earl G. Patterson, 46 IBLA 56 (Feb. 22, 1980)

State of Alaska, 48 IBLA 229 (June 17, 1980)

Where a Government contest complaint against a mining claim contains charges which, if proved, would render the claim invalid, and the contestee fails to file an answer to the complaint in accordance with Departmental regulations, the allegations of the complaint will be taken as admitted by the contestee, and the claim is properly declared null and void. The Secretary is without authority to waive the regulations to permit the late filing of an answer.

United States v. Dan Seelinger, 46 IBLA 76 (Feb. 22, (1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from an interlocutory decision which authorizes the State to initiate private contest proceedings to prove lack of qualification on the part of

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

the Native. Rather, it may initiate the private contest within the time period prescribed, or it may appeal the decision of BLM, after it becomes final, to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, all else being regular.

State of Alaska v. Elsie John, 46 IBLA 137 (Mar. 19, 1980)

State of Alaska v. Daniel Jimmie, Bertha A. Williams, 48 IBLA 370 (July 11, 1980)

State of Alaska v. Cora John Smith, 50 IBLA 6 (Sept. 5, 1980)

Where Bureau of Land Management determines that an application for a Native allotment should be rejected for failure to establish use and occupancy of the land, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Estate of Guy C. Groat, Jr., Violet Roehl, 46 IBLA 165 (Mar. 21, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to the Bureau of Land Management that the Native applicant has met the requirements for patent, upon notification to the State, it has an election. The State may initiate a private contest proceeding during the time prescribed to prove lack of qualification of the Native, or the State may await final decision from BLM and then appeal to this Board.

State of Alaska v. Dora David and Cathy Dick, 46 IBLA 177 (Mar. 21, 1980)

A Native allotment applicant who is a minor is not precluded from establishing use and occupancy of the land applied for. However, such use and occupancy must be achieved as an independent citizen in his own right and must be potentially exclusive. The question of a 14-year old's independent use and occupancy is best addressed at a contest proceeding.

Eleanor E. Wood, 46 IBLA 373 (Apr. 8, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaskan Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient, it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska v. Joan M. Marshall, 47 IBLA 85 (Apr. 21, 1980)

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

State of Alaska v. Rosen Chythlook, 47 IBLA 249 (May 13, 1980)

Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing.

United States v. William R. Sorem, 47 IBLA 226 (May 13, 1980)

Where Bureau of Land Management determines that an application for a Native allotment is invalid because the facts are not as stated in the application, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Evan Chukwak, 47 IBLA 241 (May 13, 1980)

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

United States v. George C. Hooker et al., 48 IBLA 22 (May 27, 1980)

The assertion that annual assessment work has not been performed is the assertion of a negative fact. If an examination of the mining claims and the nearby lands does not reveal the accomplishment of the required work, and there is no record of any such work having been performed, then evidence to this effect would be sufficient to establish a prima facie case. It would then devolve upon the claimant to show by a preponderance of the countervailing evidence that he has substantially complied with the statute.

In a Government contest proceeding to determine the validity of a mining claim, the claimant is always the proponent of the rule or order, always the one claiming to have earned the benefit of the mining laws through his compliance therewith. Regardless of whether the issue on which the validity of the claim rests is discovery, mode of location, or performance of assessment work, the relative position and obligation of the contestant and the contestee remain the same.

Where the Government contests the validity of a mining claim for nonperformance of annual assessment work, there is nothing inherent or implied in that action which requires a conclusion that the claim is valid in all other respects, nor may the bringing of such an action be treated as tantamount to an admission by the Government that "property rights in the claim have been established by the making of a valid location."

United States v. Catlin Bobbe et al., United States v. Exxon Corp. et al., United States v. Aldabelle Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 248

The motivation of any Government agency in initiating a contest against mining claims is irrelevant. The fact that such contest challenges the validity of certain mining claims and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

United States v. R. H. MacLaughlin, Christine MacLaughlin, 50 IBLA 176 (Sept. 30, 1980)

The procedure followed by the Department of the Interior in the initiation of mining contest cases is in compliance with the due process clause of the United States Constitution and the Administrative Procedure Act, 5 U.S.C. § 551 (1976).

United States v. Harry E. Gray, 50 IBLA 209 (Sept. 30, 1980)

Due process consists of notice and an opportunity for hearing. Although the contestee in a Government contest proceeding under the Administrative Procedure Act has a right to be represented by counsel, due process does not require that the Department of the Interior hold a second hearing because appellant did not avail himself of that right at the first hearing.

United States v. Jack McLean, 50 IBLA 290 (Oct. 7, 1980)

The motivation of any Government agency in initiating a contest against mining claims is irrelevant. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

United States v. Leon E. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

A sufficient prima facie case by the Government does not require positive proof that there has been no discovery made or that the mining claim is nonmineral in character. Upon the Government's presentation of a prima facie case, the burden shifts to the claimant to prove by a preponderance of the evidence that he indeed has effected a discovery of a valuable mineral deposit within the limits of the claim.

United States v. Graham R. Corns, 53 IBLA 5 (Feb. 26, 1981)

At any time prior to the issuance of patent, protest may be filed against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings. Such protest cannot, however, be sustained on the basis of the protestants' allegation that they are the owners of a conflicting claim which now is deemed abandoned and void as a matter of law.

Paula Troester Saragoza et al., 53 IBLA 247 (Mar. 19, 1981)

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

Where the Government contests the validity of a mining claim, it bears only the burden of establishing a prima facie case of lack of discovery; the burden then shifts to the claimant to overcome the Government's showing by a preponderance of the evidence. A prima facie case is established when a Government mineral examiner testifies that he examined the claim and found insufficient evidence of the discovery of a valuable mineral deposit.

United States v. Leon Boyce and Thomas Bokita, 59 IBLA 268 (Oct. 29, 1981)

A contestee in Government contests, challenging the validity of his mining claim and millsite, must file answers to the complaints within 30 days of service, failing which BLM properly takes the truth of the allegation in the complaints as admitted without a hearing.

New evidence offered on appeal after BLM has rendered a determination that a mining claim is null and void, following the contestee's failure to answer the contest complaint, may be considered by the Board only to determine if BLM's ruling is so patently erroneous that there should be further inquiry into the facts. Appellant's unsupported suggestion that there might be rich ore on the claim does not justify further inquiry.

United States v. Anton T. Kvalt, 62 IBLA 116 (Mar. 4, 1982)

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

United States v. Evelyn M. Bunch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald H. Braniff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

It is proper to declare unpatented mining claims null and void without a hearing where the answer in a private contest complaint was not filed in accordance with the requirements set out in 43 CFR 4.450-6.

Phillips Petroleum Co. v. Melvin Bradshaw et al., 66 IBLA 234 (Aug. 17, 1982)

In an oil shale mining claim contest, the Government bears only the burden of going forward with sufficient evidence to establish a prima facie case of invalidity, and the burden then shifts to the claimant to overcome this showing by a preponderance of the evidence. However, since abandonment and lack of good faith are questions of intent, the Government bears the ultimate burden of proving these charges.

Where evidence creates only inferences of lack of good faith in the location and holding of mining claims and fails to show clearly that these claims were abandoned, these charges are not sustained.

United States v. Weber Oil Co. et al., 68 IBLA 37 89 I.D. 538 (Oct. 21, 1982)

Under 43 CFR 4.450-1, a private contest may be brought to have a claim invalidated for any reason not shown by the records of the BLM. Because compliance with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), can only be resolved by the records of BLM, no private contest may be maintained solely on the basis of that issue.

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Where a statute limits the Department's authority to consider contests between rival mining claimants, the Department has no authority to consider favorably an argument that it is a denial of equal protection to recognize the right of a nonmineral claimant to contest a mining claim while denying such an opportunity to a rival mining claimant.

Gold Depository & Loan Co., Inc. v. Mary Brock et al., 69 IBLA 194 (Dec. 15, 1982)

Where the owner of an interest in a mining claim dies prior to the filing of a contest complaint against the claim, service of the complaint must be made on the claimant's heirs, or any adjudication following from the complaint does not affect the interest held by the heirs.

United States v. Joseph Laczkowski & Kyle G. Jones (Montney), 71 IBLA 364 (Mar. 28, 1983)

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

It is not the function of the Board of Land Appeals to make an inquiry into the motivation of any Government agency which has initiated a contest against mining claims. The fact that such contest challenges the validity of certain mining claims, and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

United States v. Lee H. Rice, Goldie E. Rice, 73 IBLA 128 (May 23, 1983)

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

INCO Services, 73 IBLA 374 (June 15, 1983)

BLM may not summarily dismiss a private contest complaint against a homestead entry for failure to file with BLM proof of service on the contestee within 30 days of service, as required by 43 CFR 4.450-3, where the evidence indicates that the contestant actually served the complaint and the contestant files proof of such service on appeal.

BLM may not dismiss a private contest complaint against a homestead entry for failure to offer reasons, not a matter of public record, in accordance with 43 CFR 4.450-1, where the complaint alleges failure to establish a residence within 6 months after the date of entry, as required by 43 CFR 2567.5(a), and the BLM land report, which concluded that there was such failure, was based on an examination of the land prior to the last day on which a residence could be established.

BLM must dismiss a private contest complaint against a homestead entry where it is not supported by the affidavit of a corroborating witness which alleges facts which, if proved, would subject the homestead entry to cancellation as required by 43 CFR 4.450-4(c).

Jessie L. Wiggeart v. Glenn W. Price, 74 IBLA 373 90 I.D. 338 (July 29, 1983)

Where the Bureau of Land Management refers a complaint about the issuance of a crossing permit under 43 CFR 4130.4-3 directly to an Administrative Law Judge for hearing, without taking any action, the decision of the Administrative Law Judge must be vacated.

Jones & Sandy Livestock, Inc., 75 IBLA 40 (Aug. 5, 1983)

Where conflicting evidence existing in the case file and submitted on appeal concerning a Native allotment applicant's use and occupancy of the land raises factual issues, the Bureau of Land Management should initiate a Government contest so that the factual issues can be resolved at a hearing.

Katsailand, Inc., et al., 77 IBLA 347 (Dec. 5, 1983)

CONTESTS AND PROTESTS--Continued

GENERALLY--Continued

Under 5 U.S.C. § 504 (1982) and 43 CFR 4.603, 48 FR 17596 (Apr. 25, 1983), an adversary adjudication is one required by statute to be conducted by the Secretary under 5 U.S.C. § 554 (1982). Because there is no statutory requirement that a mining claim contest be conducted under 5 U.S.C. § 554 (1982), mining claim contests are not proceedings covered by Equal Access to Justice Act.

Kaycee Bentonite Corp., 79 IBLA 182 (Feb. 28, 1984) 91 I.D. 138

CONTRACTS
(See also Appeals, Claims Against the United States, Delegation of Authority, Labor, Rules of Practice--if included in this Index.)

GENERALLY

"Interest in an oil and gas lease or offer." Where an oil and gas lease offeror in a written agreement gives another person a security interest in any lease issued pursuant to an offer filed under the agreement to secure only payment of lease rentals advanced by that person, that person does not have an interest in the lease offer within the meaning of 43 CFR 3102.7 (1979), requiring the disclosure of interested parties.

Warren B. Haas, 57 IBLA 247 (Aug. 28, 1981)

The signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is the act that constitutes issuance of the lease and creates a binding contract. A subsequent decision not to issue oil and gas leases in an area will not support cancellation of a preexisting lease. Cancellation of a lease based on a post-lease event is limited to circumstances where there has been a statutory or regulatory violation or a violation of the lease terms.

Carl J. Taffera, 71 IBLA 72 (Feb. 22, 1983)

Disputed allegations do not constitute evidence and cannot be accepted as proof of facts. Where a contractor asserts that a termination is a breach because it involves a lack of good faith motivated by a specific intent to injure the contractor but offers no evidence to support the constituent facts necessary to find such a breach, no breach may be found.

A contract should be interpreted so as to give a reasonable meaning to all its parts and its provisions should not be construed as conflicting unless no other reasonable construction is possible.

Because a contract provision is superfluous, it is not necessarily ambiguous, and the presence in the same contract of two provisions directed at alternative methods for termination does not, of itself, result in an ambiguity.

Appeal of David E. Brown, Jr., IBCA-1600-7-82 (Mar. 31, 1983)

Ordinarily, the signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is equivalent to issuance of the lease and creates a binding contract. However, where a regulation provides that no oil and gas lease offers will be accepted on lands withdrawn for the protection of wildlife, and the authorized officer fails to follow the

CONTRACTS--Continued

GENERALLY--Continued

regulation, such signing is not authorized and, therefore, not binding on the Secretary.

D. R. Yates, 74 IBLA 159 (July 12, 1983)

Cancellation of a lease or portion of a lease is improper when it was not issued in violation of any statute or regulation.

John Bloyce Castle, 81 IBLA 53 (May 22, 1984)

CONSTRUCTION AND OPERATION

Generally

Where a cost-plus-fixed-fee contractor has signed a contract amendment accepting the auditor's recommended overhead rates and no proof is offered to support claims for other disallowed costs, the Board finds there was a binding agreement on overhead rates and a failure to prove appellant's claims for other costs.

Appeal of National Institute for Community Development, Inc., IBCA-1185-3-78 (Mar. 28, 1980) 87 I.D. 116

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting against multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of Eden Capital Corp. and its clientele where there are ambiguities in the complex contract which provides for a preliminary division of lease obligations and proceeds and establishment of a lease escrow fund to protect funds promised to the client if the client exercises an option by which Eden will buy all leases in a particular lease program subscribed to by the client, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients of Eden have given to the terms.

Harry S. Hills, Kenneth E. Roth, 48 IBLA 356 (July 11, 1980)

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of a leasing service and its clientele where there are ambiguities in the complex contract between them, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients have given to the terms.

Valerie Keller, Elizabeth E. Drozda, 49 IBLA 303 (Aug. 20, 1980)

The Board of Land Appeals will not order a fact-finding hearing to determine whether a pool agreement violates regulations requiring disclosure of other parties in interest in a simultaneous oil and gas lease filing where there are no ambiguities in the agreement and it is clear that there are other parties in interest to the lease offer other than appellant.

Ilean M. Landis, 59 IBLA 353 (Nov. 9, 1981)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Generally--Continued

An appeal is denied where a painting contractor claiming an equitable adjustment for increased costs fails to show that the Government breached a duty to disclose superior knowledge regarding multiple layers of paint and information on an effective stripping agent because such information could reasonably be obtained by painting contractors during a site visit or from customary trade sources and the information was not found to be vital to the performance of the contract.

Appeal of B. B. Crum Construction Co., IBCA-1627-10-82 (June 22, 1983)

Where the contractor reasonably interpreted contract provisions covering the excavation and placement of gravel for a building slab and the supplying of certain flooring timbers not to be his responsibility, the Board held the contractor entitled to compensation for extra work when the Government ordered performance of those tasks not required under the contractor's interpretation.

Appeal of C. G. Norton Co., IBCA-1647-1-83 (Nov. 14, 1983)

Actions of Parties

Where the scope of the work in the contract specifications included providing complete electrical service to the project and clearly indicated that in doing so the contractor must meet the requirements of the serving electric utility, the contractor assumed the risk of the cost of complying with those requirements when it failed to ascertain or inquire, before submitting its bid, what those costs might be.

Appeal of R. J. Pirbo Enterprises, Inc., IBCA-1266-5-79 (July 30, 1980) 87 I.D. 337

Where a contractor alleged that differing site conditions were encountered in constructing bored tunnels for the Navajo Indian Irrigation Project and resolution of the question as to what the contract indicated turned on the construction to be placed on the specifications and drawings relating to the nature of the support required to support the tunnels, as well as upon a Government estimate that approximately 80 percent of the tunnels would require support other than rockbolts, the Board found the contract to have indicated that the deterioration and disintegration encountered in driving the tunnels would be primarily of a surficial nature. In so finding the Board noted that in the disputed area the contract appears to be susceptible of more than one reasonable interpretation and that within the zones of reasonableness the Government as the author has to share the major responsibility for communicating its intentions as well as the main risk of failure to carry out that responsibility. Heavily weighted by the Board in reaching its decision was the fact that all four of the lowest bidders appeared to have construed the contract to indicate that the tunnels could be supported virtually entirely with rockbolts and that that construction was apparently known to the project construction engineer at the time of bid opening based upon his analysis of the bids received.

Appeal of Flour Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981) 88 I.D. 41

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Actions of Parties--Continued

A termination for default of a seeding contract is found to be proper where (i) the appellant fails to show that the work ordered by the contracting officer's representative was not required by the technical specifications; (ii) the time allowed for performance of the contract had passed by the time the notice of termination was issued; and (iii) no excusable cause of delay had been shown to exist.

Appeal of Building Maintenance Specialist, Inc., IBCA-1397-9-80 (June 15, 1981)

Where an appellant acknowledges that it received a purchase order calling for moving Government-owned furniture and furnishings shortly prior to the move and the record shows that without making a protest of any kind the contractor proceeded with the move and that it subsequently billed the Government for the services rendered in accordance with the rate stated in the purchase order, the Board finds the purchase order to constitute the agreement of the parties.

Appeal of Alpine Moving and Storage, IBCA-1434-2-81 (Oct. 21, 1981) 88 I.D. 979

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81 (Feb. 12, 1982)

A claim for additional rock excavation is denied where the Board finds (i) that the contract provided for volume of excavation to be measured by the average end area method; (ii) that all excavation including rock boulders was so measured; and (iii) that the appellant failed to show by a preponderance of the evidence that there were any rock boulders placed in embankments for which it has not been paid.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

In interpreting a contract, statements of authorized Government officials made at a preproposal conference, attended by prospective bidders, can and should be taken into account in ascertaining the parties' intentions and joint understanding of the contract requirements.

Statements made at a preproposal conference by the designated contracting officer's technical representative (COTR) who presided at the conference, are binding upon the Government when it is determined that (i) the COTR was the "authorized representative" of the contracting officer within the meaning of clause 1(b) of the General Provisions of the contract; (ii) there is no evidence that bidders who attended the conference were made aware of any limitations of the COTR's authority; (iii) the COTR played an extensive role in the preparation of the solicitation; and (iv) the testimony of the COTR indicated that he had no reason to believe that he was not authorized to make such statements.

Appeal of Pettijohn Engineering Co., Inc., IBCA-1346-4-80 (May 26, 1983)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Actions of Parties--Continued

Where three of four extra work orders covering drilling and blasting work performed by a subcontractor provided for no reimbursement to the contractor and where the fourth extra work order was used as a vehicle to reimburse the contractor for the rental of its pumps at agreed upon rates without any evidence having been offered at the hearing to show that any amount was included therein for costs resulting from delays to the contractor's work, the Government's contention that the contractor's acceptance of the four extra work orders constituted an accord and satisfaction is rejected by the Board since it is well settled that an agreement does not operate as an accord as to matters not covered by the agreement.

Appeal of Clark & Hirt, IBCA-1508-8-81 (Feb. 9, 1984)
91 I.D. 71

Where for over half the duration of the contract performance period the contractor routinely submitted direct billings for holiday pay, and the responsible Government official approved and certified them, and payment was made to the contractor, the Board finds that such conduct by the parties prior to the onset of a dispute, is entitled to great weight in determining that the contract did not contain overhead rates for holiday pay.

Boving Services, Ltd., IBCA-1500-12-81 (Apr. 9, 1984)

The Board finds that the contractor is entitled to an equitable adjustment under the changes clause where the contractor's superintendent stated that he gave the Government permission to remove two piles of dirt and debris but reserved a third pile of clean fill dirt at another location, and the Government removed all three piles. The Government offered no direct evidence to explain its actions, which caused the contractor to purchase other fill dirt to replace the 2,500 cubic yards taken without permission.

Appeal of Bruce Anderson Co., Inc., IBCA-1633-10-82 (Nov. 30, 1984)

Allowable Costs

Where a contractor is found to have failed to maintain a system of cost records as required in the cost reimbursable contract, an affidavit of the contractor's project director prepared 5 years later is found to be insufficient evidence that unsupported retroactive cost transfers to the contract were costs actually incurred in performance of the contract.

Appeal of Washington University, IBCA-1228-11-78 (Mar. 4, 1980)
87 I.D. 88

Where a cost-plus-fixed-fee contractor has signed a contract amendment accepting the auditor's recommended overhead rates and no proof is offered to support claims for other disallowed costs, the Board finds there was a binding agreement on overhead rates and a failure to prove appellant's claims for other costs.

Appeal of National Institute for Community Development, Inc., IBCA-1185-3-78 (Mar. 28, 1980) 87 I.D. 116

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Allowable Costs--Continued

Where a cost-plus-fixed-fee contract expressly provides for the payment of finally negotiated overhead rates notwithstanding the foregoing provisions which include the limitation of costs provision, the Board finds that the amount determined for overhead costs is not subject to the limitation of the contract estimated costs.

Appeal of Kirschner Associates, Inc., IBCA-1319-12-79 (Apr. 1, 1980)

Where performance by a construction contractor was timely completed and no issue of liquidated damages is presented, an unforseeable, area-wide cement shortage causing increased cost to the contractor will not entitle the contractor to a compensatory adjustment.

Appeal of Lapar D. Construction Co., IBCA-1224-11-78 (May 20, 1980)
87 I.D. 280

Where, upon remand from the Court of Claims, the Board was directed to make a specific finding as to whether, if pipes rejected for small diameters or marked as special hydros had been available for use, the supply of acceptable pipe would have been sufficient to allow pipe laying operations to continue and the contractor merely alleged that its average production of pipe was greater than the average number of pipe it was required to furnish to its pipe laying subcontractor, the contractor's allegations obscured the fact that its own production and construction schedule called for specific sizes and lengths of pipe at specific times. The Board found that the contractor's total production was insufficient to maintain the contractor's own pipe laying schedule and therefore denied the contractor's claim for reimbursement of the payment it made to settle the delay claim of the subcontractor.

Appeals of Cen-Vi-Ro of Texas, Inc., IBCA-728-5-68 & IBCA-755-12-68 (June 27, 1980)
87 I.D. 230

Where a cost-plus-fixed-fee contract expressly provides for the payment of finally negotiated overhead rates notwithstanding the foregoing provisions which include the limitation of cost provision, the Board finds that a claim for additional overhead costs is not subject to the limitation of the contract estimated costs.

Under a cost-plus-fixed-fee contract where indirect costs are disallowed as excessive or not directly related to the performance of the contract, the Board finds the determination of allowable costs to improperly apply the standard for direct costs to indirect costs and on review of the costs in question finds entitlement to a portion of the disallowed costs.

Appeal of Dynadrop, Inc., IBCA-1329-1-80 (Apr. 8, 1981)
88 I.D. 423

Where the invitation for bids instructs potential bidders to submit bids on each of three schedules independent of the other, and the bidder to whom the contract was ultimately awarded incurs additional cost as a result of anticipation of award of one of the schedules not included in the contract awarded, the Board holds that such cost must be borne by the contractor.

Appeal of Keller Steel Builders, Inc., IBCA-1275-6-79 (Apr. 29, 1981)
88 I.D. 518

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Allowable Costs--Continued

Under a cost sharing contract wherein the Government agreed to reimburse approximately one-third of a refiner's cost of demonstrating a process of recycling waste oil into commercial end products and requiring the contractor to document the process in a final report to be made available to the public, the Board finds that the credits and rebates general provision does not entitle the Government to a share of the profits from the sale of the end products because the schedule provisions for payments to the contractor take precedence over the general provisions, and the allowance of the credit claimed by the Government would require a strained interpretation of the contract terms to require appellant's contract performance at little or no cost to the Government.

Appeal of Shale Development Corp., IBCA-1256-3-79 (May 18, 1981)

Under a cost-plus-fixed-fee contract wherein the Government has agreed to reimburse the contractor for its allowable costs not exceeding a ceiling amount for reimbursement, the Board finds the disallowance of costs alleged to have resulted from an unauthorized change to have been improper because the otherwise allowable costs exceeded the contract ceiling amount by more than the disallowance.

Appeal of IBT Corp., IBCA-1347-4-80 (Sept. 25, 1981) 88 I.D. 877

Under two cost-no-fee contracts with an educational institution requiring the work to be done in accordance with appellant's proposals and providing for a fixed-dollar amount to be paid for overhead expenses, the Board denies claimed overhead expenses attributable to the terminated portion of the performance time under the contracts and denies recovery as direct expense the salary of the project director because neither proposal contemplated this expense to be a direct cost.

Appeal of Washington State University, IBCA-1467-6-81 & 1469-6-81 (Nov. 9, 1981) 88 I.D. 1016

Where a Government audit of a cost-plus-fixed-fee contract raised questions about the reasonableness of certain items of cost and the allocability of other cost items, and the contracting officer's decision generally followed the findings in the audit report, the reasonableness of cost items was a question of fact for the Board to decide and the allocability of costs pursuant to procurement regulations was likewise a matter for the Board to decide.

Onyx Corp., IBCA-1350-8-80 (Apr. 14, 1982)

Where the Board found that the contracting officer had unreasonably disallowed certain costs in their entirety because of the difficulty of allocability, mainly resulting from subcontract work extending beyond the date of acceptance of the final report for the required research study, but also found that the contract work was timely performed, accepted as satisfactory, and was of considerable benefit to the Government; the Board held, by the jury verdict approach, that appellant was entitled to a portion of its claimed additional costs in the amount of $85,000.

Appeal of Erring Research Institute, IBCA-1169-10-77 (June 25, 1982) 89 I.D. 350

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Allowable Costs--Continued

In a case in which the appellant's motion for summary judgment is denied and the Government's cross motion for summary judgment is granted, the allowance of interest on borrowings (however represented) as part of an equitable adjustment is found to be prohibited by a provision of the Federal Procurement Regulations incorporated into the contract by reference.

Appeal of Ferguson Construction Co., IBCA-1681-6-83 (Oct. 28, 1983)

In its quantum consideration, after finding entitlement to equitable adjustments, the Board allowed amounts claimed by the contractor for depreciation, and improperly withheld by the Government for liquidated damages. It approved the claimed rate of profit disallowed by the Government auditor and the bulk of the audited total costs. However, the Board disallowed a claim for the increased price of asphalt upon finding a failure of proof that either the contractor or its supplier paid or incurred increased costs for asphalt, and, disallowed a claim for costs attributed to a winter shutdown upon finding that the contractor had agreed that such shutdown would be at no additional cost to the Government. Upon finding some fault with the Government audit upon which the contractor based its total cost theory of recovery, and dissatisfaction with the accuracy or specificity available for a precise calculation of certain other costs claimed, as well as with the contractor's proposed formula for calculating costs per day for days of delay, the Board determines that application of the jury verdict approach is both practicable and reasonable in arriving at the equitable adjustment award to the contractor.

Appeal of Burlie Brothers Contracting Co., IBCA-1175-11-77 (Jan. 27, 1984) 91 I.D. 51

Where a contractor appeals from a Government claim for refund of overpayments of overhead expense based on excluding purchased labor from the direct labor base, the refund claim is denied and the appeal is sustained where the parties entered into an agreement for a fixed overhead rate during performance without defining the direct labor base, and the evidence supports appellant's claim that negotiations and invoicing were based on its consistent practice of including purchased labor in the base.

Appeal of Management Concepts, Inc., IBCA-1601-7-82 (July 10, 1984)

Changed Conditions (Differing Site Conditions)

Where, under the standard Differing Site Conditions Clause of the contract, a construction contractor claims entitlement to increased costs caused by heavy rains or other adverse weather conditions, and the undisputed facts indicate no fault on the part of the Government, the contractor has failed to state or prove a claim upon which relief may be granted.

Appeal of The Holloway Cos., IBCA-1182-3-78 (Feb. 11, 1980) 87 I.D. 56

Under a contract for the construction of two concrete lined tunnels for the Navajo Indian Irrigation Project (Tunnel Nos. 3 and 3A) the Board finds a first category differing site conditions claim to have been

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changed Conditions (Differing Site Conditions) --Continued

established with respect to constructing Tunnel No. 3 where the conditions encountered by the contractor in that tunnel were shown to be materially different from those indicated in the contract.

In a case involving the assertion of first and second category differing site conditions claims under a contract for the construction of two concrete lined tunnels (Tunnel Nos. 3 and 3A), a first category differing site conditions claim was not established with respect to Tunnel No. 3A where the Board found the contract to have indicated that the deterioration and disintegration to be anticipated in constructing the two tunnels would be primarily surficial in nature but the evidence offered failed to show that the rock failures and fallout encountered in Tunnel No. 3A were due to overstressing and therefore nonsurficial in nature.

A second category differing site conditions claim, asserted under a contract for the construction of two concrete lined tunnels for the Navajo Indian Irrigation Project (Tunnel Nos. 3 and 3A), is denied where the basis for the claim is that the rock failures and fallout encountered in constructing Tunnel No. 3A were due to overstressing (shear type failures) but the evidence of record failed to show that overstressing was the cause of such rock failures and fallout as occurred in that tunnel.

Appeal of Fluor Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981) 88 I.D. 41

A claim asserted under a Changed Conditions Clause by reason of alleged withholding of material information (first category) is denied where there is no evidence of record indicating that the Government either withheld material information or otherwise misrepresented the conditions the contractor would encounter in performing a tree thinning contract.

Appeal of Mero & Associates, Inc., IBCA-1292-8-79 (Feb. 19, 1981) 88 I.D. 304

A Government motion for summary judgment is granted and a claim for differing site conditions (based upon damages to the jobsite caused by runoff from a severe rainstorm) is denied where the Board finds that if all of appellant's factual allegations are accepted as true neither the differing site conditions clause nor any other clause in the contract provides a basis for granting the appellant relief for the claim asserted.

Appeal of McCutcheon-Peterson (JV), IBCA-1392-9-80 (Mar. 12, 1981) 88 I.D. 361

Where under a reroofing contract the quantity of roofing required to be used is substantially greater than the quantity of roofing estimated by the Government and it is determined that the quantity of roofing required for performance of the contract could not have been verified by a prebid investigation, the Board finds that the substantially greater amount of roofing required to complete the contract work than the Government had estimated constitutes a first category differing site condition for which the contractor is entitled to an equitable adjustment under the Differing Site Conditions clause.

A second category differing site conditions is found to exist where the Government tacitly acknowledged that double roofing encountered under a contract calling for reroofing of a building in Miami, Florida, constituted an unknown condition and the testimony offered in support of the contractor's claim shows that while double roofing is not unusual in some areas of the country, it is unusual in the southern areas where there is a lot of mildew and moisture, humidity, as would be true of the particular locale in which the instant contract was performed.

Appeal of Singleton Contracting Corp., IBCA-1413-12-80 (Aug. 12, 1981) 88 I.D. 722

Where under a reroofing contract the quantity of roofing required to be used is substantially greater than the approximate quantities estimated by the Government in the invitation for bids and there was no provision included therein requiring or requesting that the quantities specified be verified by prospective bidders, the Board finds that the substantially greater amount of roofing required to complete the contract work than the Government had estimated constituted a first category differing site condition for which the contractor is entitled to an equitable adjustment in the contract price.

Appeal of Elliott's Roofing Co., IBCA-1330-1-80 (Sept. 23, 1981) 88 I.D. 836

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81 (Feb. 12, 1982)

Where the quantity of sediment removed from a canal was approximately 125 percent greater than the quantity of sediment removal estimated by the Government, and such estimate being the only information available to the contractor upon which to base its bid, and it is determined that the quantity of sediment removal required for performance of the contract was impossible to verify by a mandatory prebid investigation, the Board finds that in such circumstances the contractor had no alternative but to base its bid upon the estimated quantities of sediment furnished by the Government, and that the additional amount of work required to complete the contract in excess of the Government estimate constitutes a first category differing site condition for which the contractor is entitled to an equitable adjustment.

Appeal of Syblon-Reid Co., IBCA-1313-11-79 (Sept. 17, 1982)

Under a contract which required the reconstruction of an earthen dike, where, in the course of performance, the contractor was confronted with unusually large boulders, the Board held the contractor entitled to category (2) or, alternatively, category (1) differing site conditions relief for extra costs incurred based upon the following findings: (a) That a site inspection did not disclose the existence of the boulders in the dike; (b) that the Government failed to communicate to bidders available information concerning the existence of the boulders; (c) that the contract documents gave no indication of their existence; (d) that the Government inspector carelessly miscommunicated a prohibition against blasting to protect nesting osprey despite no prohibition against blasting

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changed Conditions (Differing Site Conditions) --Continued

in the contract documents; and (e) that the term "unclassified excavation" in the circumstances does not include "rock excavation" when blasting is prohibited.

Appeal of Industrial Machine & Welding, Inc., IBCA-1322-12-79 (July 11, 1983) 90 I.D. 308

Provisions in the specifications requiring rock excavation of a seawall foundation coupled with the prohibition against blasting, cannot be interpreted as the intention of the parties that the contractor be required to utilize every possible mechanical means to excavate any and every type of rock condition encountered at the site. The Government's argument that a proper site visit would have disclosed outcroppings of massive rock and thus put the contractor on notice that similar type rock would exist below the surface making excavation difficult, is unpersuasive as a contractor may rely on the indications contained in the contract.

A contractor's claim for an equitable adjustment based upon an alleged differing site condition was not barred by its failure to give formal written notice of the differing site condition since the Government had actual knowledge of such condition from the contractor's submission of alternative designs for anchoring the seawall. The contractor's designs were based on the actual rock conditions disclosed by partial excavation and not upon subsurface investigation by drilling, as were the Government's designs.

Roger J. Au & Son, Inc., IBCA-1303-9-79 (Sept. 14, 1983) 90 I.D. 401

Changes and Extras

Where the Government modified an invitation for bids by adding a note regarding grouting of equipment to two drawings but failed to change the drawings of circuit breakers to show placement of the grout and failed to change the specifications to require grouting of the circuit breakers, the Board held, under the rule of contra proferentem that the contractor's interpretation that the contract did not require grouting of the circuit breakers was reasonable and should prevail. The Government's direction to grout 17 of 21 Government-furnished circuit breakers was a change which entitled the contractor to an equitable adjustment.

Appeal of Slater Electric Co. of California, IBCA-1283-7-79 (Apr. 7, 1980) 87 I.D. 121

The Board finds that constructive changes occurred: (1) when the Contracting Officer's representative directed the contractor to pour concrete into forms, slightly out of compliance, but approved by him with knowledge that some overruns might result; and (2) when the contract documents did not specify the requirement for construction of diversion works at certain sites, neither of the contracting parties being aware of the need for such construction until flooding by upstream activities of third parties, and the Contracting Officer's representative ordered the diversion works constructed which was necessary to complete the project, advised the contractor that it would be paid for the extra costs incurred, and notified the Contracting Officer by letter which enclosed a copy of the

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

project plans with the diversion channels for the extra construction drawn in.

Appeal of Lamar D. Construction Co., IBCA-1224-11-78 (May 20, 1980) 87 I.D. 180

Where an earlier decision of the Board upheld the Government's interpretation of internal diameter tolerances in the manufacture of concrete pipe but the Court of Claims held that the tolerances were too strict and remanded the appeal to the Board for reconsideration of the equitable adjustment to include the effects of erroneous rejections of pipe for small diameters, the Board found that the effects of the Government's actions were so intermingled with the effects of actions for which the contractor was responsible that no formula could be devised to make a precise apportionment of the causes of inefficiencies. In the absence of any sound basis for a precise determination, the Board utilized a jury verdict approach to allow the contractor an equitable adjustment for the effects of the Government's actions early in the production of concrete pipe.

Appeals of Cop-Ti-Ro of Texas, Inc., IBCA-718-5-68 & IBCA-755-12-68 (June 27, 1980) 87 I.D. 230

A claim predicated upon defective specifications is denied where assuming arguendo that the specifications were defective, the appellant failed to show that it incurred any additional costs by reason of the allegedly defective specifications.

Appeal of Bero & Associates, Inc., IBCA-1292-8-79 (Feb. 19, 1981) 88 I.D. 304

A claim for hauling stones for use as riprap greater distances than would have been necessary if the Government had approved other sources for riprap is denied where the Board finds that the Government's refusal to permit the use of designated portions of its lands for sources of riprap was authorized by the contract specifications and the contract provision relied upon by the contractor was found not to provide a basis for recovery where it was neither shown nor alleged that the contractor or its employees had discovered any archaeological evidence which had been reported to the contracting officer or that that officer had directed any delay or change in the work as a result of such discovery having been reported to him.

Appeal of Allen Stuber, d.b.a. Stuber Construction Co., IBCA-1369-6-80 (Mar. 11, 1981)

A claim asserted under the Changes clause for increased costs resulting from actions of the President in decontrolling the price of heavy crude oil is dismissed as being outside the jurisdiction of the Board since the President's action was a sovereign act taken as part of the program to maintain or increase production of heavy crude oil.

Appeal of Martin K. Eby Construction Co., Inc., IBCA-1389-9-80 (Apr. 8, 1981) 88 I.D. 431

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

Where at least four of seven bidders shared the same interpretation of the method of construction required by a contract for the construction of a bridge and none of the bidders were shown to have a different interpretation, the Board finds the contractor's interpretation to be reasonable and further finds that the Government's insistence on a different and more costly method of construction was a constructive change for which the contractor is entitled to an equitable adjustment.

Appeal of S & W Contracting Co., Inc., IBCA-1307-10-79 (May 6, 1981) 88 I.D. 527

A termination for default of a seeding contract is found to be proper where (i) the appellant fails to show that the work ordered by the contracting officer's representative was not required by the technical specifications; (ii) the time allowed for performance of the contract had passed by the time the notice of termination was issued; and (iii) no excusable cause of delay had been shown to exist.

Appeal of Building Maintenance Specialist, Inc., IBCA-1397-9-80 (June 15, 1981)

A claim for an equitable adjustment under the Changes Clause is allowed to the extent that the claims submitted are found to have involved the placement of fumigated topsoil in planters in excess of the quantity required based upon a reasonable interpretation of the applicable specifications. As the contractor failed to separately record costs related to the changed work relying rather upon its bid estimate, the amount of the equitable adjustment to which the contractor is entitled is determined by resort to the "jury verdict" approach.

Appeal of Wakoosa Contracting Corp., IBCA-1408-11-80 (June 30, 1981)

A claim for the cost of preparing a technical inventory of field tapes and other data furnished by the Government is denied where the appellant alleges that some of the field tapes were missing and some of the data was received in a deplorable condition, but the Board finds that the concurrence of a Government representative in the taking of the inventory did not provide a predicate for the claim asserted where the preparation of the inventory was considered to be simply an exercise of a management prerogative, irrespective of whether such action was to be viewed as a means of facilitating contract performance or satisfying a contract requirement for the furnishing of demultiplexing documentation.

Appeal of Walden General, Inc., IBCA-1475-6-81 (Oct. 19, 1982) 89 I.D. 529

A contractor's claim for the added cost of furnishing concrete bases for lighting fixtures is denied where the contract required the furnishing of an operational lighting system and there were other contract references to requirements for mounting and bases. The omission of the referenced detail for the bases on the applicable drawing was an obvious omission that placed on the contractor a duty to inquire.

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

A claim for added work to create a swale in roadways is allowed where the drawing shows the existing subbase to contain the required swale.

Appeal of Tucker & Associates Contracting, Inc., IBCA-1468-6-81 (Nov. 30, 1982) 89 I.D. 597

Upon finding that Government-ordered changes to the contract caused an increase in the cost of and the time required for performance of the contract, and the evidence of record indicating that such changes did not comply with the required procedures set forth in the Task Orders clause of the contract, the Board holds that the contractor is entitled to an equitable adjustment pursuant to the Changes clause of the contract.

Appeal of Allied Repair Service, Inc., IBCA-1381-8-80 (Dec. 23, 1982)

The Board denies claims based upon a constructive change theory (operational breaches) where it finds from the evidence of record: That work claimed by the contractor to be extra work was required by the contract to be performed by the contractor at its own expense; that there is no substantial showing of Government fault; that the purported proof rests upon unsupported opinion or mere allegations; that claimed delays alleged to be caused by the Government are not shown to be unusual, unreasonable, or unauthorized by the contract documents; or, that the contractor was paid for the claimed extra work in accordance with the contract provisions.

Where the Government admits that a change to the contract occurred, but refuses to pay the contractor for claimed resulting extra work, contending that the contractor was paid therefor, the Board holds that the burden of proof shifts to the Government to prove the alleged payment, and upon a failure to sustain that burden, holds the contractor entitled to the amount claimed.

Appeal of Thorp Construction Co., Inc., IBCA-1254-3-79 (Jan. 27, 1983) 90 I.D. 21

Where during a visit to the project site preparatory to submitting a bid for the construction of a road and bridge, a contractor is told by the project engineer that the slope stakes to be placed would fall beneath a prominent ledge of rock known as the caprock but when placed the slope stakes required all of the caprock to be excavated and moved; and where the Government admitted other significant staking errors, the Board finds that the contractor is entitled to an equitable adjustment under the standard Changes Clause for excavating and moving the caprock and doing additional work as a result of the Government's staking errors.

In a case involving the construction of a road and a bridge in which the Government has stipulated that it has made slope staking errors throughout the entire project, a claim for additional costs allegedly involved in correcting slope staking errors in specified areas of the project is denied where the appellant fails to show by a preponderance of the evidence that additional costs were incurred. In support of its denial the Board notes that the lack of persuasive evidence of any contemporaneous objection to performing the work in question and a delay of over 31 months in presenting the claim now asserted raise presumptions against its validity.

When under a contract for the construction of a road and a bridge, the Government denied the contractor's request to use the bridge for its construction

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

operations following the completion of the bridge and the contractor files a claim for the costs said to have resulted from the Government's refusal, the Board finds that the refusal was justified where (i) the contract contains no provision authorizing the contractor to use the completed bridge; (ii) whatever costs the contractor may have incurred as a result of the Government's action have not been shown to be attributable to unforeseen work; (iii) appellant has not shown any custom in the construction business in support of its contentions; and (iv) the action of the project engineer in refusing the appellant permission to use the bridge was not shown to constitute an abuse of discretion.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

Where the contracting officer reduced the unit price for quantities of unclassified excavation in excess of the Government estimate, the Board granted the contractor's motion for summary judgment as a matter of law when it determined: (1) That neither party relied upon the estimate for other than solicitation purposes; (2) that the contract provided for payment to the contractor at the full unit price for actual quantities of work completed; and (3) that the Government was not entitled to a downward equitable adjustment pursuant to the Changes clause of the contract.

Luther L. Kenary Construction Co., Inc., IBCA-1556-2-82 (June 27, 1983)

A dredging contract for the dredging of silt and sediment providing for the removal of undredgeable materials by others is found to have been constructively changed when the Government fails to provide for the removal of undredgeable materials after notice and the contractor is required to remove such materials in order to timely perform his dredging.

Appeal of L. A. Belka Marine Construction & Diving Co., Inc., IBCA-1511-9-81 (July 28, 1983) 90 I.D. 322

The Board concluded that the Government should be allowed no offset for work done in an area outside the designated work areas in the contract when such outside work was directed by the Government's authorized representative to be performed by the contractor and the evidence showed that the directive was inarticulate and that the testimony of the Government witnesses with regard to excessive work, both as to type of material and geographic extent, was in conflict.

Appeal of Stephen J. Kenney, IBCA-1438-3-81 (Sept. 30, 1983) 90 I.D. 445

Upon finding that the contractor's continuous performance in the early stages of a road construction project was substantially disrupted by the Government because of grade and slope revisions resulting in delayed delivery of a final structures list, the Board holds that a constructive change occurred entitling appellant to an equitable adjustment for resulting extra costs.

Appeal of Wylie Brothers Contracting Co., IBCA-1175-11-77 (Jan. 27, 1984) 91 I.D. 51

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

The Board concludes that the specifications under a Government construction contract for the rental of draglines with operators are defective where it finds (i) that the terms of the solicitation respecting supervision were ambiguous; (ii) that the interpretation the contractor placed upon the ambiguous provisions was reasonable, as evidenced by the Government's concurrence in such interpretation prior to the time a dispute arose; (iii) that the bifurcation of authority between the COR at the jobsite and the refuge manager some 35 miles away continued for at least several months after the issuance of the notice to proceed; and (iv) that confusion over who was responsible for supervision and the manner in which it was exercised seriously delayed the contractor and resulted in the partnership incurring substantial additional expenses.

Appeal of Clark & Hirt, IBCA-1508-8-81 (Feb. 9, 1984) 91 I.D. 71

The Board finds that the contractor is entitled to an equitable adjustment under the changes clause where the contractor's superintendent stated that he gave the Government permission to remove two piles of dirt and debris but reserved a third pile of clean fill dirt at another location, and the Government removed all three piles. The Government offered no direct evidence to explain its actions, which caused the contractor to purchase other fill dirt to replace the 2,500 cubic yards taken without permission.

Appeal of Bruce Anderson Co., Inc., IBCA-1633-10-82 (Nov. 30, 1984)

Conflicting Clauses

Where the Government modified an invitation for bids by adding a note regarding grouting of equipment to two drawings but failed to change the drawings of circuit breakers to show placement of the grout and failed to change the specifications to require grouting of the circuit breakers, the Board held, under the rule of contra proferentes that the contractor's interpretation that the contract did not require grouting of the circuit breakers was reasonable and should prevail. The Government's direction to grout 17 of 21 Government-furnished circuit breakers was a change which entitled the contractor to an equitable adjustment.

Appeal of Slater Electric Co. of California, IBCA-1283-7-79 (Apr. 7, 1980) 87 I.D. 121

Because a contract provision is superfluous, it is not necessarily ambiguous, and the presence in the same contract of two provisions directed at alternative methods for termination does not, of itself, result in an ambiguity.

Appeal of David P. Brown, Jr., IBCA-1600-7-82 (Mar. 31, 1983)

The Board concludes that the specifications under a Government construction contract for the rental of draglines with operators are defective where it finds (i) that the terms of the solicitation respecting supervision were ambiguous; (ii) that the interpretation the contractor placed upon the ambiguous provisions was reasonable, as evidenced by the Government's concurrence in such interpretation prior to the time a dispute arose; (iii) that the bifurcation of authority between the COR at the jobsite and the refuge manager some 35 miles away continued for at least several

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Conflicting Clauses--Continued

months after the issuance of the notice to proceed; and (iv) that confusion over who was responsible for supervision and the manner in which it was exercised seriously delayed the contractor and resulted in the partnership incurring substantial additional expenses.

Appeal of Clark & Hirt, IBCA-1508-8-81 (Feb. 9, 1984) 91 I.D. 71

Construction Against Drafter

Where the Government modified an invitation for bids by adding a note regarding grouting of equipment to two drawings but failed to change the drawings of circuit breakers to show placement of the grout and failed to change the specifications to require grouting of the circuit breakers, the Board held, under the rule of contra proferentes that the contractor's interpretation that the contract did not require grouting of the circuit breakers was reasonable and should prevail. The Government's direction to grout 17 of 21 Government-furnished circuit breakers was a change which entitled the contractor to an equitable adjustment.

Appeal of Slater Electric Co. of California, IBCA-1283-7-79 (Apr. 7, 1980) 87 I.D. 121

Where a contractor alleged that differing site conditions were encountered in constructing bored tunnels for the Navajo Indian Irrigation Project and resolution of the question as to what the contract indicated turned on the construction to be placed on the specifications and drawings relating to the nature of the support required to support the tunnels, as well as upon a Government estimate that approximately 80 percent of the tunnels would require support other than rockbolts, the Board found the contract to have indicated that the deterioration and disintegration encountered in driving the tunnels would be primarily of a surficial nature. In so finding the Board noted that in the disputed area the contract appears to be susceptible of more than one reasonable interpretation and that within the zones of reasonableness the Government as the author has to share the major responsibility for communicating its intentions as well as the main risk of failure to carry out that responsibility. Heavily weighted by the Board in reaching its decision was the fact that all four of the lowest bidders appeared to have construed the contract to indicate that the tunnels could be supported virtually entirely with rockbolts and that that construction was apparently known to the project construction engineer at the time of bid opening based upon his analysis of the bids received.

Appeal of Flugr Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981) 88 I.D. 41

Where at least four of seven bidders shared the same interpretation of the method of construction required by a contract for the construction of a bridge and none of the bidders were shown to have a different interpretation, the Board finds the contractor's interpretation to be reasonable and further finds that the Government's insistence on a different and more costly method of construction was a constructive change for which the contractor is entitled to an equitable adjustment.

Appeal of S & W Contracting Co., Inc., IBCA-1307-10-79 (May 6, 1981) 88 I.D. 527

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Construction Against Drafter--Continued

A termination for default of a contract awarded under a small business set-aside program is converted to a termination for the convenience of the Government where the Board finds (i) that the Government failed to set forth in the solicitation the applicable size standard for the small business set-aside or to specify the classification for the procurement; (ii) that the appellant's interpretation of the solicitation requirements was reasonable; and (iii) that appellant's representation of itself as a small business concern had been made in good faith.

Appeal of Highland Reforestation, Inc., IBCA-1563-3-82 (July 8, 1983) 90 I.D. 297

The Board concludes that the specifications under a Government construction contract for the rental of draglines with operators are defective where it finds (i) that the terms of the solicitation respecting supervision were ambiguous; (ii) that the interpretation the contractor placed upon the ambiguous provisions was reasonable, as evidenced by the Government's concurrence in such interpretation prior to the time a dispute arose; (iii) that the bifurcation of authority between the COR at the jobsite and the refuge manager some 35 miles away continued for at least several months after the issuance of the notice to proceed; and (iv) that confusion over who was responsible for supervision and the manner in which it was exercised seriously delayed the contractor and resulted in the partnership incurring substantial additional expenses.

Appeal of Clark & Hirt, IBCA-1508-8-81 (Feb. 9, 1984) 91 I.D. 71

Contract Clauses

Where a contractor is found to have failed to maintain a system of cost records as required in the cost reimbursable contract, an affidavit of the contractor's project director prepared 5 years later is found to be insufficient evidence that unsupported retroactive cost transfers to the contract were costs actually incurred in performance of the contract.

Appeal of Washington University, IBCA-1228-11-78 (Mar. 4, 1980) 87 I.D. 88

Where a cost-plus-fixed-fee contract expressly provides for the payment of finally negotiated overhead rates notwithstanding the foregoing provisions which include the limitation of costs provision, the Board finds that the amount determined for overhead costs is not subject to the limitation of the contract estimated costs.

Appeal of Kirschner Associates, Inc., IBCA-1319-12-79 (Apr. 1, 1980)

Where the Permits and Responsibilities clause of a contract required a contractor to obtain all necessary permits and to comply with all applicable laws, codes, and regulations, the fact that the Government spelled out details of the costs for three required permits but made no representation of costs for a fourth permit did not transfer the contractor's responsibility for obtaining the permit to the Government. The Board held that the contractor could not recover for the costs of

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Contract Clauses--Continued

the permit which it learned about before bid opening but chose not to include in its bid.

Appeal of Manuel C. Jardin, Inc., IBCA-1257-4-79 (Apr. 16, 1980)

Where a prime contract requires a specific statement in subcontracts in order for wage escalations to apply and the subcontract contains only the referenced requirements by incorporation by reference of the specifications and a general statement passing on applicable rights and privileges of the prime contractor to the subcontractor, the Board finds no ambiguity in the prime contract and no obligation for the Government to pay for the wage escalations of the subcontractor.

Appeal of Martin K. Eby Construction Co., Inc., IBCA-1380-8-80 (Feb. 19, 1981)

A claim for hauling stones for use as riprap greater distances than would have been necessary if the Government had approved other sources for riprap is denied where the Board finds that the Government's refusal to permit the use of designated portions of its lands for sources of riprap was authorized by the contract specifications and the contract provision relied upon by the contractor was found not to provide a basis for recovery where it was neither shown nor alleged that the contractor or its employees had discovered any archaeological evidence which had been reported to the contracting officer or that that officer had directed any delay or change in the work as a result of such discovery having been reported to him.

Appeal of Allen Stuber, d.b.a. Stuber Construction Co., IBCA-1369-6-80 (Mar. 11, 1981)

Where a cost-plus-fixed-fee contract expressly provides for the payment of finally negotiated overhead rates notwithstanding the foregoing provisions which include the limitation of cost provision, the Board finds that a claim for additional overhead costs is not subject to the limitation of the contract estimated costs.

Appeal of Dynadyne, Inc., IBCA-1329-1-80 (Apr. 8, 1981) 88 I.D. 423

When a contractor expressed a desire to avoid legal action and suggested submitting a dispute to arbitration rather than following the dispute resolution process required by the disputes clause, the contracting officer was without authority to delegate his duties under the disputes clause to an arbitrator and the document entitled "Agreement to Submit to Arbitration" was a nullity which conferred no right on the contractor to claim expenses during the arbitration period.

Appeal of Danes & Moore, IBCA-1308-10-79 (Oct. 27, 1981) 88 I.D. 991

Where an architect designed a nearly flat roof having a pitch of 4 inches in 20 feet with specifications directing the construction contractor to install the roof in accordance with the manufacturer's installation manual, but the published literature of the manufacturer called for a minimum pitch of 3 inches per foot and contained no provision for installing a roof as designed by the architect, the Board found that

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Contract Clauses--Continued

leaks in the roof were the result of negligent performance of services on the part of the architect in the design of the building.

Appeal of the Eggers Partnership, IBCA-1299-8-79 (Feb. 12, 1982)

The Board denies a contractor's claim for interest based upon Government delays in paying invoices in undisputed amounts where it finds neither a statutory nor a contractual basis for recovery of the interest claimed.

Appeal of Electronic Technigues, Inc., IBCA-1474-6-81 (Mar. 22, 1982) 89 I.D. 111

A Government's motion for summary judgment is granted and an appeal is dismissed where in connection with a claim for interest for the Government's delay in making progress payment the Board finds there is no genuine issue of material fact and that neither the payments clause nor the Contract Disputes Act of 1978 authorize the payment of interest on undisputed underlying claims on which the claim for interest is based.

Appeal of Lee Roofing Co., IBCA-1506-8-81 (May 11, 1982) 89 I.D. 233

A claim for breach of warranty is not established under a contract calling for the furnishing of an audiovisual system where the Government asserts that the system was defective at the time of acceptance and the Board finds that the nonlatent preexisting defects forming the basis of the warranty claim were not excluded from the coverage of the standard inspection clause making acceptance conclusive, except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

Appeal of Bergen Expo Systems, Inc., IBCA-1348-4-80 (Sept. 9, 1982) 89 I.D. 449

A claim for additional costs attributed to a suspension of work is denied where the work stoppage resulted from the action of third parties without the fault of the Government.

Appeal of Nielsons, Inc., IBCA-1536-11-81 (Sept. 22, 1982)

Where a contractor claimed that it should have been allowed to drill or ream all sampled areas of wells to a 9-inch diameter for additional payment, but the contractor had been paid for the maximum contract amount of drilling and reaming, the Board found that the contractor could not have had a reasonable expectation of payment for more than the maximum amount stated in the contract.

Appeal of Raimonde Drilling Corp., IBCA-1359-5-80 (Feb. 14, 1983) 90 I.D. 69

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Contract Clauses--Continued

A claim for additional rock excavation is denied where the Board finds (i) that the contract provided for volume of excavation to be measured by the average end area method; (ii) that all excavation including rock boulders was so measured; and (iii) that the appellant failed to show by a preponderance of the evidence that there were any rock boulders placed in embankments for which it has not been paid.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

A contract should be interpreted so as to give a reasonable meaning to all its parts and its provisions should not be construed as conflicting unless no other reasonable construction is possible.

Because a contract provision is superflouous, it is not necessarily ambiguous, and the presence in the same contract of two provisions directed at alternative methods for termination does not, of itself, result in an ambiguity.

Appeal of David H. Brown, Jr., IBCA-1600-7-82 (Mar. 31, 1983)

A Government motion for summary judgment is granted and an appeal is dismissed when in connection with a claim for interest for the Government's delays in making progress payments, the Board finds that the Government's delays were unreasonable but also finds that there is no genuine issue of material fact and that neither the Payments to Contractor clause nor the Contract Disputes Act of 1978 authorize the payment of interest on undisputed underlying claims. Noted by the Board was the fact that the invoices on which the claim for interest is based had been paid several months before the contractor's claim for interest was submitted to the contracting officer for a decision.

Appeal of Casework Installations, Ltd., IBCA-1635-11-82 (June 7, 1983)

A contract for dredging a lake is found not to be a lump sum contract despite a fixed amount appearing on the face page under the term "Contract price" where a contract provision for measurement and payment expressly provides for payment at unit prices per cubic yard of dredged material.

Appeal of L. A. Melka Marine Construction & Diving Co., Inc., IBCA-1511-9-81 (July 28, 1983) 90 I.D. 322

The Board granted the Government's motion for summary judgment as a matter of law where appellant claimed an equitable adjustment for state taxes imposed after the contract date and the contract provided that all state and local taxes were included in the contract price, with no provision for escalation in the event of the imposition of added taxes.

Appeals of CECOS International, Inc., IBCA-1667-3-83 (Oct. 28, 1983)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Contract Clauses--Continued

In a case in which the appellant's motion for summary judgment is denied and the Government's cross motion for summary judgment is granted, the allowance of interest on borrowings (however represented) as part of an equitable adjustment is found to be prohibited by a provision of the Federal Procurement Regulations incorporated into the contract by reference.

Appeal of Ferguson Construction Co., IBCA-1681-6-83 (Oct. 28, 1983)

In a contract for construction of a prefabricated building, where the Government required painting of certain structural components under the authority of a specification and the Board determined that that specification did not apply to painting the disputed structural components, the Board held the contractor entitled to compensation for the extra painting ordered.

Appeal of C. G. Norton Co., IBCA-1647-1-83 (Nov. 14, 1983)

Where a contractor leased a helicopter to the Government, but before the end of the lease period, the helicopter was destroyed, the Board found that the inability or unwillingness of the contractor upon demand to furnish a replacement helicopter for the remainder of lease period constituted nonperformance of a contractual obligation on the part of the contractor and held that such nonperformance relieved the Government from payment for any contractually guaranteed minimum use of the aircraft.

Where a contract for the lease of a helicopter by the Government contained a Loss or Damage to Leased Aircraft clause whereby the Government assumed the risk of loss and agreed to pay and did pay the fair market value of the helicopter which was totally destroyed in a crash, the Board held that payment by the Government was performance and not a breach on its part and that the contractor was not entitled to loss of profits on a breach of contract theory.

Appeal of Gay Airways, Inc., IBCA-1429-2-81 (Mar. 9, 1984) 91 I.D. 149

Contracting Officer

A claim asserted under the Changes clause for increased costs resulting from actions of the President in decontrolling the price of heavy crude oil is dismissed as being outside the jurisdiction of the Board since the President's action was a sovereign act taken as part of the program to maintain or increase production of heavy crude oil.

Appeal of Martin K. Eby Construction Co., Inc., IBCA-1389-9-80 (Apr. 8, 1981) 88 I.D. 431

Where during a visit to the project site preparatory to submitting a bid for the construction of a road and bridge, a contractor is told by the project engineer that the slope stakes to be placed would fall beneath a prominent ledge of rock known as the caprock but when placed the slope stakes required all of the caprock to be excavated and moved; and where the Government admitted other significant staking errors, the Board finds that the contractor is entitled to an equitable

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Contracting Officer--Continued

adjustment under the standard Changes Clause for excavating and moving the caprock and doing additional work as a result of the Government's staking errors.

When under a contract for the construction of a road and a bridge, the Government denied the contractor's request to use the bridge for its construction operations following the completion of the bridge and the contractor files a claim for the costs said to have resulted from the Government's refusal, the Board finds that the refusal was justified where (i) the contract contains no provision authorizing the contractor to use the completed bridge; (ii) whatever costs the contractor may have incurred as a result of the Government's action have not been shown to be attributable to unforeseen work; (iii) appellant has not shown any custom in the construction business in support of its contentions; and (iv) the action of the project engineer in refusing the appellant permission to use the bridge was not shown to constitute an abuse of discretion.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

Where a contractor relies on the actions of a purported Government agent and that reliance is later challenged, it is the contractor's burden to show that the individual is a contracting officer, not the Government's to show he is not; a contractor who relies upon the actions of an agent, without assuring himself of the agent's actual authority does so at his peril.

Appeal of Inter-Tribal Council of Nevada, Inc., IBCA-1234-12-78 (Apr. 14, 1983)

A Government motion to dismiss an appeal predicated upon an oral contract is denied when the available evidence indicates that the Government official named was without authority to enter into a contract such as had been alleged but where assuming appellant's material allegations to be true for the purpose of the motion, it appears that a question exists as to whether the Government may be estopped to rely upon the defense of a lack of actual authority to contract if affirmative misconduct of the Government official concerned were shown to exist.

Appeal of Powell A. Casey, IBCA-1638-11-82 (May 23, 1983) 90 I.D. 230

An appeal for recovery of overrun costs in a cost reimbursement/sharing contract is denied where the contractor failed to provide sufficient, reliable information on the status of expenditures for the contracting officer reasonably to conclude that there was an overrun and though the contracting officer urged further performance, that urging was not an inducement to overrun, because it invariably applied to performance only up to the point of exhaustion of funds and was consistently accompanied by an admonition to the contractor to be guided by the contract's limitation of costs clause.

Appeal of RTL Systems, Inc., IBCA-1648-1-83 (Sept. 19, 1984) 91 I.D. 296

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Contracting Officer--Continued

A claim for interest under the Contracts Disputes Act of 1978 is denied where the Board finds justifiable the contracting officer's action in withholding funds otherwise due the contractor in order to insure payment to the contractor's employees of fringe benefits included in wage determinations set forth in the contract under the authority of the David-Bacon Act.

Appeal of BECO Corp., IBCA-1795 (Nov. 16, 1984) 91 I.D. 350

Differing Site Conditions (Changed Conditions)

Where a contractor alleged that differing site conditions were encountered in constructing bored tunnels for the Navajo Indian Irrigation Project and resolution of the question as to what the contract indicated turned on the construction to be placed on the specifications and drawings relating to the nature of the support required to support the tunnels, as well as upon a Government estimate that approximately 80 percent of the tunnels would require support other than rockbolts, the Board found the contract to have indicated that the deterioration and disintegration encountered in driving the tunnels would be primarily of a surficial nature. In so finding the Board noted that in the disputed area the contract appears to be susceptible of more than one reasonable interpretation and that within the zones of reasonableness the Government as the author has to share the major responsibility for communicating its intentions as well as the main risk of failure to carry out that responsibility. Heavily weighted by the Board in reaching its decision was the fact that all four of the lowest bidders appeared to have construed the contract to indicate that the tunnels could be supported virtually entirely with rockbolts and that that construction was apparently known to the project construction engineer at the time of bid opening based upon his analysis of the bids received.

In a case involving the assertion of a differing site conditions claim under a contract for the construction of concrete lined tunnels for the Navajo Indian Irrigation Project, the Board follows the Court of Claims in holding that it is not necessary for the "indications" in the contract to be explicit or specific, it being sufficient for there to be an indication on the face of the contract documents causing a bidder reasonably to expect that there were no "subsurface or latent" physical conditions at the site differing materially from those indicated in the contract.

Under a contract for the construction of two concrete lined tunnels for the Navajo Indian Irrigation Project (Tunnel Nos. 3 and 3A) the Board finds a first category differing site conditions claim to have been established with respect to constructing Tunnel No. 3 where the conditions encountered by the contractor in that tunnel were shown to be materially different from those indicated in the contract.

In a case involving the assertion of first and second category differing site conditions claims under a contract for the construction of two concrete lined tunnels (Tunnel Nos. 3 and 3A), a first category differing site conditions claim was not established with respect to Tunnel No. 3A where the Board found the contract to have indicated that the deterioration and disintegration to be anticipated in constructing the two tunnels would be primarily surficial in nature but the evidence offered failed to show that the rock failures and fallout encountered in Tunnel No. 3A were due to overstressing and therefore nonsurficial in nature.

A second category differing site conditions claim, asserted under a contract for the construction of two concrete lined tunnels for the Navajo Indian Irrigation

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Differing Site Conditions (Changed Conditions) --Continued

Project (Tunnel Nos. 3 and 3A), is denied where the basis for the claim is that the rock failures and fallout encountered in constructing Tunnel No. 3A were due to overstressing (shear type failures) but the evidence of record failed to show that overstressing was the cause of such rock failures and fallout as occurred in that tunnel.

Where neither what is described as the "reference reach/claim reach" approach nor the total cost method are found acceptable as a proper basis for an equitable adjustment, the Board resorts to the so-called jury verdict method for determining the amount of the equitable adjustment to which the contractor is entitled by reason of the differing site conditions found to have been encountered by the contractor in construction of Tunnel No. 3, a bored and concrete lined tunnel of the Navajo Indian Irrigation Project.

Appeal of Fluor Utah, Inc., IBCA-1068-6-75 (Jan. 15, 1981) 88 I.D. 41

A claim asserted under a Changed Conditions Clause by reason of alleged withholding of material information (first category) is denied where there is no evidence of record indicating that the Government either withheld material information or otherwise misrepresented the conditions the contractor would encounter in performing a tree thinning contract.

Appeal of Nero & Associates, Inc., IBCA-1292-8-79 (Feb. 19, 1981) 88 I.D. 304

A Government motion for summary judgment is granted and a claim for differing site conditions (based upon damages to the jobsite caused by runoff from a severe rainstorm) is denied where the Board finds that if all of appellant's factual allegations are accepted as true neither the differing site conditions clause nor any other clause in the contract provides a basis for granting the appellant relief for the claim asserted.

Appeal of McCutcheon-Peterson (JV), IBCA-1392-9-80 (Mar. 12, 1981) 88 I.D. 361

Where under a reroofing contract the quantity of roofing required to be used is substantially greater than the quantity of roofing estimated by the Government and it is determined that the quantity of roofing required for performance of the contract could not have been verified by a prebid investigation, the Board finds that the substantially greater amount of roofing required to complete the contract work than the Government had estimated constitutes a first category differing site condition for which the contractor is entitled to an equitable adjustment under the Differing Site Conditions clause.

A second category differing site conditions is found to exist where the Government tacitly acknowledged that double roofing encountered under a contract calling for reroofing of a building in Miami, Florida, constituted an unknown condition and the testimony offered in support of the contractor's claim shows that while double roofing is not unusual in some areas of the country, it is unusual in the southern areas where there is a lot of mildew and moisture, humidity, as

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Differing Site Conditions (Changed Conditions) --Continued

would be true of the particular locale in which the instant contract was performed.

Appeal of Singleton Contracting Corp., IBCA-1413-12-80 (Aug. 12, 1981) 88 I.D. 722

Where under a reroofing contract the quantity of roofing required to be used is substantially greater than the approximate quantities estimated by the Government in the invitation for bids and there was no provision included therein requiring or requesting that the quantities specified be verified by prospective bidders, the Board finds that the substantially greater amount of roofing required to complete the contract work than the Government had estimated constituted a first category differing site condition for which the contractor is entitled to an equitable adjustment in the contract price.

Appeal of Elliott's Roofing Co., IBCA-1330-1-80 (Sept. 23, 1981) 88 I.D. 836

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81 (Feb. 12, 1982)

In a differing site condition claim under a contract for excavation of a tunnel in the Central Arizona Project where consulting geologists, retained by three different bidders as well as the manufacturer of the tunneling machine, each independently concluded that the geological data furnished by the Bureau of Reclamation indicated there would be sufficient standup time in the top and sides of the tunnel to permit installation of tunnel supports in accordance with the specifications, the Board found a differing site condition existed when the contractor encountered large blocks of rock with no standup time which fell immediately out of the top and sides of the tunnel, interfering with the cutterhead of the tunneling machine and with placement of the precast concrete segments for supporting and lining the tunnel.

In two separate differing site condition claims where the contractor encountered soft invert, which would not support the weight of the tunneling machine, the Board found that a differing site condition existed when the machine encountered a 9-foot layer of clay between two drill holes, neither of which showed a layer of clay, but the Board found there was no differing site condition when the machine encountered very soft rock between two drill holes where only 45 and 50 percent of the core material was recovered from the drill holes and the lack of recovery indicated that soft material, not suitable for coring, was present at the invert level.

Where the contractor selected a reference reach of the tunnel to establish a normal cost of excavation for comparison with greater costs in the claim reach of the tunnel, but the evidence showed that some costs were understated in the reference reach and other costs were overstated in the claim reach, the Board found the contractor's approach to be unacceptable as a basis for an equitable adjustment and resorted to the jury verdict

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Differing Site Conditions (Changed Conditions) --Continued

method for determining the amount of the equitable adjustment.

J. F. Shea Co., Inc., IBCA-1191-4-78 (Mar. 30, 1982) 89 I.D. 153

A claim for a first category differing site condition is denied where a deposit of organic material encountered in excavation did not differ materially from what the contractor could reasonably have expected to encounter from a site examination and the contract indications of subsurface conditions.

Appeal of Parkland Design & Development Corp., IBCA-1442-3-81 (Aug. 24, 1982)

Where the quantity of sediment removed from a canal was approximately 125 percent greater than the quantity of sediment removal estimated by the Government, and such estimate being the only information available to the contractor upon which to base its bid, and it is determined that the quantity of sediment removal required for performance of the contract was impossible to verify by a mandatory prebid investigation, the Board finds that in such circumstances the contractor had no alternative but to base its bid upon the estimated quantities of sediment furnished by the Government, and that the additional amount of work required to complete the contract in excess of the Government estimate constitutes a first category differing site condition for which the contractor is entitled to an equitable adjustment.

Appeal of Syblon-Reid Co., IBCA-1313-11-79 (Sept. 17, 1982)

Upon finding that the evidence established a 6.8 percent difference between the actual site conditions encountered at the pit and the test results shown on the plans of the average amount of aggregate passing a No. 4 screen, as opposed to a difference of 26.5 percent asserted by the contractor on appeal, the Board holds, considering all the circumstances involved, that the 6.8 percent does not constitute a material difference and that the contractor failed to sustain its burden of proving a differing site condition.

Appeal of Thorn Construction Co., Inc., IBCA-1254-3-79 (Jan. 27, 1983) 90 I.D. 21

Provisions in the specifications requiring rock excavation of a seawall foundation coupled with the prohibition against blasting, cannot be interpreted as the intention of the parties that the contractor be required to utilize every possible mechanical means to excavate any and every type of rock condition encountered at the site. The Government's argument that a proper site visit would have disclosed outcroppings of massive rock and thus put the contractor on notice that similar type rock would exist below the surface making excavation difficult, is unpersuasive as a contractor may rely on the indications contained in the contract.

A contractor's claim for an equitable adjustment based upon an alleged differing site condition was not barred by its failure to give formal written notice of the differing site condition since the Government had actual knowledge of such condition from the contractor's submission of alternative designs for anchoring the seawall. The contractor's designs were based on the actual rock conditions disclosed by partial

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Differing Site Conditions (Changed Conditions) --Continued

excavation and not upon subsurface investigation by drilling, as were the Government's designs.

Excavation costs incurred during removal of rock for a seawall foundation were compensable as a category one differing site condition because the actual conditions encountered were materially different from those indicated in the contract documents. The boring logs, drawings and specifications contained in the solicitation indicated the presence of poor quality, soft rock in the excavation area which gave the contractor a reasonable expectation that the rock could be excavated by conventional mechanical means. During excavation, however, the contractor encountered rock which the evidence established was much harder than was anticipated, and which required the use of massive equipment to complete the project.

Roger J. An & Son, Inc., IBCA-1303-9-79 (Sept. 14, 1983) 90 I.D. 401

Where it was found: That the Government designated in the contract documents a specific site as the source of aggregate for use in a road construction project; that the contractor relied on the contract data indicating that such source contained sufficient conforming material to satisfy the contract requirements; and that the actual subsurface conditions differed materially from the conditions indicated by the contract drawings and from the expectations of persons familiar with the source, the Board concludes that the contractor is entitled to an equitable adjustment under a Category I Differing Site Condition theory.

Appeal of Wylie Brothers Contracting Co., IBCA-1175-11-77 (Jan. 27, 1984) 91 I.D. 51

The Board finds that no differing site condition existed despite allegations of excessive water impeding excavation and construction of a pipeline resulting from artesian flows where the contract indications clearly showed some artesian conditions to be expected, and required the contractors dewatering plan to be approved; and where the contractor did not implement his plan to dewater and the same plan was effective to allow completion of the project by a Government force account crew.

Appeal of Frank Rivera, Inc., IBCA-1621-9-82 (May 10, 1984)

Drawings and Specifications

Where a contractor alleged that differing site conditions were encountered in constructing bored tunnels for the Navajo Indian Irrigation Project and resolution of the question as to what the contract indicated turned on the construction to be placed on the specifications and drawings relating to the nature of the support required to support the tunnels, as well as upon a Government estimate that approximately 80 percent of the tunnels would require support other than rockbolts, the Board found the contract to have indicated that the deterioration and disintegration encountered in driving the tunnels would be primarily of a surficial nature. In so finding the Board noted that in the disputed area the contract appears to be susceptible of more than one reasonable interpretation

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Drawings and Specifications--Continued

and that within the zones of reasonableness the Government as the author has to share the major responsibility for communicating its intentions as well as the main risk of failure to carry out that responsibility. Heavily weighted by the Board in reaching its decision was the fact that all four of the lowest bidders appeared to have construed the contract to indicate that the tunnels could be supported virtually entirely with rockbolts and that that construction was apparently known to the project construction engineer at the time of bid opening based upon his analysis of the bids received.

Appeal of Fluor Utah, Inc., IBCA-1068-8-75 (Jan. 15, 1981) 88 I.D. 41

A claim predicated upon defective specifications is denied where assuming arguendo that the specifications were defective, the appellant failed to show that it incurred any additional costs by reason of the allegedly defective specifications.

Appeal of Hero & Associates, Inc., IBCA-1292-8-79 (Feb. 19, 1981) 88 I.D. 304

Where the Board found that the Government withheld information from the contractor pertaining to test results showing the plasticity index of an alternate borrow pit, it was held that the contractor was entitled to an equitable adjustment for resulting additional costs on the basis of defective specifications.

Appeal of Seldo Co., Inc., d.b.a. Desert Materials Co., IBCA-1194-5-78 (Sept. 30, 1981) 88 I.D. 895

A contractor's claim for the added cost of furnishing concrete bases for lighting fixtures is denied where the contract required the furnishing of an operational lighting system and there were other contract references to requirements for mounting and bases. The omission of the referenced detail for the bases on the applicable drawing was an obvious omission that placed on the contractor a duty to inquire.

A claim for added work to create a swale in roadways is allowed where the drawing shows the existing subbase to contain the required swale.

Appeal of Tucker & Associates Contracting, Inc., IBCA-1468-6-81 (Nov. 30, 1982) 89 I.D. 597

Where during a visit to the project site preparatory to submitting a bid for the construction of a road and bridge, a contractor is told by the project engineer that the slope stakes to be placed would fall beneath a prominent ledge of rock known as the caprock but when placed the slope stakes required all of the caprock to be excavated and moved; and where the Government admitted other significant staking errors, the Board finds that the contractor is entitled to an equitable adjustment under the standard Changes Clause for excavating and moving the caprock and doing additional work as a result of the Government's staking errors.

Where under a standard construction contract the liability of the Government for defective plans and specifications is clearly established but as a consequence of the contractor having failed to segregate the costs applicable to the constructive change, it is not possible to determine the extent to which the Government's actions increased the costs of contract performance, the amount of the equitable adjustment to which the contractor is entitled is determined by the Board on the basis of the so-called jury verdict approach.

In a case involving the construction of a road and a bridge in which the Government has stipulated that it has made slope staking errors throughout the entire project, a claim for additional costs allegedly involved in correcting slope staking errors in specified areas of the project is denied where the appellant fails to show by a preponderance of the evidence that additional costs were incurred. In support of its denial the Board notes that the lack of persuasive evidence of any contemporaneous objection to performing the work in question and a delay of over 31 months in presenting the claim now asserted raise presumptions against its validity.

When under a contract for the construction of a road and a bridge, the Government denied the contractor's request to use the bridge for its construction operations following the completion of the bridge and the contractor files a claim for the costs said to have resulted from the Government's refusal, the Board finds that the refusal was justified where (i) the contract contains no provision authorizing the contractor to use the completed bridge; (ii) whatever costs the contractor may have incurred as a result of the Government's action have not been shown to be attributable to unforeseen work; (iii) appellant has not shown any custom in the construction business in support of its contentions; and (iv) the action of the project engineer in refusing the appellant permission to use the bridge was not shown to constitute an abuse of discretion.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

Where a contract for refinishing a hull of a ship, in accordance with the manufacturer's instructions for application of a toxic antifoulant paint, did not include those instructions and the contractor alleged that it did not consider the cost of safety precautions for the paint in its cost estimate and that it was impossible to perform the contract work at the negotiated price, the Board held that the contractor had not stated a valid basis for recovery of the cost of the safety precautions since knowledge of such precautions was not exclusive to the Government but was readily available to the contractor from use of the same paint in a previous contract and from other paint in its paint locker having the same active antifouling ingredient and requiring the same safety precautions. Specifications are not defective merely because a contractor cannot sustain his anticipated profit margin while following them.

Appeal of Billingham Maritime, IBCA-1360-5-80 (June 8, 1983)

Provisions in the specifications requiring rock excavation of a seawall foundation coupled with the prohibition against blasting, cannot be interpreted as the intention of the parties that the contractor be required to utilize every possible mechanical means to excavate any and every type of rock condition encountered at the site. The Government's argument that a proper site visit would have disclosed outcroppings of massive rock and thus put the contractor on notice that similar type rock would exist below the surface making excavation difficult, is unpersuasive as a contractor may rely on the indications contained in the contract.

Roger J. Au & Son, Inc., IBCA-1303-9-79 (Sept. 14, 1983) 90 I.D. 401

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Drawings and Specifications--Continued

The Board found that the contractor reasonably interpreted the contract specifications to require that all materials, except solid rock, should be scaled and where such interpretation was communicated to Government personnel who acquiesced therein, the Board accorded minimal significance to a Government geologist's subjective intent for the rock scaling project (though corroborated by a drawing) not communicated to the contractor and is conflict with the contractor's interpretation of the specifications.

Appeal of Stephen J. Kenney, IBCA-1438-3-81 (Sept. 30, 1983) 90 I.D. 445

In a contract for construction of a prefabricated building, where the Government required painting of certain structural components under the authority of a specification and the Board determined that that specification did not apply to painting the disputed structural components, the Board held the contractor entitled to compensation for the extra painting ordered.

Appeal of C. G. Norton Co., IBCA-1647-1-83 (Nov. 14, 1983)

The Board concludes that the specifications under a Government construction contract for the rental of draglines with operators are defective where it finds (i) that the terms of the solicitation respecting supervision were ambiguous; (ii) that the interpretation the contractor placed upon the ambiguous provisions was reasonable, as evidenced by the Government's concurrence in such interpretation prior to the time a dispute arose; (iii) that the bifurcation of authority between the COR at the jobsite and the refuge manager some 35 miles away continued for at least several months after the issuance of the notice to proceed; and (iv) that confusion over who was responsible for supervision and the manner in which it was exercised seriously delayed the contractor and resulted in the partnership incurring substantial additional expenses.

Where under a construction contract for the rental of draglines with operators the responsibility of the Government for delays to the contract work was clearly established but as a result of the contractor's foreman having failed to record in his diary some of the significant events affecting the time and effect of Government actions causing delay and the contractor having failed to segregate costs applicable to the constructive change, it was not possible to determine with reasonable certainty the extent to which the Government's actions increased the costs of contract performance, the amount of the equitable adjustment to which the contractor is entitled was determined by resort to what has been characterized as the jury verdict approach.

Appeal of Clark & Hart, IBCA-1508-8-81 (Feb. 9, 1984) 91 I.D. 71

Duration of Contract

In an indefinite quantity contract with a 9-month ordering period where the maximum quantity of services was ordered immediately after award and an additional delivery order for services exceeding the maximum was issued within 2 months, the Board held that the Government could not require the contractor to perform services in excess of the maximum but when the contractor accepted the order he was bound by the unit prices therein and was not entitled to standby costs prior to

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Duration of Contract--Continued

receipt of the order which exceeded the maximum quantities stated in the contract.

Appeal of Reynolds Drilling Corp., IBCA-1359-5-80 (Feb. 14, 1983) 90 I.D. 69

Duty to Inquire

Where the scope of the work in the contract specifications included providing complete electrical service to the project and clearly indicated that in doing so the contractor must meet the requirements of the serving electric utility, the contractor assumed the risk of the cost of complying with those requirements when it failed to ascertain or inquire, before submitting its bid, what those costs might be.

Appeal of R. J. Biebe Enterprises, Inc., IBCA-1266-5-79 (July 30, 1980) 87 I.D. 337

A claim for an equitable adjustment under the Changes Clause is allowed to the extent that the claims submitted are found to have involved the placement of fumigated topsoil in planters in excess of the quantity required based upon a reasonable interpretation of the applicable specifications. As the contractor failed to separately record costs related to the changed work relying rather upon its bid estimate, the amount of the equitable adjustment to which the contractor is entitled is determined by resort to the "jury verdict" approach.

Appeal of Mahoney Contracting Corp., IBCA-1408-11-80 (June 30, 1981)

A contractor's claim for the added cost of furnishing concrete bases for lighting fixtures is denied where the contract required the furnishing of an operational lighting system and there were other contract references to requirements for mounting and bases. The omission of the referenced detail for the bases on the applicable drawing was an obvious omission that placed on the contractor a duty to inquire.

A claim for added work to create a swale in roadways is allowed where the drawing shows the existing subbase to contain the required swale.

Appeal of Tucker & Associates Contracting, Inc., IBCA-1468-6-81 (Nov. 30, 1982) 89 I.D. 597

In an earlier decision in the context of a contract ambiguity, the Board ruled in the contractor's favor on the costs of supplying certain building components and against the contractor on the costs of installing them. On reconsideration, the contractor convinced the Board that the analogy relied upon in denying the appeal for installation costs was fallacious, but, in reviewing all aspects of the decision on reconsideration, the Board discovered that its rationale for granting any relief on the issue of supplying and installing the components was also erroneous, and therefore affirmed its denial of installation costs and reversed its grant of supply costs. Where there is a patent ambiguity between contract provisions and a contractor fails to make inquiry about it, the contractor may not rely on its interpretation if the Government interpretation differs and will not be allowed to prevail for any

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Duty to Inquire--Continued

alleged extra costs for complying with directions consistent with the Government's interpretation.

Appeal of C. G. Norton Co. (On Reconsideration), IBCA-1647-1-83 (Apr. 23, 1984)

Estimated Quantities

Where under a reroofing contract the quantity of roofing required to be used is substantially greater than the quantity of roofing estimated by the Government and it is determined that the quantity of roofing required for performance of the contract could not have been verified by a prebid investigation, the Board finds that the substantially greater amount of roofing required to complete the contract work than the Government had estimated constitutes a first category differing site condition for which the contractor is entitled to an equitable adjustment under the Differing Site Conditions clause.

Appeal of Singleton Contracting Corp., IBCA-1413-12-80 (Aug. 12, 1981) 88 I.D. 722

Where under a reroofing contract the quantity of roofing required to be used is substantially greater than the approximate quantities estimated by the Government in the invitation for bids and there was no provision included therein requiring or requesting that the quantities specified be verified by prospective bidders, the Board finds that the substantially greater amount of roofing required to complete the contract work than the Government had estimated constituted a first category differing site condition for which the contractor is entitled to an equitable adjustment in the contract price.

Appeal of Elliott's Roofing Co., IBCA-1330-1-80 (Sept. 23, 1981) 88 I.D. 836

Where the quantity of sediment removed from a canal was approximately 125 percent greater than the quantity of sediment removal estimated by the Government, and such estimate being the only information available to the contractor upon which to base its bid, and it is determined that the quantity of sediment removal required for performance of the contract was impossible to verify by a mandatory prebid investigation, the Board finds that in such circumstances the contractor had no alternative but to base its bid upon the estimated quantities of sediment furnished by the Government, and that the additional amount of work required to complete the contract in excess of the Government estimate constitutes a first category differing site condition for which the contractor is entitled to an equitable adjustment.

Appeal of Syblon-Reid Co., IBCA-1313-11-79 (Sept. 17, 1982)

Where the contracting officer reduced the unit price for quantities of unclassified excavation in excess of the Government estimate, the Board granted the contractor's motion for summary judgment as a matter of law when it determined: (1) That neither party relied upon the estimate for other than solicitation purposes; (2) that the contract provided for payment to the contractor at the full unit price for actual quantities of work completed; and (3) that the Government was not entitled to a downward equitable

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Estimated Quantities--Continued

adjustment pursuant to the Changes clause of the contract.

Luther L. Penary Construction Co., Inc., IBCA-1556-2-82 (June 27, 1983)

In a unit price, estimated quantity contract, where the contractor made a prima facie case of the amount of work done as well as the reason for the discrepancy between its case thereon and the Government's and where the Government failed to rebut the contractor's case on the reason for the discrepancy, the Board found that the amount of work done was in accordance with the contractor's claim.

Appeal of Stephen J. Kenney, IBCA-1438-3-81 (Sept. 30, 1983) 90 I.D. 445

Rejected by the Board is an appellant's argument that the Government had in effect guaranteed to the contractor that he would be paid any specified number of hours per week where the Board found (i) that the requirement that the contractor work a 40-hour week was qualified by the language "weather and ground conditions permitting"; (ii) that the Government consent to the contractor working 50 hours a week was subject to the same limiting language; and (iii) that the evidence showed that some of the delays experienced by the contractor in proceeding with the contract work were attributable to rain (i.e., weather and ground conditions) for which the Government was not responsible.

Appeal of Clark & Hirt, IBCA-1508-8-81 (Feb. 9, 1984) 91 I.D. 71

A contractor's claim for compensation for placing additional quantities of base and subbase is denied where the contractor attempted to relate the measurement of the base and subbase to an alternate bid item for an estimated quantity of asphaltic concrete paving which was not accepted by the Government and where the contractor offered no evidence of actual measurement. Further evidence of delivery of excess raw materials to the site is irrelevant to payment since the payment clause provides payment for the square yardage of compacted base and subbase and not for delivery of raw materials to the site.

Appeal of Bruce Anderson Co., Inc., IBCA-1633-10-82 (Nov. 30, 1984)

General Rules of Construction

Where the Permits and Responsibilities clause of a contract required a contractor to obtain all necessary permits and to comply with all applicable laws, codes, and regulations, the fact that the Government spelled out details of the costs for three required permits but made no representation of costs for a fourth permit did not transfer the contractor's responsibility for obtaining the permit to the Government. The Board held that the contractor could not recover for the costs of the permit which it learned about before bid opening but chose not to include in its bid.

Appeal of Manuel C. Jardim, Inc., IBCA-1257-4-79 (Apr. 16, 1980)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

General Rules of Construction--Continued

Where the contractor claimed interest for the cost of borrowing money to finance the Government caused increase in costs under a contract awarded before Government regulations required an interest clause, the Board followed the Court of Claims' rule laid down in Bravo Corp. v. United States, 594 F.2d 842 (Ct. Cl. 1979), and denied the contractor's interest claim.

Appeals of Can-Vi-Po of Texas, Inc., IBCA-718-5-68 & IBCA-755-12-68 (June 27, 1980) 87 I.D. 230

Under a cost sharing contract wherein the Government agreed to reimburse approximately one-third of a refiner's cost of demonstrating a process of recycling waste oil into commercial end products and requiring the contractor to document the process in a final report to be made available to the public, the Board finds that the credits and rebates general provision does not entitle the Government to a share of the profits from the sale of the end products because the schedule provisions for payments to the contractor take precedence over the general provisions, and the allowance of the credit claimed by the Government would require a strained interpretation of the contract terms to require appellant's contract performance at little or no cost to the Government.

Appeal of Shale Development Corp., IBCA-1256-3-79 (May 18, 1981)

A claim for an equitable adjustment under the Changes Clause is allowed to the extent that the claims submitted are found to have involved the placement of fumigated topsoil in planters in excess of the quantity required based upon a reasonable interpretation of the applicable specifications. As the contractor failed to separately record costs related to the changed work relying rather upon its bid estimate, the amount of the equitable adjustment to which the contractor is entitled is determined by resort to the "jury verdict" approach.

Appeal of Nekoosa Contracting Corp., IBCA-1408-11-80 (June 30, 1981)

The Board rejected the argument of the contractor that the language of the Work Stoppage Clause, providing that the contractor will not be entitled to additional compensation for stop work orders of reasonable duration, should be interpreted to allow a claim to be compensable where the total duration of a series of stop work orders was over 50 percent of the total performance time of the contract. The Board found that no single stop work order in a series of five issued was of unreasonable duration and held that the subject language was intended to apply to only one stop work order at a time, and since the parties stipulated that each stop work order was reasonably and properly issued, the claim was not compensable.

Appeal of Soldo Co., Inc., d.b.a. Desert Materials Co., IBCA-1194-5-78 (Sept. 30, 1981) 88 I.D. 895

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

General Rules of Construction--Continued

Where an appellant acknowledges that it received a purchase order calling for moving Government-owned furniture and furnishings shortly prior to the move and the record shows that without making a protest of any kind the contractor proceeded with the move and that it subsequently billed the Government for the services rendered in accordance with the rate stated in the purchase order, the Board finds the purchase order to constitute the agreement of the parties.

Appeal of Alpine Moving and Storage, IBCA-1434-2-81 (Oct. 21, 1981) 88 I.D. 979

The Board denies a contractor's claim for interest based upon Government delays in paying invoices in undisputed amounts where it finds neither a statutory nor a contractual basis for recovery of the interest claimed.

Appeal of Electronic Techniques, Inc., IBCA-1474-6-81 (Mar. 22, 1982) 89 I.D. 111

A contract should be interpreted so as to give a reasonable meaning to all its parts and its provisions should not be construed as conflicting unless no other reasonable construction is possible.

Appeal of David B. Brown, JK., IBCA-1600-7-82 (Mar. 31, 1983)

In interpreting a contract, statements of authorized Government officials made at a preproposal conference, attended by prospective bidders, can and should be taken into account in ascertaining the parties' intentions and joint understanding of the contract requirements.

Statements made at a preproposal conference by the designated contracting officer's technical representative (COTR) who presided at the conference, are binding upon the Government when it is determined that (i) the COTR was the "authorized representative" of the contracting officer within the meaning of clause 1(b) of the General Provisions of the contract; (ii) there is no evidence that bidders who attended the conference were made aware of any limitations of the COTR's authority; (iii) the COTR played an extensive role in the preparation of the solicitation; and (iv) the testimony of the COTR indicated that he had no reason to believe that he was not authorized to make such statements.

Appeal of Pettijohn Engineering Co., Inc., IBCA-1346-4-80 (May 26, 1983)

A motion for reconsideration is denied where appellant argues for a strained interpretation of the payment provisions on the ground that a construction giving effect and meaning to all provisions will be preferred to one that leaves certain provisions superfluous or in conflict with each other.

Appeal of Tree Tree Nursery, IBCA-1628-10-82 (Aug. 17, 1983)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

General Rules of Construction--Continued

Contracts entered into by an Indian tribe and approved by the Bureau of Indian Affairs are generally subject to the same rules of construction as contracts between private parties. In construing an Indian timber sale contract, the Board of Indian Appeals will presume that the parties intended for all of its provisions to have meaning, and will, therefore, attempt to give effect to all of those provisions.

White Sands Forest Products, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 299 (Sept. 12, 1983) 90 I.D. 396

Where for over half the duration of the contract performance period the contractor routinely submitted direct billings for holiday pay, and the responsible Government official approved and certified them, and payment was made to the contractor, the Board finds that such conduct by the parties prior to the onset of a dispute, is entitled to great weight in determining that the contract did not contain overhead rates for holiday pay.

Moving Services, Ltd., IBCA-1540-12-81 (Apr. 9, 1984)

Intent of Parties

Where the contracting officer responds to appellant's general inquiry on a number of pending claims, the Board finds that response is not a new appealable decision occurring after the effective date of the Contract Disputes Act of 1978 with regard to four appeals previously dismissed for lack of jurisdiction and then pending before the Board on appellant's motion for reconsideration.

Appeals of Gregory Lumber Co., IBCA-1237-12-78, IBCA-1238-12-78, IBCA-1239-12-78, IBCA-1240-12-78 (Mar. 11, 1980) 87 I.D. 94

The Board found that liquidated damages were improperly imposed where the contractor completed installation of a computer 13 days after its delivery under a contract calling for delivery of the computer within 30 days of award but imposing no damages for late delivery and instead providing for liquidated damages if installation of the computer was not completed within 30 days of its delivery. The Board held that if the Government intended to require installation within 60 days of award, it was an unexpressed, subjective, unilateral intent which was insufficient to bind the contractor who reasonably believed otherwise.

Appeal of OAO Corp., IBCA-1427-1-81 (Sept. 15, 1981)

In interpreting a contract, statements of authorized Government officials made at a preproposal conference, attended by prospective bidders, can and should be taken into account in ascertaining the parties' intentions and joint understanding of the contract requirements.

Appeal of Pettijohn Engineering Co., Inc., IBCA-1346-4-80 (May 26, 1983)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Intent of Parties--Continued

The Board found that the contractor reasonably interpreted the contract specifications to require that all materials, except solid rock, should be scaled and where such interpretation was communicated to Government personnel who acquiesced therein, the Board accorded minimal significance to a Government geologist's subjective intent for the rock scaling project (though corroborated by a drawing) not communicated to the contractor and in conflict with the contractor's interpretation of the specifications.

Appeal of Stephen J. Fenner, IBCA-1438-3-81 (Sept. 30, 1983) 90 I.D. 445

Rejected by the Board is an appellant's argument that the Government had in effect guaranteed to the contractor that he would be paid any specified number of hours per week where the Board found (i) that the requirement that the contractor work a 40-hour week was qualified by the language "weather and ground conditions permitting"; (ii) that the Government consent to the contractor working 50 hours a week was subject to the same limiting language; and (iii) that the evidence showed that some of the delays experienced by the contractor in proceeding with the contract work were attributable to rain (i.e., weather and ground conditions) for which the Government was not responsible.

Appeal of Clark & Hirt, IBCA-1508-8-81 (Feb. 9, 1984) 91 I.D. 71

A claim for compensation for the addition of a boat throttle control and steering system is denied where appellant's contract required the furnishing of a new jet boat with an inboard engine and console with complete instrumentation, and no evidence is submitted to show why the throttle and steering systems should be excluded from the required "complete instrumentation."

Appeal of Ron's Welding & Fabricating, Inc., IBCA-1765-1-84 (Nov. 29, 1984)

Labor Laws

The Board denies a Government motion to dismiss an appeal predicated upon the ground, inter alia, that the Disputes Concerning Labor Standards clause gives the Department of Labor the authority to decide disputed questions arising out of the Davis-Bacon Act, where the record indicates that almost two-thirds of the amount withheld from a prime contractor by reason of Davis-Bacon Act violations by its subcontractor appears to represent amounts owed by the subcontractor to the Federal or to a state government and thus present questions for resolution by the Board incident to its authority to adjudicate disputes between the parties to the contract.

Appeal of G. A. Western Construction Co., IBCA-1550-2-82 (July 1, 1982) 89 I.D. 365

A claim for interest under the Contracts Disputes Act of 1978 is denied where the Board finds justifiable the contracting officer's action in withholding funds otherwise due the contractor in order to insure payment to the contractor's employees of fringe benefits included in wage determinations set forth in the contract under the authority of the David-Bacon Act.

Appeal of BECO Corp., IBCA-1795 (Nov. 16, 1984) 91 I.D. 350

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Modification of Contracts

Generally

In a case involving the movement of Government office furniture and furnishings within the State of Colorado, the Board finds (i) that the National Park Service is not required to pay a higher rate for the movement of its property than the rate negotiated with the contractor as reflected in an accepted purchase order and (ii) that it is not required to forego presenting to the contracting officer for decision a claim for damages sustained to Government property during the course of the move, even though at the time the move took place the tariff rates promulgated by the Colorado Public Utilities Commission required payment of a higher rate than that specified in the purchase order and even though the same tariff rates required payment of the full amount billed for services rendered before claims against the carrier for damages to property during the move could be entertained.

Appeal of Alpine Moving and Storage, IBCA-1434-2-81 (Oct. 21, 1981) 88 I.D. 979

Duress

Where a termination settlement agreement was reached about 14 months after a decision of the Board in favor of appellant and the facts show that appellant was responsible for almost a year of the delay for refusal to allow Government auditors full access to the contract records, and the agreement was signed by appellant's president in an amount in excess of the amount authorized by appellant's board of directors, the Board finds that appellant failed to show that it entered the agreement because of duress on behalf of the Government.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Feb. 19, 1981) 88 I.D. 293

Notices

Where the Board found that the contracting officer had actual notice of the claim for delay based on a diesel fuel shortage, but declined to make the investigation required by Clause 5(d)(2) of the General Provisions of the Standard Form 23A construction contract because of the erroneous belief that a fuel shortage was not a sufficient legal ground to justify an extension, the Board further found that the Government was not prejudiced by alleged untimely notice of delay and refused to foreclose the contractor from asserting the defense of excusable cause for delay.

Appeals of Phillips Construction Co., IBCA-1295-8-79 & 1296-8-79 (July 31, 1981) 88 I.D. 689

Written notice given a week after completion of the contract work is found to satisfy the requirement of the Differing Site Conditions clause for written notice to the contracting officer before the conditions are disturbed where the evidence shows that the Government had actual notice of the operative facts related to double roofing at the time the double roofing was encountered and no showing was made that any prejudice to the Government had resulted from the belated written notice.

Appeal of Singleton Contracting Corp., IBCA-1413-12-80 (Aug. 12, 1981) 88 I.D. 722

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Notices--Continued

A contractor's claim for an equitable adjustment based upon an alleged differing site condition was not barred by its failure to give formal written notice of the differing site condition since the Government had actual knowledge of such condition from the contractor's submission of alternative designs for anchoring the seawall. The contractor's designs were based on the actual rock conditions disclosed by partial excavation and not upon subsurface investigation by drilling, as were the Government's designs.

Roger J. Au & Son, Inc., IBCA-1303-9-79 (Sept. 14, 1983) 90 I.D. 401

The 20-day notice provision of the Changes clause is inapplicable where the Board finds the specification to be defective, thereby bringing the case within the defective specification exceptions to the notice requirement of the Changes clause.

Appeal of Clark & Hirt, IBCA-1508-8-81 (Feb. 9, 1984) 91 I.D. 71

A Government motion to dismiss an appeal is denied where the Board determines that it has jurisdiction over an appeal being actively prosecuted by a subcontractor where it finds the prime contractor's sponsorship of the subcontractor's claim is established by the following: (1) The decision from which the appeal was taken was addressed to the prime contractor; (2) the notice of appeal was signed by a representative of the contractor; and (3) the contractor is claiming overhead and profit on the subcontractor's claim.

Appeal of Obayashi-Gumi, Ltd., IBCA-1785-3-84 (Sept. 25, 1984) 91 I.D. 311

Payments

A claim based primarily upon an overpayment to a contractor is approved where the Board finds the evidence of record substantiates the Government claim and it does not appear that the appellant has ever contested either the fact or the amount of the overpayment or adjustments related to such overpayment which have the effect of reducing the amount of the Government's claim.

Appeal of Nero & Associates, Inc., IBCA-1292-8-79 (Feb. 19, 1981) 88 I.D. 304

A contractor's claim for compensation for placing additional quantities of base and subbase is denied where the contractor attempted to relate the measurement of the base and subbase to an alternate bid item for an estimated quantity of asphaltic concrete paving which was not accepted by the Government and where the contractor offered no evidence of actual measurement. Further evidence of delivery of excess raw materials to the site is irrelevant to payment since the payment clause provides payment for the square yardage of compacted base and subbase and not for delivery of raw materials to the site.

Appeal of Bruce Anderson Co., Inc., IBCA-1633-10-82 (Nov. 30, 1984)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Privity of Contract

A Government motion to dismiss an appeal is denied where the Board determines that it has jurisdiction over an appeal being actively prosecuted by a subcontractor where it finds the prime contractor's sponsorship of the subcontractor's claim is established by the following: (1) The decision from which the appeal was taken was addressed to the prime contractor; (2) the notice of appeal was signed by a representative of the contractor; and (3) the contractor is claiming overhead and profit on the subcontractor's claim.

Appeal of Obbarashi-Gumi, Ltd., IBCA-1785-3-84 (Sept. 25, 1984) 91 I.D. 311

Subcontractors and Suppliers

Where a contractor claims excusable delays by reason of the failure of suppliers to timely supply material or to replace damaged or nonspecification material, the failure to show that the suppliers' delays were without the fault or negligence of both the contractor and the suppliers precludes a finding that the delays were excusable under the contract.

Appeal of J. T. Gregory & Son, Inc., IBCA-1260-4-79 (Apr. 30, 1980) 87 I.D. 154

Where a prime contract requires a specific statement in subcontracts in order for wage escalations to apply and the subcontract contains only the referenced requirements by incorporation by reference of the specifications and a general statement passing on applicable rights and privileges of the prime contractor to the subcontractor, the Board finds no ambiguity in the prime contract and no obligation for the Government to pay for the wage escalations of the subcontractor.

Appeal of Martin K. Eby Construction Co., Inc., IBCA-1380-8-80 (Feb. 19, 1981)

A claim for rental of blowout prevention equipment used in drilling a well under a Government prime contract is denied where the supplier of the equipment alleges that the equipment was furnished pursuant to oral orders received from a Government employee but the employee named denies having placed any orders with the supplier and the supplier's own order forms show the orders in question to have been placed by the prime contractor. The appellant's claim predicated upon a benefit to the Government is dismissed since, irrespective of any benefit derived from having the rental equipment used in drilling the well covered by the prime contract, the Board has no jurisdiction over contracts implied in law.

Appeal of Shafco Industries, Inc., IBCA-1447-3-81 (Mar. 16, 1982) 89 I.D. 92

The Board denies a Government motion to dismiss an appeal predicated upon the ground, inter alia, that the Disputes Concerning Labor Standards clause gives the Department of Labor the authority to decide disputed questions arising out of the Davis-Bacon Act, where the record indicates that almost two-thirds of the amount withheld from a prime contractor by reason of Davis-Bacon Act violations by its subcontractor appears to represent amounts owed by the subcontractor to the Federal or to a state government and thus present questions for resolution by the Board incident to its

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Subcontractors and Suppliers--Continued

authority to adjudicate disputes between the parties to the contract.

Appeal of G. A. Western Construction Co., IBCA-1550-2-82 (July 1, 1982) 89 I.D. 365

A Government defense that the Board is without jurisdiction over a subcontractor's claim is rejected where it is found that the subcontractor's claim was included in the appellant's initial claim submission and that at the hearing appellant actively prosecuted the claim on behalf of the subcontractor by eliciting testimony not only from a representative of the subcontractor but from appellant's foreman as well.

Appeal of Clark & Hirt, IBCA-1500-8-81 (Feb. 9, 1984)

A Government motion to dismiss an appeal is denied where the Board determines that it has jurisdiction over an appeal being actively prosecuted by a subcontractor where it finds the prime contractor's sponsorship of the subcontractor's claim is established by the following: (1) The decision from which the appeal was taken was addressed to the prime contractor; (2) the notice of appeal was signed by a representative of the contractor; and (3) the contractor is claiming overhead and profit on the subcontractor's claim.

Appeal of Obbarashi-Gumi, Ltd., IBCA-1785-3-84 (Sept. 25, 1984) 91 I.D. 311

Third Persons

A claim for rental of blowout prevention equipment used in drilling a well under a Government prime contract is denied where the supplier of the equipment alleges that the equipment was furnished pursuant to oral orders received from a Government employee but the employee named denies having placed any orders with the supplier and the supplier's own order forms show the orders in question to have been placed by the prime contractor. The appellant's claim predicated upon a benefit to the Government is dismissed since, irrespective of any benefit derived from having the rental equipment used in drilling the well covered by the prime contract, the Board has no jurisdiction over contracts implied in law.

Appeal of Shafco Industries, Inc., IBCA-1447-3-81 (Mar. 16, 1982) 89 I.D. 92

Waiver and Estoppel

Upon finding that the Government waived the original completion date for performance of a fixed-price construction contract by permitting the contractor to work after default, failed to fix a new specific completion date after waiver, and failed to prove abandonment or anticipatory breach on the part of the contractor after the waiver, the Board holds the contractor to have been wrongfully terminated for default and entitled to have the termination for default converted to a termination for the convenience of the Government.

Appeal of Bilo Werner Co., IBCA-1202-7-78 (Mar. 22, 1982) 89 I.D. 100

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Waiver and Estoppel--Continued

A Government motion to dismiss an appeal predicated upon an oral contract is denied when the available evidence indicates that the Government official named was without authority to enter into a contract such as had been alleged but where assuming appellant's material allegations to be true for the purpose of the motion, it appears that a question exists as to whether the Government may be estopped to reply upon the defense of a lack of actual authority to contract if affirmative misconduct of the Government official concerned were shown to exist.

Appeal of Powell A. Casey, IBCA-1638-11-82 (May 23, 1983) 90 I.D. 230

Statements made at a preproposal conference by the designated contracting officer's technical representative (COTR) who presided at the conference, are binding upon the Government when it is determined that (i) the COTR was the "authorized representative" of the contracting officer within the meaning of clause 1(b) of the General Provisions of the contract; (ii) there is no evidence that bidders who attended the conference were made aware of any limitations of the COTR's authority; (iii) the COTR played an extensive role in the preparation of the solicitation; and (iv) the testimony of the COTR indicated that he had no reason to believe that he was not authorized to make such statements.

Appeal of Pettijohn Engineering Co., Inc., IBCA-1346-4-80 (May 26, 1983)

Warranties

The Government failed to sustain its burden of proving that the malfunctioning of discharge gate valves required for an irrigation system was due to the valves not meeting the requirements of the specifications rather than a result of the Government's failure to provide a filtering device in the irrigation system to keep out damaging foreign matter. Noted by the Board was the fact that under the maintenance warranty provision on which the Government's claim is based, the contractor is not responsible for repairing defects or failures due to negligence in the operation of the irrigation system by the Government or its agents.

The Board denies a claim for interest on an amount obtained by the Government from an interest-bearing escrow retention account to satisfy its claim of breach of a maintenance warranty (the interest claimed is the amount that would have been earned in the escrow account on the sum taken by the Government from the time taken until the time paid). The denial is predicated upon the absence of any clause in the contract authorizing the payment of the type of interest claimed and the fact that the only statute authorizing the payment of interest on claims against the Government is the Contract Disputes Act of 1978, under which interest is paid on claims from the time they are presented to the contracting officer for decision.

Appeal of Armstrong & Armstrong, Inc., IBCA-1311-10-79 (Jan. 29, 1982) 89 I.D. 30

A claim for breach of warranty is not established under a contract calling for the furnishing of an audiovisual system where the Government asserts that the system was defective at the time of acceptance and the Board finds that the nonlatent preexisting defects forming the basis of the warranty claim were not excluded from the coverage of the standard inspection clause making acceptance conclusive, except as regards

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Warranties--Continued

latent defects, fraud, or such gross mistakes as amount to fraud.

Appeal of Bergen Expo Systems, Inc., IBCA-1348-4-80 (Sept. 9, 1982) 89 I.D. 449

CONTRACT DISPUTES ACT OF 1978

Generally

Where the Government as the moving party on a counterclaim sustains its burden of proof concerning an overpayment to the contractor, the Board concludes that the withholding and set off of funds otherwise payable to the contractor by the Government was proper.

Appeal of Dodd, Frazier & Co., IBCA-1591-6-82 & 1605-7-82 (Jan. 28, 1983) 90 I.D. 41

A contract was properly terminated for default because a state license was not furnished and the contractor had adequate notice that the license was required and that his failure to provide it would result in termination for default and liability for excess reprocurement costs.

Appeal of Thuppers Reforestation, IBCA-1576-5-82 (Jan. 31, 1983)

A purchase order requiring that abstracts of title be prepared and certified by an abstractor was properly terminated when the contractor, after adequate written notice, failed to demonstrate that he was authorized under state law to conduct an abstractor's business, and did not otherwise secure the required certification by a properly authorized abstractor.

Appeal of Rudy Martin, IBCA-1606-7-82 (Oct. 19, 1983)

Interest

A construction contractor's claim for interest under the Contract Disputes Act of 1978, is denied where the Board finds that the underlying claims for an equitable adjustment were negotiated to settlement as evidenced by a written agreement between the parties which contained no provision postponing the finality of the settlement pending the resolution of the claim for interest.

Appeal of Hann Construction Co., Inc., IBCA-1280-7-79 (Dec. 10, 1981) 88 I.D. 1065

The Board denies a claim for interest on an amount obtained by the Government from an interest-bearing escrow retention account to satisfy its claim of breach of a maintenance warranty (the interest claimed is the amount that would have been earned in the escrow account on the sum taken by the Government from the time taken until the time paid). The denial is predicated upon the absence of any clause in the contract authorizing the payment of the type of interest claimed and the fact that the only statute authorizing the payment of interest on claims against the Government is the Contract Disputes Act of 1978, under which interest is paid on claims from the time they are presented to the contracting officer for decision.

Appeal of Armstrong & Armstrong, Inc., IBCA-1311-10-79 (Jan. 29, 1982) 89 I.D. 30

CONTRACTS--Continued

CONTRACT DISPUTES ACT OF 1978--Continued

Interest--Continued

The Board denies a contractor's claim for interest based upon Government delays in paying invoices in undisputed amounts where it finds neither a statutory nor a contractual basis for recovery of the interest claimed.

Appeal of Electronic Techniques, Inc., IBCA-1474-6-81 (Mar. 22, 1982) 89 I.D. 111

A Government's motion for summary judgment is granted and an appeal is dismissed where in connection with a claim for interest for the Government's delay in making progress payment the Board finds there is no genuine issue of material fact and that neither the payments clause nor the Contract Disputes Act of 1978 authorize the payment of interest on undisputed underlying claims on which the claim for interest is based.

Appeal of Lee Roofing Co., IBCA-1506-8-81 (May 11, 1982) 89 I.D. 233

Where the Government withheld funds, due to the contractor for work performed, to cover the cost of site restoration and seeding pursuant to a site restoration clause which required ruts to be smoothed and depressions to be filled but did not require seeding, the Board held that the contractor was entitled to be paid for the amount erroneously withheld for seeding, plus interest from the date the claim was presented to the contracting officer.

Appeal of Raimonde Drilling Corp., IBCA-1359-5-80 (Feb. 16, 1983) 90 I.D. 69

A Government motion for summary judgment is granted and an appeal is dismissed when in connection with a claim for interest for the Government's delays in making progress payments, the Board finds that the Government's delays were unreasonable but also finds that there is no genuine issue of material fact and that neither the Payments to Contractor clause nor the Contract Disputes Act of 1978 authorize the payment of interest on undisputed underlying claims. Noted by the Board was the fact that the invoices on which the claim for interest is based had been paid several months before the contractor's claim for interest was submitted to the contracting officer for a decision.

Appeal of Casework Installations, Ltd., IBCA-1635-11-82 (June 7, 1983)

In a case in which the appellant's motion for summary judgment is denied and the Government's cross motion for summary judgment is granted, the failure of a contractor to certify its claims in excess of $50,000 when submitting them to the contracting officer, as required by sec. 6(c) of the Contract Disputes Act of 1978, is found to preclude the allowance of interest provided for by sec. 12 of the Act.

Appeal of Ferguson Construction Co., IBCA-1681-6-83 (Oct. 28, 1983)

CONTRACTS--Continued

CONTRACT DISPUTES ACT OF 1978--Continued

Interest--Continued

In an equitable adjustment case, the Board finds that an appellant is entitled to simple interest on the amount found to be due and that under the provisions of the Contract Disputes Act the amount of interest is to be determined on the basis of applying variable rates for the period over which interest is payable with interest not to commence until the contractor has submitted its claim to the contracting officer for decision.

Appeal of Ohbayashi-Gumi, Ltd., IBCA-1785-3-84 (Sept. 25, 1984) 91 I.D. 311

A claim for interest under the Contracts Disputes Act of 1978 is denied where the Board finds justifiable the contracting officer's action in withholding funds otherwise due the contractor in order to insure payment to the contractor's employees of fringe benefits included in wage determinations set forth in the contract under the authority of the David-Bacon Act.

Appeal of PECO Corp., IBCA-1795 (Nov. 16, 1984) 91 I.D. 350

Jurisdiction

Where the contracting officer responds to appellant's general inquiry on a number of pending claims, the Board finds that response is not a new appealable decision occurring after the effective date of the Contract Disputes Act of 1978 with regard to four appeals previously dismissed for lack of jurisdiction and then pending before the Board on appellant's motion for reconsideration.

Appeals of Gregory Lumber Co., IBCA-1237-12-78, IBCA-1238-12-78, IBCA-1239-12-78, IBCA-1240-12-78 (Mar. 11, 1980) 87 I.D. 90

Where a contractor does not elect to come under the Contract Disputes Act of 1978, except as contained in counsel's posthearing reply brief; the contract is awarded in Aug. of 1977; no claim is pending before the contracting officer on Mar. 1, 1979; and the contracting officer reviews claims already denied after a prehearing conference conducted in Aug. of 1979, in a final attempt to reach a settlement before hearing; the Board holds that, in such circumstances, no valid election to come under the Act has been made, and therefore the Board has no jurisdiction under the Act.

Appeals of DCT Systems, Inc., IBCA-1197-6-78, IBCA-1204-8-78 (Sept. 30, 1980) 87 I.D. 450

A claim of mutual mistake asserted under a tree thinning contract is dismissed for want of jurisdiction where the Board finds (i) that it has no authority under the Disputes clause to reform contracts and (ii) that since appellant did not elect to proceed under the Contract Disputes Act of 1978, the Board derives no reformation authority from the Act in this instance.

Appeal of Hero & Associates, Inc., IBCA-1292-8-79 (Feb. 19, 1981) 88 I.D. 304

CONTRACTS--Continued

CONTRACT DISPUTES ACT OF 1978--Continued

Jurisdiction--Continued

A protest of award by an unsuccessful bidder is dismissed where the Board finds that it has no jurisdiction over bid protests under either the disputes clause or the Contract Disputes Act of 1978.

Appeal of Dakota Titles & Records, A Joint Venture, IBCA-1420-1-81 (Feb. 24, 1981) 88 I.D. 324

A Government motion to dismiss an appeal is granted where no express contract between the parties exists, there is no evidence from which an implied in fact contract could be inferred, and the Board is without jurisdiction over contracts implied in law, assuming appellant is seeking full relief.

Appeal of Dean Prosser and Crew, IBCA-1471-6-81 (Aug. 28, 1981) 88 I.D. 809

Where a contractor offered not a scintilla of evidence to support its allegations that it encountered bad weather and had to work at reduced efficiency for 21 days and therefore should not have been assessed 21 days of liquidated damages, the Board denied the appeal for lack of evidence to support the contractor's claim. The Government's counterclaim for an amount equal to the unsupported claim was dismissed by the Board since it had not been presented to the contracting officer for decision as required by the Contract Disputes Act of 1978.

Appeal of Asphalt, Inc., IBCA-1331-2-80 (Sept. 15, 1981)

A claim for rental of blowout prevention equipment used in drilling a well under a Government prime contract is denied where the supplier of the equipment alleges that the equipment was furnished pursuant to oral orders received from a Government employee but the employee named denies having placed any orders with the supplier and the supplier's own order forms show the orders in question to have been placed by the prime contractor. The appellant's claim predicated upon a benefit to the Government is dismissed since, irrespective of any benefit derived from having the rental equipment used in drilling the well covered by the prime contract, the Board has no jurisdiction over contracts implied in law.

Appeal of Shafco Industries, Inc., IBCA-1447-3-81 (Mar. 16, 1982) 89 I.D. 92

The Board denies a Government motion to dismiss an appeal predicated upon the ground, inter alia, that the Disputes Concerning Labor Standards clause gives the Department of Labor the authority to decide disputed questions arising out of the Davis-Bacon Act, where the record indicates that almost two-thirds of the amount withheld from a prime contractor by reason of Davis-Bacon Act violations by its subcontractor appears to represent amounts owed by the subcontractor to the Federal or to a state government and thus present questions for resolution by the Board incident to its authority to adjudicate disputes between the parties to the contract.

A Government motion to dismiss an appeal on the grounds that the contracting officer had neither issued nor been requested to issue a final decision is denied, where the Board finds (i) that the appellant was warranted in treating a contracting officer's disclaimer of any responsibility for adjudicating a dispute as a final decision, and (ii) that no useful purpose would

CONTRACTS--Continued

CONTRACT DISPUTES ACT OF 1978--Continued

Jurisdiction--Continued

be served by remanding a case to the contracting officer for a decision when the Government's announced position is that the contracting officer has no authority to render a decision relating to wage determinations under the Davis-Bacon Act.

Appeal of G. A. Western Construction Co., IBCA-1550-2-82 (July 1, 1982) 89 I.D. 365

The Board finds that it has jurisdiction over a Government counterclaim against a contractor under the Contract Disputes Act of 1978, where such claim was the subject of a decision of the contracting officer.

Appeal of Dodd, Frazier & Co., IBCA-1591-6-82 & 1605-7-82 (Jan. 28, 1983) 90 I.D. 41

An appeal under the Contract Disputes Act filed more than 90 days after a contractor's receipt of a final decision was dismissed with prejudice as untimely.

Appeal of R & R Contractors, IBCA 1646-1-83 (May 13, 1983) 90 I.D. 226

An appeal taken under a grant is dismissed where the Board finds that it is without jurisdiction over the claim asserted under either the terms of the grant or under the provisions of the Contract Disputes Act of 1978.

Appeal of Confederated Tribes of the Chehalis Reservation, IBCA-1640-12-82 (May 20, 1983) 90 I.D. 228

In an appeal, subject to the provisions of the Contract Disputes Act of 1978, the Board finds that proceedings under the Act are de novo as they have been for appeals governed by the "Disputes" clause.

Appeal of Powell A. Casey, IBCA-1638-11-82 (May 23, 1983) 90 I.D. 230

An appeal is dismissed, sua sponte, when a surety seeks to become a party to the contractor's appeal absent the consent or assignment of the contractor, and where the only action claimed to constitute privity of contract with the Government is a notice by the Government to the surety that the contractor has failed to timely perform, was terminated for default, and specifies claims against the performance bond.

Appeal of United States Fidelity & Guaranty Co., Surety for Frank Rivera, Inc., IBCA-1645-12-82 (June 10, 1983)

A Government motion to dismiss an appeal and remand it to the contracting officer for decision is granted where the Board finds that it is without jurisdiction over a claim of mutual mistake first presented in the complaint, since a published regulation prescribes that claims of mistake alleged after award of a contract, whether mutual or unilateral, are to be presented initially to the contracting officer for decision.

Appeal of Wakon Redbird & Associates, IBCA-1682-6-83 (Sept. 30, 1983) 90 I.D. 441

CONTRACTS--Continued

CONTRACT DISPUTES ACT OF 1978--Continued

Jurisdiction--Continued

An appeal under the Contract Disputes Act filed more than 90 days after a contractor's receipt of a contracting officer's final decision is dismissed as untimely.

Appeal of Tibbals Construction, Inc., IBCA-1618-9-82 (Nov. 4, 1983)

Timely filing of an appeal under the Contract Disputes Act of 1978 is jurisdictional and an appeal filed after the expiration of the 90-day period allowed by the Act is dismissed since the Board has no jurisdiction to consider an untimely filed appeal.

Appeal of Denver Pump Co., Inc., IBCA-1725-9-83 (Nov. 14, 1983)

Appeal of Nicholson Construction Co., IBCA-1711-8-83 (Nov. 30, 1983) 90 I.D. 494

Appeal of Columbia Engineering Corp., IBCA-1776-2-84 (Feb. 29, 1984)

Where the Board found that the contractor failed to comply with the certification requirements of 41 U.S.C. § 605(c)(1), it held that the fact that the contracting officer did not render a decision on the claim as submitted does not affect the consequences of the failure to certify.

The Board held that the failure of a contractor to certify a claim to the contracting officer in accordance with 41 U.S.C. § 605(c)(1) renders the claim as submitted a nullity, relieving both the contracting officer and the Board from any obligation and authority to issue a decision thereon.

The Board rejected appellant's contention that certification of a claim appended to a complaint makes Government counsel an agent of the contracting officer for the purpose of compliance with the requirements of 41 U.S.C. § 605(c)(1) and granted the motion of the Government to vacate the Board's decision rendered on the merits and to dismiss the appeal for lack of jurisdiction.

L. A. Nelka Marine Construction & Diving Co., Inc., IBCA-1511-9-81 (Nov. 25, 1983) 90 I.D. 491

Although the Contract Disputes Act gives the Board jurisdiction over breach of contract claims, the Board finds that claims presented subsequent to a direction by the Government to cease all work under a contract are not redressable as breach of contract claims where (i) the contract includes a termination for the convenience of the Government clause; (ii) the lack of funds to pay the contractor for further work constituted an adequate cause for directing performance under the contract to cease; (iii) that the failure of the contracting officer to invoke the termination for convenience clause as the basis for his action does not affect the right to rely upon that clause in determining the rights and obligations of the parties; (iv) that the presence in the contract of a termination for convenience clause precludes actions of the Government from being considered breaches of contract (assuming they might otherwise be); and (v) that the inclusion of a termination for convenience clause makes the recovery of anticipated profits unallowable.

Appeal of Clark & Hirt, IBCA-1508-8-81 (Feb. 9, 1984) 91 I.D. 71

CONTRACTS--Continued

DISPUTES AND REMEDIES

Burden of Proof

Where a cost-plus-fixed-fee contractor has signed a contract amendment accepting the auditor's recommended overhead rates and no proof is offered to support claims for other disallowed costs, the Board finds there was a binding agreement on overhead rates and a failure to prove appellant's claims for other costs.

Appeal of National Institute for Community Development, Inc., IBCA-1185-3-78 (Mar. 28, 1980) 87 I.D. 116

Where a contractor seeks relief from the assessment of liquidated damages for delayed completion of the contract work due to alleged excessive rain, the claim is denied for want of proof for failure to show that the amount of rain constituted unusually severe weather.

Appeal of J. T. Gregory & Son, Inc., IBCA-1260-4-79 (Apr. 30, 1980) 87 I.D. 154

An appeal from a termination for default is denied for want of proof where the contractor offers no evidence to support his appeal notice claiming the default was excusable and the termination for default improper.

Appeal of Gil's Aircraft Services, IBCA-1288-8-79 (May 9, 1980)

In a case remanded to the Board by the Court of Claims in which the Board had previously found that 1,013 concrete pipes were wrongfully rejected and the Court of Claims afforded the contractor an opportunity to show by record evidence that more pipes were so rejected, but the contractor offered no probative evidence of additional wrongful rejections, the Board declined to increase the equitable adjustment allowed in its original decision.

Where, upon remand from the Court of Claims, the Board was directed to make a specific finding as to whether, if pipes rejected for small diameters or marked as special hydros had been available for use, the supply of acceptable pipe would have been sufficient to allow pipe laying operations to continue and the contractor merely alleged that its average production of pipe was greater than the average number of pipe it was required to furnish to its pipe laying subcontractor, the contractor's allegations obscured the fact that its own production and construction schedule called for specific sizes and lengths of pipe at specific times. The Board found that the contractor's total production was insufficient to maintain the contractor's own pipe laying schedule and therefore denied the contractor's claim for reimbursement of the payment it made to settle the delay claim of the subcontractor.

Appeals of Cop-Vi-Bo of Texas, Inc., IBCA-718-5-68 & IBCA-755-12-68 (June 27, 1980) 87 I.D. 230

A contractor who seeks an extension of time under a standard form of construction contract because of an alleged excusable cause of delay, in general, has the burden of proving that the alleged cause of delay actually existed, that it met the criteria of excusability prescribed by the contract and that it delayed the ultimate completion of the contract as a whole.

Appeal of Wuppchel & Small, Inc., IBCA-1263-5-79 (June 27, 1980)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof--Continued

In a case involving the assertion of a differing site conditions claim under a contract for the construction of concrete lined tunnels for the Navajo Indian Irrigation Project, the Board follows the Court of Claims in holding that it is not necessary for the "indications" in the contract to be explicit or specific, it being sufficient for there to be an indication on the face of the contract documents causing a bidder reasonably to expect that there were no "subsurface or latent" physical conditions at the site differing materially from those indicated in the contract.

Appeal of Flour Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981) 88 I.D. 41

Where the appellant seeks to have an assessment of 46 days of liquidated damages remitted, but offers no proof in support of his claims, the Board denies the appeal for want of proof because mere assertions in the complaint are not proof.

Appeal of Johnsonius & Sons, Inc., IBCA-1345-4-80 (Feb. 25, 1981)

An appeal seeking remission of liquidated damages is denied when the contract completion occurred beyond the specified completion date and appellant offers no proof that the delay was excusable.

Appeal of Mechanex, Inc., IBCA-1362-6-80 (Apr. 8, 1981)

Where the testimony of appellant's only witness testifying with respect to contract performance was found unworthy of belief and not credible, the Board holds that it has the discretion to reject all the testimony of such witness except that which has been corroborated; and the Board concludes, that except for one of the claims for an equitable adjustment conceded by the Government, there was no corroboration of the discredited testimony, and, therefore, the remaining claims of appellant must be denied for failure to sustain the burden of proof.

Appeal of Scoggs, Inc., IBCA-1090-1-76 (June 16, 1981) 88 I.D. 590

Where the Board finds appellant's evidence with respect to two alleged conversations to be little more than conclusory hearsay without reference to literal substance and appellant alleged that certain drawings had been approved by the Government, when the clear language of the responses to the submitted drawings indicated rejection, the Board holds that appellant has failed to sustain its burden of proof, because of failure to prove the allegations of its complaint by any substantial evidence, and denies the claim of appellant for costs incurred to furnish and install insulating fittings required by the specifications in connection with the construction of a pipeline.

Appeal of Forlich and Son, Inc., and Steve P. Rados, Inc. (A Joint Venture), IBCA-1255-3-79 (Aug. 27, 1981) 88 I.D. 796

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof--Continued

Where a contractor offered not a scintilla of evidence to support its allegations that it encountered bad weather and had to work at reduced efficiency for 21 days and therefore should not have been assessed 21 days of liquidated damages, the Board denied the appeal for lack of evidence to support the contractor's claim. The Government's counterclaim for an amount equal to the unsupported claim was dismissed by the Board since it had not been presented to the contracting officer for decision as required by the Contract Disputes Act of 1978.

Appeal of Asphalt, Inc., IBCA-1331-2-80 (Sept. 15, 1981)

The Government failed to sustain its burden of proving that the malfunctioning of discharge gate valves required for an irrigation system was due to the valves not meeting the requirements of the specifications rather than a result of the Government's failure to provide a filtering device in the irrigation system to keep out damaging foreign matter. Noted by the Board was the fact that under the maintenance warranty provision on which the Government's claim is based, the contractor is not responsible for repairing defects or failures due to negligence in the operation of the irrigation system by the Government or its agents.

The Board denies a claim for interest on an amount obtained by the Government from an interest-bearing escrow retention account to satisfy its claim of breach of a maintenance warranty (the interest claimed is the amount that would have been earned in the escrow account on the sum taken by the Government from the time taken until the time paid). The denial is predicated upon the absence of any clause in the contract authorizing the payment of the type of interest claimed and the fact that the only statute authorizing the payment of interest on claims against the Government is the Contract Disputes Act of 1978, under which interest is paid on claims from the time they are presented to the contracting officer for decision.

Appeal of Armstrong & Armstrong, Inc., IBCA-1311-10-79 (Jan. 29, 1982) 89 I.D. 30

A construction contractor's claim for substantial increases in equitable adjustments allowed by the contracting officer for directed changes is denied where the Board finds that appellant has failed to sustain the burden of proving a causal connection between the costs claimed and the alleged Government actions, and failed to provide reliable cost data to show the Government computations were inadequate compensation for the changed work.

Appeals of Foster Mechanical Contractors, Inc., IBCA-1357-5-80 & IBCA-1366-6-80 (Feb. 1, 1982) 89 I.D. 53

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81 (Feb. 12, 1982)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof--Continued

Where a contractor's conduct and correspondence for a year after delivery of equipment shows acknowledgement of defects which it agrees to repair, a claim for reimbursement for the cost of the repair work is denied where the contractor is unable to prove that the defects did not actually exist.

Appeal of Terra Technology Corp., IBCA-1393-9-80 (Mar. 4, 1982)

An appellant will be held to have failed to sustain its burden of proof and the appeal will be denied where appellant's case is submitted on the record without a hearing and the record consists only of contract documents, correspondence, and pleadings alleging that the Contracting Officer's decision is erroneous. Disputed allegations do not constitute evidence and cannot be accepted as proof of facts.

Appeal of E. H. White & Co., IBCA-1216-9-78 (July 19, 1982)

A claim of constructive change is denied where the appeal is submitted for decision on the record without a hearing and the appellant's case consists entirely of allegations contained in its claim letter or complaint. Allegations do not constitute proof of essential facts which are disputed.

Appeal of Western States Construction Co., Inc., IBCA-1466-6-81 (Sept. 21, 1982)

A contractor has the burden of producing evidence showing that he is entitled to relief on the basis of claims made, and the appeal will be denied where the record does not support appellant's contentions and appellant fails to appear at the hearing scheduled at its request and adduces no evidence. Disputed allegations do not constitute evidence and cannot be accepted as proof of facts.

Appeal of Dexter Cedar, IBCA-1535-11-81 (Sept. 30, 1982)

A default termination of a contract for failure to make progress so as to endanger performance is sustained where at the time of termination the contractor was far behind the monthly schedule and the principal grounds relied upon by the appellant as an excusable cause of delay was the failure by the Government to conform to an industry practice for which, however, no proof was offered and which would not constitute an excusable cause of delay even if shown to exist, where, as here, the Government either (i) denies the contentions advanced by the appellant relying upon evidence of record in support of the denial or (ii) shows the contentions to be irrelevant to the question of excusable cause of delay.

A claim for the cost of preparing a technical inventory of field tapes and other data furnished by the Government is denied where the appellant alleges that some of the field tapes were missing and some of the data was received in a deplorable condition, but the Board finds that the concurrence of a Government representative in the taking of the inventory did not provide a predicate for the claim asserted where the preparation of the inventory was considered to be simply an exercise of a management prerogative, irrespective of whether such action was to be viewed as a

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof--Continued

means of facilitating contract performance or satisfying a contract requirement for the furnishing of desultiplexing documentation.

Appeal of Walden General, Inc., IBCA-1475-6-81 (Oct. 19, 1982) 89 I.D. 529

Upon finding that the evidence established a 6.8 percent difference between the actual site conditions encountered at the pit and the test results shown on the plans of the average amount of aggregate passing a No. 4 screen, as opposed to a difference of 26.5 percent asserted by the contractor on appeal, the Board holds, considering all the circumstances involved, that the 6.8 percent does not constitute a material difference and that the contractor failed to sustain its burden of proving a differing site condition.

Where the Government admits that a change to the contract occurred, but refuses to pay the contractor for claimed resulting extra work, contending that the contractor was paid therefor, the Board holds that the burden of proof shifts to the Government to prove the alleged payment, and upon a failure to sustain that burden, holds the contractor entitled to the amount claimed.

Appeal of Thew Construction Co., Inc., IBCA-1254-3-79 (Jan. 27, 1983) 90 I.D. 21

Where the Government as the moving party on a counterclaim sustains its burden of proof concerning an overpayment to the contractor, the Board concludes that the withholding and set off of funds otherwise payable to the contractor by the Government was proper.

Appeal of Todd, Frazier & Co., IBCA-1591-6-82 & 1605-7-82 (Jan. 28, 1983) 90 I.D. 41

Where under a contract for the construction of a road and a bridge involving a substantial amount of unclassified excavation, the contractor's general superintendent and the then project engineer and the then project inspector testified in support of their widely divergent views as to the representations allegedly made by the Government representatives to the general superintendent during tours of the site to the effect that the slope stakes when placed would fall beneath a prominent ledge of rock known as caprock, the Board accepts the corroborated testimony of the general superintendent over the uncorroborated testimony of the project engineer but it refuses to accept the testimony of the general superintendent over that of the project inspector where the former's testimony is not corroborated with respect to the representations attributed to the inspector.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

Where a contractor relies on the actions of a purported Government agent and that reliance is later challenged, it is the contractor's burden to show that the individual is a contracting officer, not the Government's to show he is not; a contractor who relies upon the actions of an agent, without assuring himself of the agent's actual authority does so at his peril.

Appeal of Inter-Tribal Council of Nevada, Inc., IBCA-1234-12-78 (Apr. 14, 1983)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof--Continued

Where an analysis of all relevant evidence persuades the Board that the contractor failed to establish by sufficient evidence, its burden that a storm event was of such intensity as to be totally unforeseeable, the contractor cannot escape some responsibility for risk of loss of a tide station, and some resulting liability for the reasonable cost of reconstruction of the facility.

Appeal of Pettijohn Engineering Co., Inc., IBCA-1346-4-80 (May 26, 1983)

Default termination of a contract for conducting Schlumberger Vertical Electrical Soundings at the Nevada test site for the purpose of evaluating possible repositories for high level nuclear wastes was proper due to the contractor's failure to comply with the production requirements of the contract, the failure of its sounding data to conform to the specification requirements, and the contractor's failure to sustain its burden of proof that its default was excusable within the meaning of the Default Clause of the contract.

Assessment of excess costs of reprocurement against a defaulted supply contractor was proper because the Government sustained its burden of proof that the reprocurement was made within a reasonable period of time, that the cost and manner of the repurchase were reasonable, that all reasonable steps were taken to mitigate damages, and that the reprocurement contract was performed and final payment made.

Heinrichs Geoexploration Co., IBCA-1213-9-78 & IBCA-1222-11-78 (June 17, 1983)

Where the Board found that the Government failed to produce documentation for its claimed actual costs resulting from the contractor's failure to complete the contract, it held that the general statements in the testimony of the Government witnesses became nothing more than reassertions of the disputed allegations of its claim and insufficient to sustain the burden of proof.

Appeal of Charley O. Bates, d.b.a. Phoenix Reforestation Co., IBCA-1196-7-78 (Aug. 11, 1983) 90 I.D. 366

Since the burden of proof in a claim for an equitable adjustment arising because of an alleged Government insistence on performance in excess of the contract requirements lies with the contractor, the contractor's failure to submit any substantial, reliable evidence probative of the elements of its claim, results in the denial of the appeal.

Appeal of Pebble Haulers, Inc., IBCA-1524-10-81 (Aug. 23, 1983)

The Government sustained its burden of proof by submitting evidence to show that appellant's security guards committed numerous defaults of tardiness and missing Metes clock stations while appellant failed to sustain its burden of showing that the defaults were excusable, since it offered no evidence. The Board therefore found that termination of the contract for default was justified.

Appeal of William G. Griffin t/a Security of Virginia, Inc., IBCA-1491-10-82 (Sept. 29, 1983)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof--Continued

In a unit price, estimated quantity contract, where the contractor made a prima facie case of the amount of work done as well as the reason for the discrepancy between its case thereon and the Government's and where the Government failed to rebut the contractor's case on the reason for the discrepancy, the Board found that the amount of work done was in accordance with the contractor's claim.

The Board concluded that the Government failed to prove its contention that the contractor removed excessive material for safety reasons, whether by use of explosives or equipment, where the evidence established (1) that the contractor's equipment was incapable of moving solid rock and (2) that rock outcroppings first appearing to be solid turned out to be loose and that the less dangerous overall procedure adopted after such discovery was to blast such outcroppings when encountered.

Where the evidence established that in the course of performance of the contract, the contractor, by blasting, removed some quantity of solid rock not compensable under the contract, the Board nevertheless found the contractor's evidence more persuasive than the Government's on the question of the quantity of solid rock removed and held the Government entitled to an offset against the compensable work performed measured by the quantity of solid rock removed proved in the contractor's case.

Appeal of Stephen J. Kenney, IBCA-1438-3-81 (Sept. 30, 1983) 90 I.D. 485

A purchase order requiring that abstracts of title be prepared and certified by an abstractor was properly terminated when the contractor, after adequate written notice, failed to demonstrate that he was authorized under state law to conduct an abstractor's business, and did not otherwise secure the required certification by a properly authorized abstractor.

Appeal of Rudy Martin, IBCA-1606-7-82 (Oct. 19, 1983)

Termination of a contract for default was proper where the Government offered sufficient evidence to demonstrate that the contractor failed to perform the requirements of the contract, and the contractor offered no evidence to sustain its burden of showing the default was excusable.

Luther Benjamin Construction Co., Inc., IBCA-1571-9-82 (Oct. 25, 1983)

Valor Construction Corp., IBCA-1688-6-83 (Jan. 9, 1984)

In a construction contract, where the contractor complained of the Government's refusal to make final payment because of a dispute over two punch-list items and the contractor merely alleged satisfactory performance in one instance and asserted lack of contractual obligation in the other, both of which were contradicted by the Government, the Board held that the contractor had failed to carry its burden of proof for entitlement to recovery, since it failed to support its allegation and assertion by submission of any evidence.

Appeal of C. G. Horton Co., IBCA-1647-1-83 (Nov. 14, 1983)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof--Continued

Where three of four extra work orders covering drilling and blasting work performed by a subcontractor provided for no reimbursement to the contractor and where the fourth extra work order was used as a vehicle to reimburse the contractor for the rental of its pumps at agreed upon rates without any evidence having been offered at the hearing to show that any amount was included therein for costs resulting from delays to the contractor's work, the Government's contention that the contractor's acceptance of the four extra work orders constituted an accord and satisfaction is rejected by the Board since it is well settled that an agreement does not operate as an accord as to matters not covered by the agreement.

Appeal of Clark & Hirt, IBCA-1508-8-81 (Feb. 9, 1984)
91 I.D. 71

A contractor was allowed to recover holiday pay expenses as a fringe labor cost under a fixed rate, indefinite quantity contract because it sustained its burden of proof that holiday pay was excluded from overhead rates as an indirect cost, and that the contractor's direct billing for holiday pay did not result in a duplicate recovery of such costs.

Moving Services, Ltd., IBCA-1540-12-81 (Apr. 9, 1984)

In an appeal from a termination for default where the contractor's theory of the case is defective specifications, it is the contractor's burden to show not only that the specifications were faulty but that the faulty specifications caused the condition from which termination resulted. Upon finding that although the contractor showed that a Government well was incapable of producing the precise flow by total dynamic head set out in the contract specifications under which a particular pump was supplied, but finding that the Government established that the pump should have operated adequately under the actual flow conditions the well was capable of producing, the Board holds that the Government effectively controverted the contractor's case, that the contractor failed to sustain its burden of proof, and that the termination for default was justified entitling the Government to prevail.

Appeal of W. Hickey Co., Inc., IBCA-1574-4-82 (Apr. 20, 1984)
91 I.D. 186

In a case where the parties differ as to the amount of equitable adjustment to be provided for a constructive change, the Board finds the appellant to have shown by a preponderance of the evidence that it is entitled to the amount of the equitable adjustment sought.

Appeal of Obbayashi-Gumi, Ltd., IBCA-1785-3-84 (Sept. 25, 1984)
91 I.D. 311

A contractor's claims for constructive changes and costs of extended performance are denied for failure to sustain the burden of proving the claims where the added work was compensated by change orders, that rework was required to meet specification requirements, that delays were not caused by the Government, and the contractor accepted change orders extending the performance to the completion date.

Appeal of Kirkpatrick Division, Paul N. Howard Co., IBCA-1520-10-81 (Nov. 28, 1984)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Damages

Generally

In a contract which provided for helicopter spraying of herbicide on grass after spring sprouting and the Government, after giving notice to proceed and granting permission to the contractor to mix the herbicide for the entire project, changed its mind about the readiness of the grass for spraying and imposed a noncontractual requirement that the grass be 6 inches high before spraying, the Board found that the Government breached its duty not to interfere with the contractor's performance and that the contractor was entitled to damages in the form of standby costs for its helicopter and for the tank truck in which the herbicide was mixed.

Appeal of Evergreen Helicopters, Inc., IBCA-1380-8-80 (Aug. 28, 1981)
88 I.D. 803

In a case involving a denial of a claim for impaired bonding capacity damages, the Board noted that it considered (i) that damages of this nature were precluded by a termination for convenience article being included in the contract and (ii) that appellant had failed to show that the loss of profit claimed on other contracts was the inevitable result of the Government having delayed performance of the contract work by approximately 6 months, after which the Board found that appellant was not entitled to prevail in any event since the record contained no evidence showing particular contracts not bid upon or successfully bid upon but denied because of inability to obtain a bond.

Appeal of Clark & Hirt, IBCA-1508-8-81 (Feb. 9, 1984)
91 I.D. 71

Where a contractor leased a helicopter to the Government, but before the end of the lease period, the helicopter was destroyed, the Board found that the inability or unwillingness of the contractor upon demand to furnish a replacement helicopter for the remainder of lease period constituted nonperformance of a contractual obligation on the part of the contractor and held that such nonperformance relieved the Government from payment for any contractually guaranteed minimum use of the aircraft.

Where a contract for the lease of a helicopter by the Government contained a Loss or Damage to Leased Aircraft clause whereby the Government assumed the risk of loss and agreed to pay and did pay the fair market value of the helicopter which was totally destroyed in a crash, the Board held that payment by the Government was performance and not a breach on its part and that the contractor was not entitled to loss of profits on a breach of contract theory.

Appeal of Gay Airways, Inc., IBCA-1429-2-81 (Mar. 9, 1984)
91 I.D. 144

Actual Damages

Where in connection with the movement of Government property, a contractor employs workers not provided for by terms of the purchase order covering the move and it appears that the need for such extra workers resulted in part from deficiencies in performance by the contractor and in part from failures of cooperation by the Government, the Board--noting the absence of any precise measurement for determining the

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Damages--Continued

Actual Damages--Continued

relative fault of the parties--resorts to a jury verdict approach in finding the amount to which the contractor is entitled for one of the items included in the claim for equitable adjustment.

Appeal of Alpine Moving and Storage, IBCA-1434-2-81 (Oct. 21, 1981; 88 I.D. 979

Liquidated Damages

Where a contractor claims excusable delays by reason of the failure of suppliers to timely supply material or to replace damaged or nonspecification material, the failure to show that the suppliers' delays were without the fault or negligence of both the contractor and the suppliers precludes a finding that the delays were excusable under the contract.

Where a contractor seeks relief from the assessment of liquidated damages for delayed completion of the contract work due to alleged excessive rain, the claim is denied for want of proof for failure to show that the amount of rain constituted unusually severe weather.

Appeal of J. T. Gregory & Son, Inc., IBCA-1260-4-79 (Apr. 30, 1980) 87 I.D. 154

Liquidated damages were properly assessed against the contractor where it was shown that no portion of the total computer system delivered by the contractor was ready for use on the agreed installation date, and that the contracting officer's computation of liquidated damages was reasonable and consistent with the contract provisions.

Four-Phase Systems, Inc., IBCA-1269-5-79 (Mar. 1, 1983)

Upon finding that a contract clause in a tree planting contract provided that a contractor would receive no pay for any planting unit where the contractor failed to properly plant less than approximately 80 to 85 percent of the unit, the Board held the clause to constitute an unenforceable penalty because of no reasonable relationship to the degree of noncompliance with planting requirements and awarded an equitable adjustment for that portion of the planting units satisfactorily performed.

Appeal of Charles P. Bates, d.b.a. Phoenix Reforestation Co., IBCA-1199-7-78 (Aug. 11, 1981) 88 I.D. 766

Measurement

Where in connection with the movement of Government property, a contractor employs workers not provided for by terms of the purchase order covering the move and it appears that the need for such extra workers resulted in part from deficiencies in performance by the contractor and in part from failures of cooperation by the Government, the Board--noting the absence of any precise measurement for determining the relative fault of the parties--resorts to a jury verdict approach in finding the amount to which the contractor is entitled for one of the items included in the claim for equitable adjustment.

Appeal of Alpine Moving and Storage, IBCA-1434-2-81 (Oct. 21, 1981)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Damages--Continued

Measurement--Continued

Where the Government failed to notify the architect that it had rejected a solution for leaks proposed by the manufacturer of the roof panels and forwarded by the architect, the Government's failure precluded the architect from submitting a proposal for a conventional built-up roof and resulted in unnecessary and avoidable expense when the Government had the roof repaired by another contractor at a higher cost. The architect was entitled to be paid the difference between the cost of the conventional roof and the higher cost which the Government had deducted from payments due the architect.

Appeal of the Rogers Partnership, IBCA-1299-8-79 (Feb. 12, 1982)

Equitable Adjustments

Where, under the standard Differing Site Conditions Clause of the contract, a construction contractor claims entitlement to increased costs caused by heavy rains or other adverse weather conditions, and the undisputed facts indicate no fault on the part of the Government, the contractor has failed to state or prove a claim upon which relief may be granted.

Appeal of The Hollowat Cos., IBCA-1182-3-78 (Feb. 11, 1980) 87 I.D. 56

Where the evidence of record is too general and inconclusive to permit a precise mathematical computation of quantum, but preponderates in favor of the contractor for entitlement to some allowance for unpaid excavation resulting from performance of a fixed price highway construction contract, the Board will determine the equitable adjustment by utilization of the jury verdict approach.

In the absence of a statute, procurement regulation, or specific contract provision permitting recovery from the Government for the costs of professional services not contributing directly to the performance of a fixed price type contract, such costs will not be allowed as part of an equitable adjustment, whether incurred before or after the findings of fact and decision of the contracting officer.

Appeal of Tiffany Construction Co., IBCA-1162-8-77 (June 12, 1980) 87 I.D. 210

Where an earlier decision of the Board upheld the Government's interpretation of internal diameter tolerances in the manufacture of concrete pipe but the Court of Claims held that the tolerances were too strict and remanded the appeal to the Board for reconsideration of the equitable adjustment to include the effects of erroneous rejections of pipe for small diameters, the Board found that the effects of the Government's actions were so intermingled with the effects of actions for which the contractor was responsible that no formula could be devised to make a precise apportionment of the causes of inefficiencies. In the absence of any sound basis for a precise determination, the Board utilized a jury verdict approach to allow the contractor an equitable adjustment for the effects of the Government's actions early in the production of concrete pipe.

Appeals of Con-Ti-No of Texas, Inc., IBCA-718-5-68 & IBCA-755-12-68 (June 27, 1980) 87 I.D. 330

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Equitable Adjustments--Continued

Where neither what is described as the "reference reach/claim reach" approach nor the total cost method are found acceptable as a proper basis for an equitable adjustment, the Board resorts to the so-called jury verdict method for determining the amount of the equitable adjustment to which the contractor is entitled by reason of the differing site conditions found to have been encountered by the contractor in construction of Tunnel No. 3, a bored and concrete lined tunnel of the Navajo Indian Irrigation Project.

Appeal of Fluor Utah, Inc., IBCA-1068-6-75 (Jan. 15, 1981)
88 I.D. 41

A claim predicated upon defective specifications is denied where assuming arguendo that the specifications were defective, the appellant failed to show that it incurred any additional costs by reason of the allegedly defective specifications.

Appeal of Nero & Associates, Inc., IBCA-1292-8-79 (Feb. 19, 1981)
88 I.D. 304

A claim for an equitable adjustment under the Changes Clause is allowed to the extent that the claims submitted are found to have involved the placement of fumigated topsoil in planters in excess of the quantity required based upon a reasonable interpretation of the applicable specifications. As the contractor failed to separately record costs related to the changed work relying rather upon its bid estimate, the amount of the equitable adjustment to which the contractor is entitled is determined by resort to the "jury verdict" approach.

Appeal of Wakoona Contracting Corp., IBCA-1008-11-80 (June 30, 1981)

Where under a reroofing contract the quantity of roofing required to be used is substantially greater than the approximate quantities estimated by the Government in the invitation for bids and there was no provision included therein requiring or requesting that the quantities specified be verified by prospective bidders, the Board finds that the substantially greater amount of roofing required to complete the contract work than the Government had estimated constituted a first category differing site condition for which the contractor is entitled to an equitable adjustment in the contract price.

Appeal of Elliott's Roofing Co., IBCA-1330-1-80 (Sept. 23, 1981)
88 I.D. 836

Where the Government admits liability and the quantum evidence adduced by the parties is not satisfactory, the Board will determine the amount of equitable adjustment by utilizing the jury verdict approach.

Appeal of Soldo Co., Inc., d.b.a. Desert Materials Co., IBCA-1194-5-78 (Sept. 30, 1981)
88 I.D. 895

Where in connection with the movement of Government property, a contractor employs workers not provided for by terms of the purchase order covering the move and it appears that the need for such extra workers resulted in part from deficiencies in performance by the contractor and in part from failures of cooperation by the Government, the Board--noting the absence of any precise measurement for determining the

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Equitable Adjustments--Continued

relative fault of the parties--resorts to a jury verdict approach in finding the amount to which the contractor is entitled for one of the items included in the claim for equitable adjustment.

Appeal of Alpine Moving and Storage, IBCA-1034-2-81 (Oct. 21, 1981)
88 I.D. 979

A construction contractor's claim for interest under the Contract Disputes Act of 1978, is denied where the Board finds that the underlying claims for an equitable adjustment were negotiated to settlement as evidenced by a written agreement between the parties which contained no provision postponing the finality of the settlement pending the resolution of the claim for interest.

Appeal of Hass Construction Co., Inc., IBCA-1280-7-79 (Dec. 10, 1981)
88 I.D. 1065

Under a well-drilling contract where a differing site condition had been determined to exist and the right of appellant to continue performance had been terminated for the convenience of the Government, without a determination of the amount of the equitable adjustment, the Board finds the costs of ineffective efforts to overcome the differing site conditions to be allowable in the termination settlement, but determines the equitable adjustment in the light of appellant's failure to use known and effective drilling practices to overcome the conditions encountered.

Pennsylvania Drilling Co., IBCA-1187-4-78 (Mar. 22, 1982)

Where the contractor selected a reference reach of the tunnel to establish a normal cost of excavation for comparison with greater costs in the claim reach of the tunnel, but the evidence showed that some costs were understated in the reference reach and other costs were overstated in the claim reach, the Board found the contractor's approach to be unacceptable as a basis for an equitable adjustment and resorted to the jury verdict method for determining the amount of the equitable adjustment.

J. F. Shea Co., Inc., IBCA-1191-4-78 (Mar. 30, 1982)
89 I.D. 153

Upon finding that Government-ordered changes to the contract caused an increase in the cost of and the time required for performance of the contract, and the evidence of record indicating that such changes did not comply with the required procedures set forth in the Task Orders clause of the contract, the Board holds that the contractor is entitled to an equitable adjustment pursuant to the Changes clause of the contract.

Appeal of Allied Repair Service, Inc., IBCA-1301-8-80 (Dec. 23, 1982)

Where during a visit to the project site preparatory to submitting a bid for the construction of a road and bridge, a contractor is told by the project engineer that the slope stakes to be placed would fall beneath a prominent ledge of rock known as the caprock but when placed the slope stakes required all of the caprock to be excavated and moved; and where the Government admitted other significant staking errors, the Board finds that the contractor is entitled to an equitable

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Equitable Adjustments--Continued

adjustment under the standard Changes Clause for excavating and moving the caprock and doing additional work as a result of the Government's staking errors.

Where under a standard construction contract the liability of the Government for defective plans and specifications is clearly established but as a consequence of the contractor having failed to segregate the costs applicable to the constructive change, it is not possible to determine the extent to which the Government's actions increased the costs of contract performance, the amount of the equitable adjustment to which the contractor is entitled is determined by the Board on the basis of the so-called jury verdict approach.

In a case involving the construction of a road and a bridge in which the Government has stipulated that it has made slope staking errors throughout the entire project, a claim for additional costs allegedly involved in correcting slope staking errors in specified areas of the project is denied where the appellant fails to show by a preponderance of the evidence that additional costs were incurred. In support of its denial the Board notes that the lack of persuasive evidence of any contemporaneous objection to performing the work in question and a delay of over 31 months in presenting the claim now asserted raise presumptions against its validity.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

A claim for an equitable adjustment is sustained in part, where it is determined that weather conditions at the site could reasonably have been of an intensity to constitute a storm event within the "gray area" of a risk of loss agreement entered into by the parties at a preproposal conference, pursuant to which the Government, upon such determination, agreed to participate in the reasonable reconstruction costs of the facility.

Appeal of Pettijohn Engineering Co., Inc., IBCA-1346-4-80 (May 26, 1983)

Where the contracting officer reduced the unit price for quantities of unclassified excavation in excess of the Government estimate, the Board granted the contractor's motion for summary judgment as a matter of law when it determined: (1) That neither party relied upon the estimate for other than solicitation purposes; (2) that the contract provided for payment to the contractor at the full unit price for actual quantities of work completed; and (3) that the Government was not entitled to a downward equitable adjustment pursuant to the Changes clause of the contract.

Luther L. Emery Construction Co., Inc., IBCA-1556-2-82 (June 27, 1983)

Upon finding that a contract clause in a tree planting contract provided that a contractor would receive no pay for any planting unit where the contractor failed to properly plant less than approximately 80 to 85 percent of the unit, the Board held the clause to constitute an unenforceable penalty because of no reasonable relationship to the degree of noncompliance with planting requirements and awarded an equitable adjustment for that portion of the planting units satisfactorily performed.

Appeal of Charley O. Estes, d.b.a. Phoenix Reforestation Co., IBCA-1198-7-78 (Aug. 11, 1983) 90 I.D. 366

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Equitable Adjustments--Continued

Excavation costs incurred during removal of rock for a seawall foundation were compensable as a category one differing site condition because the actual conditions encountered were materially different from those indicated in the contract documents. The boring logs, drawings and specifications contained in the solicitation indicated the presence of poor quality, soft rock in the excavation area which gave the contractor a reasonable expectation that the rock could be excavated by conventional mechanical means. During excavation, however, the contractor encountered rock which the evidence established was much harder than was anticipated, and which required the use of massive equipment to complete the project.

Upon a finding of liability, where the quantum evidence adduced by the parties is not satisfactory, the Board will determine the amount of equitable adjustment by utilizing the jury verdict approach.

Roger J. Au & Son, Inc., IBCA-1303-9-79 (Sept. 14, 1983) 90 I.D. 401

In a case in which the appellant's motion for summary judgment is denied and the Government's cross motion for summary judgment is granted, the allowance of interest on borrowings (however represented) as part of an equitable adjustment is found to be prohibited by a provision of the Federal Procurement Regulations incorporated into the contract by reference.

Appeal of Ferguson Construction Co., IBCA-1681-6-83 (Oct. 28, 1983)

Upon finding that the contractor's continuous performance in the early stages of a road construction project was substantially disrupted by the Government because of grade and slope revisions resulting in delayed delivery of a final structures list, the Board holds that a constructive change occurred entitling appellant to an equitable adjustment for resulting extra costs.

Where it was found: That the Government designated in the contract documents a specific site as the source of aggregate for use in a road construction project; that the contractor relied on the contract data indicating that such source contained sufficient conforming material to satisfy the contract requirements; and that the actual subsurface conditions differed materially from the conditions indicated by the contract drawings and from the expectations of persons familiar with the source, the Board concludes that the contractor is entitled to an equitable adjustment under a Category I Differing Site Condition theory.

In its quantum consideration, after finding entitlement to equitable adjustments, the Board allowed amounts claimed by the contractor for depreciation, and improperly withheld by the Government for liquidated damages. It approved the claimed rate of profit disallowed by the Government auditor and the bulk of the audited total costs. However, the Board disallowed a claim for the increased price of asphalt upon finding a failure of proof that either the contractor or its supplier paid or incurred increased costs for asphalt, and, disallowed a claim for costs attributed to a winter shutdown upon finding that the contractor had agreed that such shutdown would be at no additional cost to the Government. Upon finding some fault with the Government audit upon which the contractor based its total cost theory of recovery, and dissatisfaction with the accuracy or specificity available for a precise calculation of certain other costs claimed, as well as with the contractor's proposed formula for calculating costs per day for days of delay, the Board

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Equitable Adjustments--Continued

approach is both practicable and reasonable in arriving at the equitable adjustment award to the contractor.

Appeal of Wylie Brothers Contracting Co., IBCA-1175-11-77 (Jan. 27, 1984) 91 I.D. 51

In a case involving a claim for equipment idled as a result of delays attributed to the Government, the Board found that the rates for idle equipment used in the claim were in excess of the rate derived from applying the regularly invoked rule that the reasonable value of standby equipment is 50 percent of operating equipment rates.

A claim involving idle equipment, which the Board finds not to be cognizable as a breach of contract claim is found to constitute a claim falling within the purview of the standard Changes clause and reimbursable thereunder. In this connection it is noted that the Board is not limited by the appellant's choice of remedies or by the Government's assignment of defense.

Where under a construction contract for the rental of draglines with operators the responsibility of the Government for delays to the contract work was clearly established but as a result of the contractor's foreman having failed to record in his diary some of the significant events affecting the time and effect of Government actions causing delay and the contractor having failed to segregate costs applicable to the constructive change, it was not possible to determine with reasonable certainty the extent to which the Government's actions increased the costs of contract performance, the amount of the equitable adjustment to which the contractor is entitled was determined by resort to what has been characterized as the jury verdict approach.

Appeal of Clark & Hirt, IBCA-1508-8-81 (Feb. 9, 1984) 91 I.D. 71

A contractor was allowed to recover holiday pay expenses as a fringe labor cost under a fixed rate, indefinite quantity contract because it sustained its burden of proof that holiday pay was excluded from overhead rates as an indirect cost, and that the contractor's direct billing for holiday pay did not result in a duplicate recovery of such costs.

Moving Services, Ltd., IBCA-1540-12-81 (Apr. 9, 1984)

In a case where the parties differ as to the amount of equitable adjustment to be provided for a constructive change, the Board finds the appellant to have shown by a preponderance of the evidence that it is entitled to the amount of the equitable adjustment sought.

Appeal of Ohbayashi-Gumi, Ltd., IBCA-1785-3-84 (Sept. 25, 1984) 91 I.D. 311

Extraordinary Remedies

The Board is without jurisdiction to review an agency's failure to act to grant extraordinary relief under P.L. 85-804, regardless of whether the agency is authorized to grant such relief.

Appeals of CECOS International, Inc., IBCA-1667-3-83 (Oct. 28, 1983)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Jurisdiction

The Board has no jurisdiction to reform a contract which is not governed by the provisions of the Contract Disputes Act of 1978. Therefore, where the contract is not under that Act, and a construction contractor presents some evidence in support of a claim that the method of testing, employed by the Government to determine the compressive strength of structural concrete, is unfair, resulting in wrongful monetary penalties, but fails to allege or prove that the Government did not comply with the contract specifications in performing such testing, the Board will find such claim to be a request for reformation of the contract and will dismiss the claim for lack of jurisdiction.

Appeal of Lamar D. Construction Co., IBCA-1228-11-78 (May 20, 1980) 87 I.D. 180

Where the Board finds an indefinite quantity option-type contract to have been consummated by the parties, as opposed to a requirements-type contract, the contractor assumes the risk of whether the Government will order more than the minimum estimate of services anticipated to be ordered, and the Board, as a matter of law, is without jurisdiction to grant an equitable adjustment to the contractor under the changes clause, termination for convenience, or other contract clauses for claimed costs alleged to have resulted from the negligent preparation of maximum estimates.

Appeals of DCT Systems, Inc., IBCA-1197-6-78, IBCA-1204-8-78 (Sept. 30, 1980) 87 I.D. 450

A claim of mutual mistake asserted under a tree thinning contract is dismissed for want of jurisdiction where the Board finds (i) that it has no authority under the Disputes clause to reform contracts and (ii) that since appellant did not elect to proceed under the Contract Disputes Act of 1978, the Board derives no reformation authority from the Act in this instance.

A claim based primarily upon an overpayment to a contractor is approved where the Board finds the evidence of record substantiates the Government claim and it does not appear that the appellant has ever contested either the fact or the amount of the overpayment or adjustments related to such overpayment which have the effect of reducing the amount of the Government's claim.

Appeal of Nero & Associates, Inc., IBCA-1292-8-79 (Feb. 19, 1981) 88 I.D. 304

A protest of award by an unsuccessful bidder is dismissed where the Board finds that it has no jurisdiction over bid protests under either the disputes clause or the Contract Disputes Act of 1978.

Appeal of Dakota Titles & Records, A Joint Venture, IBCA-1420-1-81 (Feb. 24, 1981) 88 I.D. 324

The Board held that since its jurisdiction is appellate only, it may not consider claims presented to it without such claims first having been submitted to the contracting officer for consideration and decision.

Appeals of Phillips Construction Co., IBCA-1295-8-79 & 1296-8-79 (July 31, 1981) 88 I.D. 689

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Jurisdiction--Continued

An appeal may be decided on the basis of a theory not advanced by the parties so long as the theory is consistent with the facts of record or legitimate inferences therefrom.

Written notice given a week after completion of the contract work is found to satisfy the requirement of the Differing Site Conditions clause for written notice to the contracting officer before the conditions are disturbed where the evidence shows that the Government had actual notice of the operative facts related to double roofing at the time the double roofing was encountered and no showing was made that any prejudice to the Government had resulted from the belated written notice.

Appeal of Singleton Contracting Corp., IBCA-1413-12-80 88 I.D. 722 (Aug. 12, 1981)

The Board denies a Government motion to dismiss an appeal predicated upon the ground, inter alia, that the Disputes Concerning Labor Standards clause gives the Department of Labor the authority to decide disputed questions arising out of the Davis-Bacon Act, where the record indicates that almost two-thirds of the amount withheld from a prime contractor by reason of Davis-Bacon Act violations by its subcontractor appears to represent amounts owed by the subcontractor to the Federal or to a state government and thus present questions for resolution by the Board incident to its authority to adjudicate disputes between the parties to the contract.

A Government motion to dismiss an appeal on the grounds that the contracting officer had neither issued nor been requested to issue a final decision is denied, where the Board finds (i) that the appellant was warranted in treating a contracting officer's disclaimer of any responsibility for adjudicating a dispute as a final decision, and (ii) that no useful purpose would be served by remanding a case to the contracting officer for a decision when the Government's announced position is that the contracting officer has no authority to render a decision relating to wage determinations under the Davis-Bacon Act.

Appeal of G. A. Western Construction Co., IBCA-1550-2-82 (July 1, 1982) 89 I.D. 365

An appeal taken under a grant is dismissed where the Board finds that it is without jurisdiction over the claim asserted under either the terms of the grant or under the provisions of the Contract Disputes Act of 1978.

Appeal of Confederated Tribes of the Chehalis Reservation, IBCA-1640-12-82 (May 20, 1983) 90 I.D. 228

Where the exceptions to a "Release" specifically designate particular claims as being excluded from the effect of the release, a further claim, that cannot reasonably be considered to be within the claims asserted in the exceptions is barred by the release provisions and will be dismissed.

Appeal of Charley O. Estes, d.b.a. Phoenix Reforestation Co., IBCA-1198-7-78 (Aug. 11, 1983) 90 I.D. 366

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Jurisdiction--Continued

The Board has no jurisdiction under the Equal Access to Justice Act to award attorney fees and costs to a contractor as the prevailing party in a proceeding against the United States, since the U.S. Court of Appeals for the Federal Circuit has ruled that Congress in that Act did not expressly waive sovereign immunity from liability for such an award with respect to contract dispute proceedings before Boards of Contract Appeals.

The Board holds that it has no authority, pursuant to the CDA, EAJA, or any other statute, to order an agency to pay attorney fees and costs or to comply with any particular law, and further, if the Board were to order the BIA to pay the requested fees and cost, it would be attempting to do indirectly what it has determined it cannot do directly.

Application for Costs (Central Colorado Contractors, Inc.), IBCA-1672-4-83 (Aug. 17, 1983) 90 I.D. 379

The Board is without jurisdiction to review an agency's failure to act to grant extraordinary relief under P.L. 85-804, regardless of whether the agency is authorized to grant such relief.

Appeals of CICOS International, Inc., IBCA-1667-3-83 (Oct. 28, 1983)

A claim involving idle equipment, which the Board finds not to be cognizable as a breach of contract claim is found to constitute a claim falling within the purview of the standard Changes clause and reimbursable thereunder. In this connection it is noted that the Board is not limited by the appellant's choice of remedies or by the Government's assignment of defense.

A Government defense that the Board is without jurisdiction over a subcontractor's claim is rejected where it is found that the subcontractor's claim was included in the appellant's initial claim submission and that at the hearing appellant actively prosecuted the claim on behalf of the subcontractor by eliciting testimony not only from a representative of the subcontractor but from appellant's foreman as well.

Appeal of Clark & Hirt, IBCA-1508-8-81 (Feb. 9, 1984) 91 I.D. 71

Upon finding no statute or contractual agreement between the parties providing for the same, the Board denied appellant's claims for interest, attorney fees and costs.

Appeal of Gay Airways, Inc., IBCA-1429-2-81 (Mar. 9, 1984) 91 I.D. 149

A Government motion to dismiss an appeal is denied where the Board determines that it has jurisdiction over an appeal being actively prosecuted by a subcontractor where it finds the prime contractor's sponsorship of the subcontractor's claim is established by the following: (1) The decision from which the appeal was taken was addressed to the prime contractor; (2) the notice of appeal was signed by a representative of the contractor; and (3) the contractor is claiming overhead and profit on the subcontractor's claim.

Appeal of Ohtaroshi-Gumi, Ltd., IBCA-1785-3-84 (Sept. 25, 1984) 91 I.D. 311

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Substantial Evidence

In a case involving the assertion of a differing site conditions claim under a contract for the construction of concrete lined tunnels for the Navajo Indian Irrigation Project, the Board follows the Court of Claims in holding that it is not necessary for the "indications" in the contract to be explicit or specific, it being sufficient for there to be an indication on the face of the contract documents causing a bidder reasonably to expect that there were no "subsurface or latent" physical conditions at the site differing materially from those indicated in the contract.

Appeal of Fluor Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981) 88 I.D. 41

Where the Board finds appellant's evidence with respect to two alleged conversations to be little more than conclusory hearsay without reference to literal substance and appellant alleged that certain drawings had been approved by the Government, when the clear language of the responses to the submitted drawings indicated rejection, the Board holds that appellant has failed to sustain its burden of proof, because of failure to prove the allegations of its complaint by any substantial evidence, and denies the claim of appellant for costs incurred to furnish and install insulating fittings required by the specifications in connection with the construction of a pipeline.

Appeal of Kordick and Son, Inc., and Steve P. Rados, Inc. (A Joint Venture), IBCA-1255-3-79 (Aug. 27, 1981) 88 I.D. 798

The Board denies claims based upon a constructive change theory (operational breaches) where it finds from the evidence of record: That work claimed by the contractor to be extra work was required by the contract to be performed by the contractor at its own expense; that there is no substantial showing of Government fault; that the purported proof rests upon unsupported opinion or mere allegations; that claimed delays alleged to be caused by the Government are not shown to be unusual, unreasonable, or unauthorized by the contract documents; or, that the contractor was paid for the claimed extra work in accordance with the contract provisions.

Appeal of Thorn Construction Co., Inc., IBCA-1254-3-79 (Jan. 27, 1983) 90 I.D. 21

Since the burden of proof in a claim for an equitable adjustment arising because of an alleged Government insistence on performance in excess of the contract requirements lies with the contractor, the contractor's failure to submit any substantial, reliable evidence probative of the elements of its claim, results in the denial of the appeal.

Appeal of Pebble Haulers, Inc., IBCA-1524-10-81 (Aug. 23, 1983)

Rejected by the Board is an appellant's argument that the Government had in effect guaranteed to the contractor that he would be paid any specified number of hours per week where the Board found (i) that the requirement that the contractor work a 40-hour week was qualified by the language "weather and ground conditions permitting"; (ii) that the Government consent to the contractor working 50 hours a week was subject to the same limiting language; and (iii) that the evidence showed that some of the delays experienced by the contractor in proceeding with the contract work were

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Substantial Evidence--Continued

attributable to rain (i.e., weather and ground conditions) for which the Government was not responsible.

Appeal of Clark S. Hirt, IBCA-1508-8-81 (Feb. 9, 1984) 91 I.D. 71

Termination for Convenience

Where it is undisputed that the Government ordered the minimum amount of services required to be ordered under an indefinite quantity option contract, and the Board finds that the failure of the contractor to timely perform delivery of the last seven call orders for services did not result from the low volume of work ordered by the Government, but instead, from reduction of typing staff, reduction of hours of typists employed to perform the contract, and failure to give priority to the contract work over other work, the contractor will be denied its request for a conversion of a termination for default to a termination for convenience of the Government.

Appeals of EGT Systems, Inc., IBCA-1197-6-78, IBCA-1204-8-78 (Sept. 30, 1980) 87 I.D. 450

Under a well-drilling contract where a differing site condition had been determined to exist and the right of appellant to continue performance had been terminated for the convenience of the Government, without a determination of the amount of the equitable adjustment, the Board finds the costs of ineffective efforts to overcome the differing site condition to be allowable in the termination settlement, but determines the equitable adjustment in the light of appellant's failure to use known and effective drilling practices to overcome the conditions encountered.

Pennsylvania Drilling Co., IBCA-1187-4-78 (Mar. 22, 1982)

The principle that the Government may not use the termination for convenience clause where at the time of entering the contract it had the intention to use that clause is not applicable in the absence of any evidence to support the existence of that intention. Even if such a factual circumstance were demonstrable, however, a contractor may not recover where it submits no proof of any damage resulting from that circumstance.

Appeal of David R. Brown, Jr., IBCA-1600-7-82 (Mar. 31, 1983)

The Board of Contract Appeals has no authority to award a contract and in an appeal from a termination for default may do no more than review the contracting officer's conduct leading to the termination action and affirm the termination if that conduct is found to be valid or convert the termination to a termination for the convenience of the Government.

Honey, IBCA-1649-1-83 (Jan. 30, 1984)

Although the Contract Disputes Act gives the Board jurisdiction over breach of contract claims, the Board finds that claims presented subsequent to a direction by the Government to cease all work under a contract are not redressable as breach of contract claims where (i) the contract includes a termination for the convenience of the Government clause; (ii) the lack of funds to pay the contractor for further work constituted an adequate cause for directing performance under

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Termination for Convenience--Continued

the contract to cease; (iii) that the failure of the contracting officer to invoke the termination for convenience clause as the basis for his action does not affect the right to rely upon that clause in determining the rights and obligations of the parties; (iv) that the presence in the contract of a termination for convenience clause precludes actions of the Government from being considered breaches of contract (assuming they might otherwise be); and (v) that the inclusion of a termination for convenience clause makes the recovery of anticipated profits unallowable.

Appeal of Clark & Hirt, IBCA-1508-8-81 (Feb. 9, 1984) 91 I.D. 71

A Government motion to dismiss a claim for lost profits and an alternative motion for partial summary judgment on the lost profit claim are both denied in a case where appellant implies that the actions of the contracting officer were in bad faith and asserts that the actions of the contracting officer during the administration of the contract were arbitrary, capricious, and unreasonable. In denying both motions, the Board notes that there are some limited circumstances in which the damages recoverable have not been restricted to those specified in the termination for convenience clause and that at the requested oral hearing, appellant will be afforded the opportunity to prove bad faith or abuse of discretion on the part of the contracting officer such as might avoid the recovery limitations of the convenience-termination clause.

Appeal of Allan D. Barwise, IBCA-1690-6-83 (May 17, 1984) 91 I.D. 253

Termination for Default

Generally

The contracting officer's decision to terminate for default a fixed price contract for the delivery of a single forked lift truck for a stated price is deemed proper where the appellant failed to timely deliver the truck to the specified delivery point by the specified contract delivery date.

Appeals of Yale Industrial Trucks, Baltimore/Washington, Inc., IBCA-1287-7-79 & IBCA-1293-8-79 (Sept. 12, 1980) 87 I.D. 407

Where a contract specifies the complement and standard for drilling equipment to be furnished, neither the preaward survey of appellant's equipment, nor the commencement of performance with incomplete and admittedly noncompliance equipment is deemed a waiver of the contract requirement, and a default termination after issuance of a "cure notice" is upheld upon the failure of the contractor to provide equipment as specified in the contract.

Appeals of Allied Drilling, Inc., IBCA-1242-1-79 & IBCA-1250-2-79 (Sept. 12, 1980) 87 I.D. 400

Where the contractor delivered contract items which failed to substantially conform with the contract specifications, and where the contracting officer terminated the contractor's right to proceed with performance of the contract work because of the contractor's

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Termination for Default--Continued

Generally--Continued

nonconforming delivery, the Government's termination for default was proper.

Appeal of Franklin Instrument Co., Inc., IBCA-1270-6-79 (Feb. 26, 1981) 88 I.D. 326

Where the record shows that the contractor waited until 4 days before the contract time for construction had elapsed and then wrote to the contracting officer to advise that he was ready to start construction, and where the contractor offered no evidence to support allegations regarding equipment breakdown and high tides, the Board found that the failure to make progress was unexcused and that default termination was warranted.

Appeal of Central American Construction Co., Inc., IBCA-1337-3-80 (Apr. 14, 1981)

A termination for default of a seeding contract is found to be proper where (i) the appellant fails to show that the work ordered by the contracting officer's representative was not required by the technical specifications; (ii) the time allowed for performance of the contract had passed by the time the notice of termination was issued; and (iii) no excusable cause of delay had been shown to exist.

Appeal of Building Maintenance Specialist, Inc., IBCA-1397-9-80 (June 15, 1981)

Where the contractor established that a critical diesel fuel shortage prevented timely completion of the contract, and that such shortage was unforeseeable, beyond the control, and without the fault or negligence of the contractor or its subcontractors or suppliers, the Board held that the contractor proved excusable cause for delay.

Appeals of Phillips Construction Co., IBCA-1295-8-79 & 1296-8-79 (July 31, 1981) 88 I.D. 689

Upon finding that the Government waived the original completion date for performance of a fixed-price construction contract by permitting the contractor to work after default, failed to fix a new specific completion date after waiver, and failed to prove abandonment or anticipatory breach on the part of the contractor after the waiver, the Board holds the contractor to have been wrongfully terminated for default and entitled to have the termination for default converted to a termination for the convenience of the Government.

Appeal of Milo Werner Co., IBCA-1202-7-78 (Mar. 22, 1982) 89 I.D. 100

Where the contractor partially delivered electronic timer units which failed to substantially conform with the contract specifications, and the contractor fails to show that the specifications were otherwise deficient or that its failure to timely deliver acceptable units within the contract performance period was the result of excusable cause of

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Termination for Default--Continued

Generally--Continued

delay, the Government's termination for default was proper.

Appeal of Environaire Systems, Inc., IBCA-1386-8-80 (Oct. 19, 1982) 89 I.D. 522

Default termination of a contract for delivery of 75 altimeter dials was proper because the contractor failed to perform the work by the extended completion date and offered no excuse for its default. The contractor's claim that it experienced "extreme difficulty in procuring an acceptable silk screened elevation dial," and in "obtaining a vendor capable of doing an acceptable job," indicates fault not only on the part of the subcontractor, but on the contractor's part as well. Every reasonably prudent contractor prior to bidding should obtain assurance that the materials needed to complete the work will be furnished. For a delay to be excusable it must arise from causes beyond the control and without the fault or negligence of both the contractor and his subcontractors or suppliers. Here, the delay resulted in the contractor failing to obtain an acceptable elevation dial when needed, which did not excuse the default.

Appeal of the Airflo Instrument Co., IBCA-1323-12-79 (Jan. 13, 1983)

A default termination for failure to deliver a data entry keypunch computer system in accordance with the mandatory requirements of the contract was proper when nearly 4 months after the agreed installation date the contractor had failed to establish an excusable cause of delay or indicate to the contracting officer a delivery date when a fully workable system would be installed and available for testing.

Four-Phase Systems, Inc., IBCA-1269-5-79 (Mar. 1, 1983)

Default termination of a contract for conducting Schlumberger Verticle Electrical Soundings at the Nevada test site for the purpose of evaluating possible repositories for high level nuclear wastes was proper due to the contractor's failure to comply with the production requirements of the contract, the failure of its sounding data to conform to the specification requirements, and the contractor's failure to sustain its burden of proof that its default was excusable within the meaning of the Default Clause of the contract.

Heinrichs Geoexploration Co., IBCA-1213-9-78 & IBCA-1222-11-78 (June 17, 1983)

When the contracting officer did not make a determination that individual omissions of janitorial service had accumulated to the point where the contract was not being substantially performed and the contracting officer did not give sufficient weight to the contractor's timely efforts to cure the deficiencies, the Board found that the termination for default was not justified and should be converted into a termination for the convenience of the Government. Since imposition of excess reprocurement costs is dependent upon a valid termination for default, conversion of the termination for default to termination for the convenience of the Government removed the basis for the Government's attempt to collect excess costs and the

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Termination for Default--Continued

Generally--Continued

Board sustained the appeal from imposition of such costs.

Hendrson Building Maintenance Co., Inc., IBCA-1335-3-80 & 1411-12-80 (July 7, 1983)

A termination for default of a contract awarded under a small business set-aside program is converted to a termination for the convenience of the Government where the Board finds (i) that the Government failed to set forth in the solicitation the applicable size standard for the small business set-aside or to specify the classification for the procurement; (ii) that the appellant's interpretation of the solicitation requirements was reasonable; and (iii) that appellant's representation of itself as a small business concern had been made in good faith.

Appeal of Highland Reforestation, Inc., IBCA-1563-3-82 (July 8, 1983) 90 I.D. 297

The Government sustained its burden of proof by submitting evidence to show that appellant's security guards committed numerous defaults of tardiness and missing Detex clock stations while appellant failed to sustain its burden of showing that the defaults were excusable, since it offered no evidence. The Board therefore found that termination of the contract for default was justified.

Appeal of William G. Griffin t/a Security of Virginia, Inc., IBCA-1403-10-80 (Sept. 23, 1983)

Termination of a contract for default was proper where the Government offered sufficient evidence to demonstrate that the contractor failed to perform the requirements of the contract, and the contractor offered no evidence to sustain its burden of showing the default was excusable.

Luther Benjamin Construction Co., Inc., IBCA-1571-4-82 (Oct. 25, 1983)

Major Construction Corp., IBCA-1688-6-83 (Jan. 9, 1984)

The Board of Contract Appeals has no authority to award a contract and in an appeal from a termination for default may do no more than review the contracting officer's conduct leading to the termination action and affirm the termination if that conduct is found to be valid or convert the termination to a termination for the convenience of the Government.

Where a contractor (1) failed to comply with a notice to proceed within the time therefor as stated in the notice, (2) by its conduct established a likelihood of future inability to proceed such as would support a conclusion of anticipatory breach, and (3) was so dilatory in performance that a belief that the contract could not be completed timely was reasonable, the Board concluded that the contracting officer had a corresponding number of independent, valid reasons for terminating the contract for default.

Hopex, IBCA-1649-1-83 (Jan. 30, 1984)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Termination for Default--Continued

Generally--Continued

In an appeal from a termination for default where the contractor's theory of the case is defective specifications, it is the contractor's burden to show not only that the specifications were faulty but that the faulty specifications caused the condition from which termination resulted. Upon finding that although the contractor showed that a Government well was incapable of producing the precise flow by total dynamic head set out in the contract specifications under which a particular pump was supplied, but finding that the Government established that the pump should have operated adequately under the actual flow conditions the well was capable of producing, the Board holds that the Government effectively controverted the contractor's case, that the contractor failed to sustain its burden of proof, and that the termination for default was justified entitling the Government to prevail.

Appeal of W. Hicker Co., Inc., IBCA-1574-4-82 (Apr. 20, 1984) 91 I.D. 186

The Board found that termination of a contract for default was proper where the contractor failed to complete contract performance on time because of a failure to dewater the excavation and abandoned the contract work because of an alleged differing site condition of excessive artesian water, which was effectively dewatered using the same plan during a later season of greater subsurface flows.

Appeal of Frank Rivers, Inc., IBCA-1621-9-82 (May 10, 1984)

Excess Costs

Where the Government presented evidence of immediate need for replacement of a forked lift truck in need of repairs and presenting a safety hazard, the Government's action to reprocure the truck from the third lowest bidder who had the only immediately available truck complying with the contract standards is deemed proper and consistent with the duty to mitigate the reprocurement costs.

Appeals of Yale Industrial Trucks, Baltimore/Washington, Inc., IBCA-1287-7-79 & IBCA-1293-8-79 (Sept. 12, 1980) 87 I.D. 407

A contract was properly terminated for default because a state license was not furnished and the contractor had adequate notice that the license was required and that his failure to provide it would result in termination for default and liability for excess reprocurement costs.

Appeal of Thygesen Reforestation, IBCA-1576-5-82 (Jan. 31, 1983)

Assessment of excess costs of reprocurement against a defaulted supply contractor was proper because the Government sustained its burden of proof that the reprocurement was made within a reasonable period of time, that the cost and manner of the repurchase were reasonable, that all reasonable steps were taken to mitigate damages, and that the reprocurement contract was performed and final payment made.

Peterichs Geoexploration Co., IBCA-1213-9-78 & IBCA-1222-11-78 (June 17, 1983)

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Termination for Default--Continued

Excess Costs--Continued

When the contracting officer did not make a determination that individual omissions of janitorial service had accumulated to the point where the contract was not being substantially performed and the contracting officer did not give sufficient weight to the contractor's timely efforts to cure the deficiencies, the Board found that the termination for default was not justified and should be converted into a termination for the convenience of the Government. Since imposition of excess reprocurement costs is dependent upon a valid termination for default, conversion of the termination for default to termination for the convenience of the Government removed the basis for the Government's attempt to collect excess costs and the Board sustained the appeal from imposition of such costs.

Handyman Building Maintenance Co., Inc., IBCA-1335-3-80 & 1411-12-80 (July 7, 1983)

FEDERAL PROCUREMENT REGULATIONS

A Government motion to dismiss an appeal and remand it to the contracting officer for decision is granted where the Board finds that it is without jurisdiction over a claim of mutual mistake first presented in the complaint, since a published regulation prescribes that claims of mistake alleged after award of a contract, whether mutual or unilateral, are to be presented initially to the contracting officer for decision.

Appeal of Wakon Redbird & Associates, IBCA-1682-6-83 (Sept. 30, 1983) 90 I.D. 441

In a case in which the appellant's motion for summary judgment is denied and the Government's cross motion for summary judgment is granted, the allowance of interest on borrowings (however represented) as part of an equitable adjustment is found to be prohibited by a provision of the Federal Procurement Regulations incorporated into the contract by reference.

Appeal of Ferguson Construction Co., IBCA-1681-6-83 (Oct. 28, 1983)

FORMATION AND VALIDITY

Authority to Make

When a contractor expressed a desire to avoid legal action and suggested submitting a dispute to arbitration rather than following the dispute resolution process required by the disputes clause, the contracting officer was without authority to delegate his duties under the disputes clause to an arbitrator and the document entitled "Agreement to Submit to Arbitration" was a nullity which conferred no right on the contractor to claim expenses during the arbitration period.

Appeal of Dagen & Moore, IBCA-1308-10-79 (Oct. 27, 1981) 88 I.D. 991

CONTRACTS--Continued

FORMATION AND VALIDITY--Continued

Authority to Make--Continued

Where a contractor relies on the actions of a purported Government agent and that reliance is later challenged, it is the contractor's burden to show that the individual is a contracting officer, not the Government's to show he is not; a contractor who relies upon the actions of an agent, without assuring himself of the agent's actual authority does so at his peril.

Appeal of Inter-Tribal Council of Nevada, Inc., IBCA-1234-12-78 (Apr. 14, 1983)

A Government motion to dismiss an appeal predicated upon an oral contract is denied when the available evidence indicates that the Government official named was without authority to enter into a contract such as had been alleged but where assuming appellant's material allegations to be true for the purpose of the motion, it appears that a question exists as to whether the Government may be estopped to reply upon the defense of a lack of actual authority to contract if affirmative misconduct of the Government official concerned were shown to exist.

Appeal of Powell A. Casey, IBCA-1638-11-82 (May 23, 1983) 90 I.D. 230

A termination for default of a contract awarded under a small business set-aside program is converted to a termination for the convenience of the Government where the Board finds (i) that the Government failed to set forth in the solicitation the applicable size standard for the small business set-aside or to specify the classification for the procurement; (ii) that the appellant's interpretation of the solicitation requirements was reasonable; and (iii) that appellant's representation of itself as a small business concern had been made in good faith.

Appeal of Highland Reforestation, Inc., IBCA-1563-3-82 (July 8, 1983) 90 I.D. 297

Cost-type Contracts

Where the Government entered into a sole source, cost-plus-fixed-fee contract with appellant for the purpose of conducting a research and analysis study to determine the toxicity of certain gases emanating from a citrate process used for flue gas desulfurization in the operation of mines, and appellant entered into a subcontract with a University to accomplish the major portion of the required research, the Board found that the Government was not involved in the formation or preparation of the subcontract, and that although they may have intended to enter into a firm, fixed-price contract, the contracting parties did, in fact, by the clear and unambiguous language employed, enter into a cost-reimbursement type contract.

Appeal of Eyring Research Institute, IBCA-1169-10-77 (June 25, 1982) 89 I.D. 350

A claim for an overrun of a cost-plus-fixed-fee contract is sustained where the overrun resulted from increased overhead rates during appellant's fiscal year after completion of contract performance, and failure to give advance notice in accordance with the Limitation of Cost Clause is excused where through no fault or inadequacy of appellant's accounting or business

CONTRACTS--Continued

FORMATION AND VALIDITY--Continued

Cost-type Contracts--Continued

acquisition procedures, he had no reason to believe, during performance, that an overrun would occur.

Appeal of Metametrics, Inc., IBCA-1552-2-82 (Oct. 27, 1982) 89 I.D. 554

A contractor's claim for additional allowable indirect costs to offset the Government's claim for refunds of overpayments under two contracts are denied where the allowable indirect costs allowed by the Government were based on the contractor's proposal to allocate indirect costs on the basis of salaries and wages rather than total direct costs, and the overpayments resulted from overbillings of direct costs.

Appeals of A. L. Pellum (ALPA), IBCA-1484-7-81 & IBCA-1485-7-81 (Nov. 1, 1982)

A contractor's claim for crediting the value of equipment returned to the Government against disallowed costs under a cost reimbursement contract is denied because the cost of the equipment was allowed against contract expenditures and title to the equipment was in the Government. A second claim that the contract was converted to a fixed price type or that the Government had approved a markup on a subcontract of the entire project to a wholly owned subsidiary was denied for lack of credible evidence that the markup provision was presented to the contracting officer for approval.

Appeal of Crow Creek Sioux Tribe, IBCA-1431-2-81 (Nov. 10, 1982) 89 I.D. 575

Fixed-price Contracts

Where an appellant acknowledges that it received a purchase order calling for moving Government-owned furniture and furnishings shortly prior to the move and the record shows that without making a protest of any kind the contractor proceeded with the move and that it subsequently billed the Government for the services rendered in accordance with the rate stated in the purchase order, the Board finds the purchase order to constitute the agreement of the parties.

In a case involving the movement of Government office furniture and furnishings within the State of Colorado, the Board finds (i) that the National Park Service is not required to pay a higher rate for the movement of its property than the rate negotiated with the contractor as reflected in an accepted purchase order and (ii) that it is not required to forego presenting to the contracting officer for decision a claim for damages sustained to Government property during the course of the move, even though at the time the move took place the tariff rates promulgated by the Colorado Public Utilities Commission required payment of a higher rate than that specified in the purchase order and even though the same tariff rates required payment of the full amount billed for services rendered before claims against the carrier for damages to property during the move could be entertained.

Appeal of Alpine Moving and Storage, IBCA-1434-2-81 (Oct. 21, 1981) 88 I.D. 979

CONTRACTS--Continued

FORMATION AND VALIDITY--Continued

Formalities

In a case involving the movement of Government office furniture and furnishings within the State of Colorado, the Board finds (i) that the National Park Service is not required to pay a higher rate for the movement of its property than the rate negotiated with the contractor as reflected in an accepted purchase order and (ii) that it is not required to forego presenting to the contracting officer for decision a claim for damages sustained to Government property during the course of the move, even though at the time the move took place the tariff rates promulgated by the Colorado Public Utilities Commission required payment of a higher rate than that specified in the purchase order and even though the same tariff rates required payment of the full amount billed for services rendered before claims against the carrier for damages to property during the move could be entertained.

Appeal of Alpine Moving and Storage, IBCA-1434-2-81 (Oct. 21, 1981) 88 I.D. 979

Governing Law

In a case involving the movement of Government office furniture and furnishings within the State of Colorado, the Board finds (i) that the National Park Service is not required to pay a higher rate for the movement of its property than the rate negotiated with the contractor as reflected in an accepted purchase order and (ii) that it is not required to forego presenting to the contracting officer for decision a claim for damages sustained to Government property during the course of the move, even though at the time the move took place the tariff rates promulgated by the Colorado Public Utilities Commission required payment of a higher rate than that specified in the purchase order and even though the same tariff rates required payment of the full amount billed for services rendered before claims against the carrier for damages to property during the move could be entertained.

Appeal of Alpine Moving and Storage, IBCA-1434-2-81 (Oct. 21, 1981) 88 I.D. 979

Implied and Constructive Contracts

A Government motion to dismiss an appeal is granted where no express contract between the parties exists, there is no evidence from which an implied in fact contract could be inferred, and the Board is without jurisdiction over contracts implied in law, assuming appellant is seeking full relief.

Appeal of Dean Prosser and Crew, IBCA-1471-6-81 (Aug. 28, 1981) 88 I.D. 809

A claim for rental of blowout prevention equipment used in drilling a well under a Government prime contract is denied where the supplier of the equipment alleges that the equipment was furnished pursuant to oral orders received from a Government employee but the employee named denies having placed any orders with the supplier and the supplier's own order forms show the orders in question to have been placed by the prime contractor. The appellant's claim predicated upon a benefit to the Government is dismissed since, irrespective of any benefit derived from having the rental equipment used in drilling the well covered by the prime contract, the Board has no jurisdiction over contracts implied in law.

Appeal of Shafco Industries, Inc., IBCA-1447-3-81 (Mar. 16, 1982) 89 I.D. 92

CONTRACTS--Continued

FORMATION AND VALIDITY--Continued

Implied and Constructive Contracts--Continued

The Board found that there was no implied contract with the Government where a management consultant submitted a second proposal for 50 man-days of service to a private corporation established by the Blackfeet Indian Tribe after the consultant's initial proposal concealed the extent of the service contemplated and did not indicate that any additional service would be required. Payment for the service in the initial proposal by a Government grant to the tribe did not give rise to an obligation to pay for the service in the second proposal since there was no Government acceptance of the second proposal and all assurances that the consultant would continue to be paid came from persons outside the Government.

Appeal of W. B. Hyland & Hyland/Associates, IBCA-1332-2-80 (Aug. 31, 1982) 89 I.D. 435

Legality

Upon finding that a contract clause in a tree planting contract provided that a contractor would receive no pay for any planting unit where the contractor failed to properly plant less than approximately 80 to 85 percent of the unit, the Board held the clause to constitute an unenforceable penalty because of no reasonable relationship to the degree of noncompliance with planting requirements and awarded an equitable adjustment for that portion of the planting units satisfactorily performed.

Appeal of Charles O. Bates, d.b.a. Phoenix Reforestation Co., IBCA-1198-7-78 (Aug. 11, 1983) 90 I.D. 366

Mistakes

A claim for additional rock excavation is denied where the Board finds (i) that the contract provided for volume of excavation to be measured by the average end area method; (ii) that all excavation including rock boulders was so measured; and (iii) that the appellant failed to show by a preponderance of the evidence that there were any rock boulders placed in embankments for which it has not been paid.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

PERFORMANCE OR DEFAULT

Generally

Where the final product of a contract is defective, the fault will be with the Government and not the contractor when the evidence establishes that the contractor complied with the specifications and it is inferable that the Government design and specifications and its administration of the contract are defective.

Upon finding that: (1) There were no contract specifications regarding seepage in a conduit pipe; (2) any seepage was minimal as late as 2 years after the original project completion; (3) a second installation was accepted despite greater seepage; and (4) the Government failed to show how part of the pipe being out of round adversely affected the intended functioning of the installation, the Board holds the contractor entitled to an equitable adjustment having established that its performance was acceptable when first performed, despite some seepage in the pipe and a portion of the pipe being out of round.

Appeal of Industrial Machine & Welding, Inc., IBCA-1322-12-79 (July 11, 1983)

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Generally--Continued

In a construction contract, where the contractor complained of the Government's refusal to make final payment because of a dispute over two punch-list items and the contractor merely alleged satisfactory performance in one instance and asserted lack of contractual obligation in the other, both of which were contradicted by the Government, the Board held that the contractor had failed to carry its burden of proof for entitlement to recovery, since it failed to support its allegation and assertion by submission of any evidence.

Appeal of C. G. Norton Co., IBCA-1647-1-83 (Nov. 14, 1983)

Where a contractor leased a helicopter to the Government, but before the end of the lease period, the helicopter was destroyed, the Board found that the inability or unwillingness of the contractor upon demand to furnish a replacement helicopter for the remainder of lease period constituted nonperformance of a contractual obligation on the part of the contractor and held that such nonperformance relieved the Government from payment for any contractually guaranteed minimum use of the aircraft.

Where a contract for the lease of a helicopter by the Government contained a Loss or Damage to Leased Aircraft clause whereby the Government assumed the risk of loss and agreed to pay and did pay the fair market value of the helicopter which was totally destroyed in a crash, the Board held that payment by the Government was performance and not a breach on its part and that the contractor was not entitled to loss of profits on a breach of contract theory.

Appeal of Gay Airways, Inc., IBCA-1429-2-81 (Mar. 9, 1984)
91 I.D. 149

Acceptance of Performance

Under a fixed price contract requiring the specialized archeological services of a contracator to conduct research and prepare a final report, the Board finds the final report and material delivered were improperly rejected by applying acceptance criteria developed unilaterally by the Government subsequent to award of the contract and that such criteria were developed for purposes other than the instant contract requirements.

Appeal of A. Helene Warren, IBCA-1422-1-81 (Sept. 29, 1981)

Under a fixed-price contract requiring a report in accordance with a statement of work contained in appellant's letter incorporated into the contract, the Board finds the final report was improperly rejected by applying acceptance criteria not contained in the contract.

Appeal of Boston Technologies, Inc., IBCA-1527-10-81 (Mar. 25, 1982)

A claim by the Government for a credit due to the deletion of a specification requirement for calcium chloride in a roadway base course is denied where the purported deletion was made by an unauthorized person and the nonspecification base course was accepted by the Government with knowledge of the omission of calcium chloride.

Appeal of Tucker & Associates Contracting, Inc., IBCA-1468-6-81 (Nov. 30, 1982)
89 I.D. 597

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Breach

In a contract which provided for helicopter spraying of herbicide on grass after spring sprouting and the Government, after giving notice to proceed and granting permission to the contractor to mix the herbicide for the entire project, changed its mind about the readiness of the grass for spraying and imposed a noncontractual requirement that the grass be 4 inches high before spraying, the Board found that the Government breached its duty not to interfere with the contractor's performance and that the contractor was entitled to damages in the form of standby costs for its helicopter and for the tank truck in which the herbicide was mixed.

Appeal of Evergreen Helicopters, Inc., IBCA-1368-8-80 (Aug. 28, 1981)
88 I.D. 803

Where the Government continued to encourage performance and accept deliveries after the scheduled dates for delivery had past, without attempting to establish a new delivery schedule, the contractor's default of timely delivery is deemed to be waived and the Government's claim for breach of contract is denied.

Appeal of Terra Technology Corp., IBCA-1393-9-80 (Mar. 4, 1982)

Where a contractor (1) failed to comply with a notice to proceed within the time therefor as stated in the notice, (2) by its conduct established a likelihood of future inability to proceed such as would support a conclusion of anticipatory breach, and (3) was so dilatory in performance that a belief that the contract could not be completed timely was reasonable, the Board concluded that the contracting officer had a corresponding number of independent, valid reasons for terminating the contract for default.

Hosey, IBCA-1649-1-83 (Jan. 30, 1984)

Compensable Delays

In an indefinite quantity contract with a 4-month ordering period where the maximum quantity of services was ordered immediately after award and an additional delivery order for services exceeding the maximum was issued within 2 months, the Board held that the Government could not require the contractor to perform services in excess of the maximum but when the contractor accepted the order he was bound by the unit prices therein and was not entitled to standby costs prior to receipt of the order which exceeded the maximum quantities stated in the contract.

Appeal of Raimonde Drilling Corp., IBCA-1359-5-80 (Feb. 14, 1983)
90 I.D. 69

When under a contract for the construction of a road and a bridge, the Government denied the contractor's request to use the bridge for its construction operations following the completion of the bridge and the contractor files a claim for the costs said to have resulted from the Government's refusal, the Board finds that the refusal was justified where (i) the contract contains no provision authorizing the contractor to use the completed bridge; (ii) whatever costs the contractor may have incurred as a result of the Government's action have not been shown to be attributable to unforeseen work; (iii) appellant has not shown any custom in the construction business in support of its contentions; and (iv) the action of the project engineer

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Compensable Delays--Continued

in refusing the appellant permission to use the bridge was not shown to constitute an abuse of discretion.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

Excusable Delays

Where a contractor seeks relief from the assessment of liquidated damages for delayed completion of the contract work due to alleged excessive rain, the claim is denied for want of proof for failure to show that the amount of rain constituted unusually severe weather.

Appeal of J. T. Gregory & Son, Inc., IBCA-1260-4-79 (Apr. 30, 1980) 87 I.D. 154

A contractor who seeks an extension of time under a standard form of construction contract because of an alleged excusable cause of delay, in general, has the burden of proving that the alleged cause of delay actually existed, that it met the criteria of excusability prescribed by the contract and that it delayed the ultimate completion of the contract as a whole.

Appeal of Wunschel & Small, Inc., IBCA-1263-5-79 (June 27, 1980)

Where a prime contractor's delayed performance of its contractual obligations was caused by its sole source subcontractor's failure to perform, the prime contractor assumed the risk of such nonperformance by its subcontractor, and the prime contractor's delayed performance was not an excusable cause of delay cognizable under the default clause.

Appeal of Franklin Instrument Co., Inc., IBCA-1270-6-79 (Feb. 26, 1981) 88 I.D. 326

A termination for default of a seeding contract is found to be proper where (i) the appellant fails to show that the work ordered by the contracting officer's representative was not required by the technical specifications; (ii) the time allowed for performance of the contract had passed by the time the notice of termination was issued; and (iii) no excusable cause of delay had been shown to exist.

Appeal of Building Maintenance Serv. Assist., Inc., IBCA-1397-9-80 (June 15, 1981)

Where the contractor established that a critical diesel fuel shortage prevented timely completion of the contract, and that such shortage was unforeseeable, beyond the control, and without the fault or negligence of the contractor or its subcontractors or suppliers, the Board held that the contractor proved excusable cause for delay.

Appeals of Phillips Construction Co., IBCA-1295-8-79 & 1296-8-79 (July 31, 1981) 88 I.D. 689

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Excusable Delays--Continued

Upon finding that the contractor had agreed to a modification of the contract whereby the Government extended the completion date and increased the total contract price as consideration for the Government's admitted cause of delay of performance, the Board holds that an unconditional, bilateral settlement was reached resulting in a bar to contractor's subsequent claim based on excusable delay.

Appeal of Environmental Research & Technology, Inc., IBCA-1244-1-79 (July 12, 1982)

A default termination of a contract for failure to make progress so as to endanger performance is sustained where at the time of termination the contractor was far behind the monthly schedule and the principal grounds relied upon by the appellant as an excusable cause of delay was the failure by the Government to conform to an industry practice for which, however, no proof was offered and which would not constitute an excusable cause of delay even if shown to exist, where, as here, the Government either (i) denies the contentions advanced by the appellant relying upon evidence of record in support of the denial or (ii) shows the contentions to be irrelevant to the question of excusable cause of delay.

Appeal of Walden General, Inc., IBCA-1475-6-81 (Oct. 19, 1982) 89 I.D. 529

Default termination of a contract for delivery of 75 altimeter dials was proper because the contractor failed to perform the work by the extended completion date and offered no excuse for its default. The contractor's claim that it experienced "extreme difficulty in procuring an acceptable silk screened elevation dial," and in "obtaining a vendor capable of doing an acceptable job," indicates fault not only on the part of the subcontractor, but on the contractor's part as well. Every reasonably prudent contractor prior to bidding should obtain assurance that the materials needed to complete the work will be furnished. For a delay to be excusable it must arise from causes beyond the control and without the fault or negligence of both the contractor and his subcontractors or suppliers. Here, the delay resulted in the contractor failing to obtain an acceptable elevation dial when needed, which did not excuse the default.

Appeal of the Airflo Instrument Co., IBCA-1323-12-79 (Jan. 13, 1983)

Impossibility of Performance

Where a contract for refinishing a hull of a ship, in accordance with the manufacturer's instructions for application of a toxic antifoulant paint, did not include those instructions and the contractor alleged that it did not consider the cost of safety precautions for the paint in its cost estimate and that it was impossible to perform the contract work at the negotiated price, the Board held that the contractor had not stated a valid basis for recovery of the cost of the safety precautions since knowledge of such precautions was not exclusive to the Government but was readily available to the contractor from use of the same paint in a previous contract and from other paint in its paint locker having the same active antifouling ingredient and requiring the same safety precautions. Specifications are not defective merely because a

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Impossibility of Performance--Continued

contractor cannot sustain his anticipated profit margin while following them.

Appeal of Dillingham Maritime, IBCA-1360-5-80 (June 8, 1983)

Inspection

A claim for the costs of rejected concrete for failure to meet the air content requirement of the contract is sustained where the test instrument indicating nonspecification results was not an approved standard for measurement and testing with an approved instrument was not timely made.

Appeal of Tucker & Associates Contracting, Inc., IBCA-1468-6-81 (Nov. 30, 1982) 89 I.D. 597

Where the final product of a contract is defective, the fault will be with the Government and not the contractor when the evidence establishes that the contractor complied with the specifications and it is inferable that the Government design and specifications and its administration of the contract are defective.

Appeal of Industrial Machine & Welding, Inc., IBCA-1322-12-79 (July 11, 1983) 90 I.D. 308

Release and Settlement

Where the exceptions to a "Release" specifically designate particular claims as being excluded from the effect of the release, a further claim, that cannot reasonably be considered to be within the claims asserted in the exceptions is barred by the release provisions and will be dismissed.

Appeal of Charley O. Estes, d.b.a. Phoenix Reforestation Co., IBCA-1198-7-78 (Aug. 11, 1983) 90 I.D. 366

Where three of four extra work orders covering drilling and blasting work performed by a subcontractor provided for no reimbursement to the contractor and where the fourth extra work order was used as a vehicle to reimburse the contractor for the rental of its pumps at agreed upon rates without any evidence having been offered at the hearing to show that any amount was included therein for costs resulting from delays to the contractor's work, the Government's contention that the contractor's acceptance of the four extra work orders constituted an accord and satisfaction is rejected by the Board since it is well settled that an agreement does not operate as an accord as to matters not covered by the agreement.

Appeal of Clark & Hirt, IBCA-1508-8-81 (Feb. 9, 1984) 91 I.D. 71

Suspension of Work

A claim for additional costs attributed to a suspension of work is denied where the work stoppage resulted from the action of third parties without the fault of the Government.

Appeal of Nielsons, Inc., IBCA-1536-11-81 (Sept. 22, 1982)

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Suspension of Work--Continued

Where a work suspension of less than 3 days was neither unreasonable on its merits nor of unreasonably long duration, a claim for additional expenses incurred as a result of the suspension is denied.

Appeal of Industrial Machine & Welding, Inc., IBCA-1322-12-79 (July 11, 1983) 90 I.D. 308

Waiver and Estoppel

Where the Government's conduct constituted encouragement to a contractor to proceed with performance of the contract work after the delivery date had passed, and where such a contractor incurred performance costs in reliance thereon, the Government has waived the delivery schedule.

Appeal of Franklin Instrument Co., Inc., IBCA-1270-6-79 (Feb. 26, 1981) 88 I.D. 326

Where the Government continued to encourage performance and accept deliveries after the scheduled dates for delivery had past, without attempting to establish a new delivery schedule, the contractor's default of timely delivery is deemed to be waived and the Government's claim for breach of contract is denied.

Appeal of Terra Technology Corp., IBCA-1393-9-80 (Mar. 4, 1982)

The Board holds: (1) That after waiver of 2 completion dates extending over a 6-month period, a new completion period of 30 days established by the contracting officer was reasonable; (2) that a letter from the contractor, dated 7 days before the end of the final 30-day completion period, advising the Government that it was unable to complete the work constituted an anticipatory breach on the part of the contractor; and (3) appellant therefore failed to establish a right to have the default termination converted to a termination for convenience of the Government under a waiver theory.

Appeal of Environmental Research & Technology, Inc., IBCA-1244-1-79 (July 12, 1982)

CONVEYANCES

GENERALLY

Where over the course of several decades patented land has been conveyed according to the description in the patent by willing buyers and sellers in "arm's length" transactions, the subsequent grantees of the original entryman had a duty to identify the land that they were purchasing, and the Government will not amend the patent to substitute other public land simply because the present owner believes, or even proves, that certain of the land settled by the original entryman was misdescribed by him, absent any showing of a basis for equitable relief.

George Val Spoy, 46 IBLA 101 (Feb. 29, 1980)

CONVEYANCES--Continued

GENERALLY--Continued

Where evidence is persuasive that certain land was included in a homestead patent as the consequence of an error in description, and other land was settled, improved and occupied for several decades thereafter, an application to reform the patent will be allowed where the concerned administrative agencies do not object, the Government's interests are not unduly prejudiced, no third party's rights are affected, and substantial equities of the applicant will thereby be preserved.

Hattie Ranch Corp., 87 IBLA 17 (Apr. 11, 1980)
87 I.D. 143

Under sec. 316 of the Federal Land Policy and Management Act of 1976, the Secretary of the Interior has discretionary authority to correct an error in a conveyance document when the error is clearly established and equitable considerations dictate that relief be granted. BLM's rejection of an application to amend a homestead patent to change the legal description of the land patented will be affirmed where the record does not support a finding that the entryman erred in describing the lands he had entered.

Roy R. Williams, 57 IBLA 8 (Aug. 5, 1981)

Adverse possession cannot be asserted against the United States. Mere occupancy of public lands and the making of improvements thereon give no vested right against the United States. An occupant of Federal land must show that he occupies the same under some proceeding or law that at least authorized his right of possession.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard E. Tingley, 62 IBLA 315 (Mar. 19, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

United States v. Evelyn E. Bunch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or

CONVEYANCES--Continued

GENERALLY--Continued

protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

United States v. Gerald H. Braniff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

An application for a quitclaim deed under sec. 6 of the Act of Apr. 28, 1930, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, is properly rejected because the Act of July 6, 1960, precludes the Department from utilizing the 1930 Act for that purpose.

Masonic Homes of California, 70 IBLA 46 (Jan. 10, 1983)

R. E. Hornaday, 76 IBLA 353 (Oct. 24, 1983)

Where BLM makes an unequivocal offer to sell a small tract and invites acceptance by submitting a prescribed amount as full payment, and where an individual submits the payment, a binding contract passing equitable title to the buyer is created. Thereafter, BLM holds legal title in trust for the purchaser and, as soon as any impediments to conveyance of full legal title are removed, it is obliged to convey title to him, without additional charge.

Although the Small Tract Act of June 1, 1938, was repealed by the Federal Land Policy and Management Act of 1976, this repeal was made expressly subject to any existing "land use right or authorization," including a vested contractual equitable property right. Thus, the repeal of the former by the latter did not remove the Department's authority to meet its ministerial duty to pass legal title where a binding contract to do so had been created prior to the enactment of FLPMA.

Chester F. Dawson, 73 IBLA 27 (May 9, 1983)

An application for a recordable disclaimer or a quitclaim deed of the Government's interest in a parcel of land in the Inyo National Forest under sec. 6 of the Act of Apr. 28, 1930, based upon a conveyance in 1900 to the United States of the parcel in anticipation of making a lieu selection under the Act of June 4, 1897, is properly rejected even though the lieu selection was never completed, because the Act of July 6, 1960, precludes the Department from utilizing the 1930 Act for that purpose and provides that title to the lands was quieted to the United States in 1961 as part of the national forest in which the lands are located.

The legislative history of the Act of July 6, 1960, shows the Congress fully considered the constitutionality of the compensation provisions contained therein. The Department is bound to follow these provisions.

Soda Flat Co., Inc., 75 IBLA 388 (Sept. 2, 1983)

CONVEYANCES--Continued

GENERALLY--Continued

An application for a recordable disclaimer or quitclaim deed of the Government's interest in a parcel of land in the Sierra National Forest under sec. 6 of the Act of Apr. 28, 1930, which parcel was deeded to the Government in 1899 in contemplation of selecting another parcel in lieu thereof pursuant to the Act of June 4, 1897, is properly rejected even though the lieu selection never was consummated, because the Act of July 6, 1960, repealed the Department's authority to do so and provided that title to the lands was quieted to the United States as part of the national forest in which the lands are located.

The legislative history of the Act of July 6, 1960, shows the Congress fully considered the constitutionality of the compensation provisions contained therein. The Department is bound to follow these provisions.

O. J. Shaw et al., 75 IBLA 396 (Sept. 2, 1983)

A conveyance for public lands carries with it an implied affirmation of every necessary prerequisite. After the Secretary of the Interior has decided that any particular land is not mineral in character and has approved conveyance thereof on that basis, the transfer of title is not vitiated by the subsequent discovery of minerals.

While the Secretary of the Interior may recommend appropriate judicial action to cancel a conveyance and regain title if the circumstances warrant, a stranger to any prior claim or interest has no standing to seek cancellation of a state grant.

George Antunovich, John E. Curran, 76 IBLA 301 (Oct. 19, 1983) 90 I.D. 464

Where a stranger to the original patentee acquires a certain, specific tract of land through mesne conveyances and then seeks to have the patent amended so that he can acquire other land instead, he must demonstrate first that there was an error in the patent's land description and, second, that he is deserving as a matter of equity and justice to be granted that which was actually earned by the original patentee.

George Val Snow (On Judicial Remand), 79 IBLA 261 (Mar. 7, 1984)

Under sec. 316 of the Federal Land Policy and Management Act of 1976, the Secretary of the Interior has discretionary authority to correct an error in a conveyance document when the error is clearly established and equitable considerations dictate that relief be granted. BLM's rejection of an application to amend a homestead patent to include additional acreage will be affirmed where the record does not support a finding that the original patentees had entered those lands, nor was there ever any intent to enter such lands as part of the original homestead entry.

Elmer L. Love, 80 IBLA 101 (Apr. 3, 1984)

Legislative history of the Act of July 6, 1960, clearly shows that Congress concluded that the Federal Government holds title to land relinquished to the Federal Government in anticipation of a forest lieu exchange, notwithstanding the failure to consummate the exchange.

An application for a recordable disclaimer of the Government's interest in a parcel of land in the Inyo National Forest pursuant to sec. 315 of the Act of

CONVEYANCES--Continued

GENERALLY--Continued

Oct. 21, 1976, which parcel was deeded to the Government in 1899 in contemplation of selecting another parcel in lieu thereof pursuant to the Act of June 4, 1897, is properly rejected even though the lieu selection was never consummated, because the Act of July 6, 1960, quieted title to such land to the United States as part of the national forest in which the lands are located.

Andy D. Rutledge et al., 82 IBLA 89 (July 17, 1984)

INTEREST CONVEYED

Under sec. 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1976), the Secretary of the Interior has discretionary authority to correct an error in a conveyance document when the error is clearly established and equitable considerations dictate that relief be granted. Where a company establishes that it acquired a right-of-way pursuant to the Act of July 26, 1866, prior to the repeal of the right-of-way provisions of that Act by the Federal Land Policy and Management Act of 1976, a subsequent interim conveyance to a Native corporation is subject to that right-of-way, and where the conveyance does not reflect that fact, the Secretary may act to correct that error.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

COURTS

Where a United States district court has ordered a lessee to adopt a dual accounting method of determining value and has ordered the Department to require this dual accounting from the lessee, the question of the propriety of the Area Supervisor's order doing so is apparently res judicata, the only question being whether the order is the court's final action.

Supron Energy Corp. et al., 46 IBLA 181 (Mar. 21, 1980)

DELEGATION OF AUTHORITY
(See also Administrative Authority, Contracts--if included in this Index.)

EXTENT OF

The presumption of regularity supports the acts of public officers and, in the absence of clear evidence to the contrary, they are presumed to have properly discharged their official duties.

Don Cook, 60 IBLA 255 (Dec. 4, 1981)

The Board of Land Appeals has been delegated full authority by the Secretary of the Interior to review decisions rendered by Departmental officials relating to the use and disposition of public lands. Where, on appeal to the Board, BLM admits the existence of errors and omissions in its decision, but declines to delineate the nature and effect of such errors and omissions, the Board may, in its discretion, determine de novo any factual or legal question necessary for the adjudication of the appeal.

Denton C. Cavin, 83 IBLA 107 (Oct. 5, 1984)

DELEGATION OF AUTHORITY--Continued

REDELEGATIONS

The Department of the Interior, which retains the authority to enter freely and inspect mining claims, has redelegated this authority to the Forest Service as to lands within the boundaries of national forests. Agents of the Forest Service have the right to enter such claims at any time; no permission need be sought from the claimants.

United States v. Lyle O. Cook et al., 71 IBLA 268 (Mar. 22, 1983)

DESERT LAND ENTRY

GENERALLY

Where an applicant, with a preference right of entry, fails to properly execute and sign the application for a desert land entry, the applicant's preference right of entry is extinguished; the application, however, may be treated as a regular application with priority established from the date of signing.

"Resident citizen." As used in sec. 2 of the Act of Mar. 3, 1891, 26 Stat. 1096, 43 U.S.C. § 325 (1976), the term "resident citizen" refers to someone who is actually living in the State at the time of entry, and does not refer to individuals who have established tax or voting residency within a state but who are not actually residing therein.

Sandy C. Daicy, 46 IBLA 140 (Mar. 19, 1980)

An application for a desert land entry is not properly executed under 43 CFR 2521.2 where the applicant fails to correctly describe the land applied for. Subject to valid intervening rights and competing interests, an applicant may acquire priority from the date of the filing of the statement of reasons on which the correct land description is filed with the BLM State Office.

Stephen F. Pullen, 48 IBLA 5 (May 27, 1980)

Patricia Manning, 48 IBLA 244 (June 17, 1980)

Malon A. Taylor, 48 IBLA 336 (July 3, 1980)

Where an applicant has filed two desert land entry applications, the earlier of which does not conform to the classification and opening order, and on appeal to this Board opts for the second application to the exclusion of the first, such application may acquire priority from the date the statement of reasons was filed, subject to valid intervening rights or competing interests in the land.

A desert land applicant, whose application is rejected because of an adverse classification, and does not timely seek appropriate appellate review thereof, loses whatever rights may have accrued to him by virtue of the application and he will not enjoy any preference right to the land when it is subsequently classified as suitable for desert land entry.

Bruce C. Newcomb, 48 IBLA 263 (June 30, 1980)

Where the Bureau of Land Management has rejected desert land entry applications because cultivation of the jojoba plant would not meet the requirements of the Desert Land Act, and where appellants submit extensive

DESERT LAND ENTRY--Continued

GENERALLY--Continued

data and analysis in an attempt to rebut the BLM conclusion, the cases may be remanded to BLM for further consideration and development of the record.

Joanne F. Wright et al., 49 IBLA 237 (Aug. 18, 1980)

A desert land entry application is properly rejected where the lands applied for are unsurveyed according to the official records of the Bureau of Land Management.

George J. Chachas et al., 62 IBLA 310 (Mar. 19, 1982)

An application for a desert land entry which is not accompanied by the statements of two credible witnesses as required by 43 U.S.C. § 322 (1976), is not properly executed under 43 CFR 2521.2 and is properly rejected as incomplete. Where the application has been filed in a competing situation pursuant to a simultaneous filing, the application may not be corrected and loses its priority in favor of the second drawn application.

R. Jay Kidd, 66 IBLA 71 (July 29, 1982)

Where the charges in a private contest complaint against a desert land entry are not corroborated as required by 43 CFR 4.450-4(c), the complaint must be dismissed.

A private contest against a desert land entry that is initiated prior to the expiration of the statutory life of the entry and charges that the entryperson will fail to meet the requirements of the law by the expiration date is premature. Since time remains for the entryperson to fulfill the requirements, it cannot be said with certainty that the contestant has alleged facts which if proved would require cancellation of the entry and thus the contest must be dismissed.

Dale R. Wright v. Jean L. Guiffre, 68 IBLA 279 (Nov. 17, 1982)

"Resident citizen." As used in sec. 2 of the Act of Mar. 3, 1891, 26 Stat. 1096, 43 U.S.C. § 325 (1976), the term "resident citizen" refers to someone who is actually living in the state at the time of entry, and does not refer to individuals who have established tax or voting residency or own land within a state but who are not actually residing therein.

Benjamin D. Christensen, 74 IBLA 239 (July 19, 1983)

Where BLM uses a computerized economic analysis to justify rejection of a desert land entry application, BLM must explain the basis of its analysis and data and the deficiencies of the applicant's proposal in its decision so that the applicant has some basis for understanding and accepting the rejection or appealing and disputing it.

Roger K. Ogden, 77 IBLA 4 (Oct. 31, 1983) 90 I.D. 481

Analysis of the economic feasibility of proposed reclamation of desert land is an acceptable factor for BLM to consider when reviewing, pursuant to 43 CFR 2520.0-8(d)(3), whether a desert land entry application may be allowed in the form sought.

Where BLM uses a computerized economic analysis to justify rejection of a desert land entry application,

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DESERT LAND ENTRY--Continued

GENERALLY--Continued

BLM must explain the basis of its analysis and the deficiencies of the applicant's proposal in its decision so that the applicant has some basis for understanding and accepting the rejection or appealing and disputing it. Sufficient facts and explanations to support the decision must be present before the Board will affirm such a decision on appeal.

David V. Udy, 81 IBLA 58 (May 22, 1984)

APPLICATIONS

Where an applicant, with a preference right of entry, fails to properly execute and sign the application for a desert land entry, the applicant's preference right of entry is extinguished; the application, however, may be treated as a regular application with priority established from the date of signing.

"Resident citizen." As used in sec. 2 of the Act of Mar. 3, 1891, 26 Stat. 1096, 43 U.S.C. § 325 (1976), the term "resident citizen" refers to someone who is actually living in the State at the time of entry, and does not refer to individuals who have established tax or voting residency within a state but who are not actually residing therein.

Sandy C. Daicy, 46 IBLA 140 (Mar. 19, 1980)

An application for a desert land entry is not properly executed under 43 CFR 2521.2 where the applicant fails to correctly describe the land applied for. Subject to valid intervening rights and competing interests, an applicant may acquire priority from the date of the filing of the statement of reasons on which the correct land description is filed with the BLM State Office.

Stephen F. Bollon, 48 IBLA 5 (May 27, 1980)

Patricia Manning, 48 IBLA 244 (June 17, 1980)

Malon A. Taylor, 48 IBLA 336 (July 3, 1980)

Where an applicant has filed two desert land entry applications, the earlier of which does not conform to the classification and opening order, and on appeal to this Board opts for the second application to the exclusion of the first, such application may acquire priority from the date the statement of reasons was filed, subject to valid intervening rights or competing interests in the land.

A desert land applicant, whose application is rejected because of an adverse classification, and does not timely seek appropriate appellate review thereof, loses whatever rights may have accrued to his by virtue of the application and he will not enjoy any preference right to the land when it is subsequently classified as suitable for desert land entry.

Bruce C. Newcomb, 48 IBLA 263 (June 30, 1980)

A desert land application filed for lands which are withdrawn for reclamation purposes at the time of the filing of the application must be rejected. It cannot be suspended pending the lifting of the withdrawal. Even where the purpose of the withdrawal cannot be met, the withdrawal is nevertheless effective to bar the disposal of the land.

Robert A. Adams, 57 IBLA 370 (Sept. 8, 1981)

DESERT LAND ENTRY--Continued

APPLICATIONS--Continued

A desert land entry application filed pursuant to the Act of Mar. 3, 1877, as amended, 43 U.S.C. § 321 (1976), is properly rejected where the applicant fails to provide evidence that the proposed system of impounding rainfall on the land in question and directing it to the plants by a system of canals and ditches would provide a permanent and feasible source of sufficient water for irrigation.

A desert land entry application which provides that the crops for cultivation will be the century plant and the pinon pine tree is properly rejected because such species are not "crops" which would qualify the subject land for desert land entry.

Patricia E. Scher, 59 IBLA 276 (Oct. 29, 1981)

A desert land entry application is properly rejected where the lands applied for are unsurveyed according to the official records of the Bureau of Land Management.

George J. Chachas et al., 62 IBLA 310 (Mar. 19, 1982)

BLM may properly reject a desert land entry application where the land applied for has been withdrawn by a public land order as part of the Snake River Birds of Prey National Conservation Area.

Gary E. Carter, 65 IBLA 338 (July 15, 1982)

An application for a desert land entry which is not accompanied by the statements of two credible witnesses as required by 43 U.S.C. § 322 (1976), is not properly executed under 43 CFR 2521.2 and is properly rejected as incomplete. Where the application has been filed in a competing situation pursuant to a simultaneous filing, the application may not be corrected and loses its priority in favor of the second drawn application.

B. Jay Kidd, 66 IBLA 71 (July 29, 1982)

Where the Secretary by appropriate notice in the Federal Register has classified certain lands for multiple use management and such lands are thereby segregated from desert land entry, which classification has not been terminated by either a reclassification or publication in the Federal Register of termination of classification, an application for desert land entry is properly denied.

Bill K. Yeargley, Hilaler B. Yeargley, 67 IBLA 97 (Sept. 13, 1982)

A desert land application is properly rejected where the applicant proposes to irrigate his entry from underground water sources, but fails to show at the time of filing his application that he has acquired a right from the State to appropriate underground water or that he has taken appropriate steps, as far as then possible, looking to the acquisition of such a right.

James R. Hardcastle, 69 IBLA 341 (Dec. 28, 1982)

DESERT LAND ENTRY--Continued

APPLICATIONS--Continued

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a desert land entry petition-application will not be allowed.

Duelle H. Adams, Lyle H. Adams, 70 IBLA 63 (Jan. 10, 1983)

A desert land entry application is properly rejected where the applicant fails to provide evidence of a water right or that the proposed system would provide a permanent and feasible source of sufficient water for irrigation.

Janice Pearson, 73 IBLA 220 (May 27, 1983)

"Resident citizen." As used in sec. 2 of the Act of Mar. 3, 1891, 26 Stat. 1096, 43 U.S.C. § 325 (1976), the term "resident citizen" refers to someone who is actually living in the state at the time of entry, and does not refer to individuals who have established tax or voting residency or own land within a state but who are not actually residing therein.

Benjamin P. Christensen, 74 IBLA 239 (July 19, 1983)

The Bureau of Land Management properly rejects an application for a desert land entry, in accordance with 43 CFR 7.3, where the applicant indicates in her application that she is an employee, or the spouse or agent of an employee, of the Department of the Interior. In addition, where an individual seeking allowance of a desert land entry accepts employment with the Bureau of Land Management while her application is pending, such application must be rejected even if it is not reached for adjudication until after her employment with the Bureau has been terminated.

Karen (Johnson) Bradshaw, 75 IBLA 342 (Aug. 31, 1983)

Where BLM determines that lands identified in a desert land entry application cannot be farmed as an economically feasible operating unit, BLM properly rejects the application.

Roger K. Ogden, 77 IBLA 8 (Oct. 31, 1983) 90 I.D. 481

A desert land entry application is properly rejected where the applicant proposes to irrigate his entry from groundwater sources, but fails to show at the time of filing his application that he has acquired a right from the State to appropriate groundwater or that he has taken appropriate steps, as far as then possible, looking to the acquisition of such a right.

Gene L. Morrison, 77 IBLA 325 (Dec. 5, 1983)

A desert land entry application is properly rejected where the applicant fails to provide evidence of a water right or that he has initiated, so far as then possible, appropriate steps looking to the acquisition of such a water right.

James Neil Fletcher, 78 IBLA 330 (Jan. 24, 1984)

DESERT LAND ENTRY--Continued

APPLICATIONS--Continued

An application for desert land entry is properly rejected where the applicant proposes to irrigate his entry from underground water sources, but fails to show that he has acquired a right from the state to appropriate underground water or that he has taken appropriate steps, as far as then possible, toward acquisition of such a right.

Richard B. Greaser, 79 IBLA 234 (Feb. 29, 1984)

A desert land entry application is properly rejected where the applicant proposes to irrigate his entry from underground water sources, but fails to show at the time of filing his application that he has acquired a right from the State to appropriate underground water or that he has taken appropriate steps, as far as then possible, looking to the acquisition of such a right.

Elmer A. Kubler, 80 IBLA 283 (May 4, 1984)

Dale Christiansen, 82 IBLA 97 (July 23, 1984)

Rejection of a desert land entry application will be set aside where the applicant has alleged facts which, if proved, would result in a different conclusion.

David V. Udy, 81 IBLA 58 (May 22, 1984)

The failure of a desert land entry applicant to promptly notify the authorizing BLM officer of a change of address does not, in itself, constitute an adequate basis for rejecting the application.

Keith L. McCabe, Jr., 81 IBLA 314 (June 18, 1984)

A desert land entry application is properly rejected where the applicant fails to provide evidence of a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right.

Lee A. Pitz, Gregory Pitz, 82 IBLA 1 (July 2, 1984)

A desert land entry application is properly rejected where the applicant is relying for a source of water on a water permit application which has been canceled by the state water authority, since a desert land entry application without evidence of a water right must be rejected.

Robert E. White et al., 82 IBLA 34 (July 10, 1984)

A desert land entry application is properly rejected where the applicant proposes to irrigate his entry from underground water sources but fails to show at the time of filing his application that he has acquired a right from the state to appropriate underground water or that he has taken necessary steps to acquire such right.

Joe B. Carter, Mildred E. Carter, 83 IBLA 104 (Oct. 1, 1984)

DESERT LAND ENTRY--Continued

APPLICATIONS--Continued

A desert land entry application is properly rejected where the applicant's water permit application has been canceled by the State water authority, since a desert land entry application without evidence of a water right must be rejected.

Ruth O. Prince, 83 IBLA 369 (Nov. 15, 1984)

A desert land entry application is properly rejected where the applicant proposes to irrigate the entry from underground water sources but fails to show at the time of filing the application that a right to appropriate underground water has been acquired or that appropriate steps have been taken, as far as then possible, toward the acquisition of such a right.

Joe J. Pinson et al., 84 IBLA 96 (Dec. 10, 1984)
91 I.D. 359

The failure of a desert land entry applicant to promptly notify the Bureau of Land Management of a change of address does not, in itself, constitute an adequate basis for rejecting the application.

Marlin G. Tullis, 84 IBLA 202 (Dec. 27, 1984)

CLASSIFICATION

A desert land applicant, whose application is rejected because of an adverse classification, and does not timely seek appropriate appellate review thereof, loses whatever rights may have accrued to him by virtue of the application and he will not enjoy any preference right to the land when it is subsequently classified as suitable for desert land entry.

Bruce C. Newcomb, 48 IBLA 263 (June 30, 1980)

Certified mailing is an acceptable form of service under Department practice. 43 CFR 1821.2-4. Sending land classification proposals and decisions to a petitioner-applicant by certified mail meets the requirements in 43 CFR 2450.3 and 2450.4 that those documents be served on the petitioner-applicant.

Elbert O. Sovereign, Jr., 50 IBLA 15 (Sept. 9, 1980)

Where the Secretary by appropriate notice in the Federal Register has classified certain lands for multiple use management and such lands are thereby segregated from desert land entry, which classification has not been terminated by either a reclassification or publication in the Federal Register of termination of classification, an application for desert land entry is properly denied.

Bill K. Yeargsley, Nilsloe H. Yeargsley, 67 IBLA 97 (Sept. 13, 1982)

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a desert land entry petition-application will not be allowed.

Duella M. Adams, Lyle R. Adams, 70 IBLA 63 (Jan. 10, 1983)

DESERT LAND ENTRY--Continued

CULTIVATION AND RECLAMATION

Where the Bureau of Land Management has rejected desert land entry applications because cultivation of the jojoba plant would not meet the requirements of the Desert Land Act, and where appellants submit extensive data and analysis in an attempt to rebut the BLM conclusion, the cases may be remanded to BLM for further consideration and development of the record.

Joseph F. Wright et al., 49 IBLA 237 (Aug. 18, 1980)

Where after weighing all the evidence presented at a hearing in a Government contest of two desert land entries, the Administrative Law Judge determines that only 480 acres of land can be reasonably successfully cultivated from the common water supply developed during the life of the entries, that determination will be upheld when it is supported by the record.

United States v. Elodrene Evans, Darrell Evans, 55 IBLA 83 (June 1, 1981)

A desert land entry application which provides that the crops for cultivation will be the century plant and the pinon pine tree is properly rejected because such species are not "crops" which would qualify the subject land for desert land entry.

Patricia K. Scher, 59 IBLA 276 (Oct. 29, 1981)

An application for a desert land entry is properly rejected where the entryman's plan of operations calls for the construction of a greenhouse and supplemental irrigated finishing shade houses in order to propagate seedling coniferous trees but does not provide for the actual tilling of the soil for raising crops.

William S. Archibald, 75 IBLA 236 (Aug. 24, 1983)

EXTENSION OF TIME

BLM properly denies a third extension of time to file final proof of compliance on a desert land entry and cancels that entry where there is no reasonable prospect that the entryman will be able to make final proof of reclamation, irrigation, and cultivation within the time required by law.

Leonard P. Yesterday, Lorene I. Yesterday, 51 IBLA 132 (Nov. 20, 1980)

LANDS SUBJECT TO

A desert land application filed for lands which are withdrawn for reclamation purposes at the time of the filing of the application must be rejected. It cannot be suspended pending the lifting of the withdrawal. Even where the purpose of the withdrawal cannot be met, the withdrawal is nevertheless effective to bar the disposal of the land.

Robert A. Adams, 57 IBLA 370 (Sept. 8, 1981)

Lands which are known to be underlain by deposits of oil shale are withdrawn from desert land entry by Exec. Order No. 5327 (Apr. 15, 1930), and a desert land application for such lands is properly rejected.

Argee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

DESERT LAND ENTRY--Continued

LANDS SUBJECT TO--Continued

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quit-claim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard E. Tingley, 62 IBLA 315 (Mar. 19, 1982)

Where the Secretary by appropriate notice in the Federal Register has classified certain lands for multiple use management and such lands are thereby segregated from desert land entry, which classification has not been terminated by either a reclassification or publication in the Federal Register of termination of classification, an application for desert land entry is properly denied.

Bill K. Yearsley, Hilalee H. Yearsley, 67 IBLA 97 (Sept. 13, 1982)

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a desert land entry petition-application will not be allowed.

Phyllis M. Adams, Lyle E. Adams, 70 IBLA 63 (Jan. 10, 1983)

Bureau of Land Management properly rejects a desert land entry as to land within a material site because such land is known to contain minerals and mineral lands are excluded from desert land entry.

Norma L. McBride, 73 IBLA 165 (May 24, 1983)

WATER RIGHT

A desert land entry application filed pursuant to the Act of Mar. 3, 1877, as amended, 43 U.S.C. § 321 (1976), is properly rejected where the applicant fails to provide evidence that the proposed system of impounding rainfall on the land in question and directing it to the plants by a system of canals and ditches would provide a permanent and feasible source of sufficient water for irrigation.

Patricia K. Scher, 59 IBLA 276 (Oct. 29, 1981)

A desert land application is properly rejected where the applicant proposes to irrigate his entry from underground water sources, but fails to show at the time of filing his application that he has acquired a right from the State to appropriate underground water or that he has taken appropriate steps, as far as then possible, looking to the acquisition of such a right.

James R. Hardcastle, 69 IBLA 341 (Dec. 28, 1982)

A desert land entry application is properly rejected where the applicant fails to provide evidence of a water right or that the proposed system would provide a permanent and feasible source of sufficient water for irrigation.

Janice Pearson, 73 IBLA 220 (May 27, 1983)

DESERT LAND ENTRY--Continued

WATER RIGHT--Continued

A desert land entry application is properly rejected where the applicant proposes to irrigate his entry from groundwater sources, but fails to show at the time of filing his application that he has acquired a right from the State to appropriate groundwater or that he has taken appropriate steps, as far as then possible, looking to the acquisition of such a right.

Gene L. Morrison, 77 IBLA 325 (Dec. 5, 1983)

A desert land entry application is properly rejected where the applicant fails to provide evidence of a water right or that he has initiated, so far as then possible, appropriate steps looking to the acquisition of such a water right.

James Neil Fletcher, 78 IBLA 330 (Jan. 24, 1984)

An application for desert land entry is properly rejected where the applicant proposes to irrigate his entry from underground water sources, but fails to show that he has acquired a right from the state to appropriate underground water or that he has taken appropriate steps, as far as then possible, toward acquisition of such a right.

Richard H. Greener, 79 IBLA 234 (Feb. 29, 1984)

A desert land entry application is properly rejected where the applicant proposes to irrigate his entry from underground water sources, but fails to show at the time of filing his application that he has acquired a right from the State to appropriate underground water or that he has taken appropriate steps, as far as then possible, looking to the acquisition of such a right.

Elmer A. Kubler, 80 IBLA 283 (May 4, 1984)

Dale Christiansen, 82 IBLA 97 (July 23, 1984)

A desert land entry application is properly rejected where the applicant fails to provide evidence of a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right.

Lee A. Fite, Gregory Fite, 82 IBLA 1 (July 2, 1984)

A desert land entry application is properly rejected where the applicant is relying for a source of water on a water permit application which has been canceled by the state water authority, since a desert land entry application without evidence of a water right must be rejected.

Robert E. White et al., 82 IBLA 34 (July 10, 1984)

A desert land entry application is properly rejected where the applicant proposes to irrigate his entry from underground water sources but fails to show at the time of filing his application that he has acquired a right from the state to appropriate underground water or that he has taken necessary steps to acquire such right.

Joe B. Carter, Mildred E. Carter, 83 IBLA 104 (Oct. 1, 1984)

DESERT LAND ENTRY--Continued

WATER RIGHT--Continued

A desert land entry application is properly rejected where the applicant's water permit application has been canceled by the State water authority, since a desert land entry application without evidence of a water right must be rejected.

Beth O. Prince, 83 IBLA 369 (Nov. 15, 1984)

A desert land entry application is properly rejected where the applicant proposes to irrigate the entry from underground water sources but fails to show at the time of filing the application that a right to appropriate underground water has been acquired or that appropriate steps have been taken, as far as then possible, toward the acquisition of such a right.

Joe J. Pinson et al., 84 IBLA 96 (Dec. 10, 1984)
91 I.D. 359

WATER SUPPLY

Where after weighing all the evidence presented at a hearing in a Government contest of two desert land entries, the Administrative Law Judge determines that only 480 acres of land can be reasonably successfully cultivated from the common water supply developed during the life of the entries, that determination will be upheld when it is supported by the record.

United States v. Elodyeae Ewang, Darrell Ewang, 55 IBLA 83 (June 1, 1981)

EMINENT DOMAIN
(See also Irrigation Claims--if included in this Index.)

Eminent domain is the power of the sovereign to take private property for a public use without the owner's consent, conditioned on payment of just compensation. A state has no right to condemn Federally owned lands absent consent from the Congress of the United States.

State of Alaska, 46 IBLA 12 (Feb. 20, 1980)

Under the Uniform Appraisal Standards for Federal Land Acquisitions (1973), evidence of sums paid by condemning authorities for similar properties, regardless of whether condemnation proceedings have begun, is inadmissible to determine the fair market value of a particular property.

Denver and Rio Grande Western Railroad Co., 58 IBLA 4 (Sept. 15, 1981)

ENDANGERED SPECIES ACT OF 1973

GENERALLY

The Endangered Species Act of 1973, including the taking prohibitions of sec. 9, applies to Native Americans exercising treaty hunting and fishing rights.

Application of the Endangered Species Act to Native Americans with Treaty Hunting and Fishing Rights, M-36926 (Nov. 4, 1980) 87 I.D. 525

ENDANGERED SPECIES ACT OF 1973--Continued

AMENDMENTS OF 1978

Where a tourist unknowingly imports a listed species into the United States in violation of the Endangered Species Act of 1973, the legislative history of the 1978 amendments to that Act indicates that forfeiture of the item will be sought rather than the imposition of a civil penalty.

Charles R. Bittenberry (Appellant) v. U.S. Fish and Wildlife Service (Appellee), 4 OHA 42 (Aug. 13, 1980)

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

A reexport certificate may only be issued pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora when the country of import is satisfied that the item in question was imported into that country in accordance with the Convention.

Charles R. Bittenberry (Appellant) v. U.S. Fish and Wildlife Service (Appellee), 4 OHA 42 (Aug. 13, 1980)

SECTION 7

Generally

BLM may, in its discretion, reject any offer to lease Federal lands for oil and gas upon a determination supported by facts of record that leasing would not be in the public interest, e.g., where leasing might adversely affect the Yuma clapper rail, a federally listed endangered species.

Where BLM rejects an oil and gas lease offer, in order to protect a federally listed endangered species, the record should ordinarily reflect consideration of whether leasing subject to protective stipulations, including no surface occupancy, would not adequately serve the public interest. Where the record indicates that BLM failed to consider alternatives to no leasing, the case will be remanded to BLM for such an assessment.

BLM may properly reject an oil and gas lease offer in order to protect a federally listed endangered species pending the availability of further studies of the effect of oil and gas exploration and development on a resident population of that species.

Chevron U.S.A., Inc., 80 IBLA 324 (May 8, 1984)

Consultation

The July 19, 1978, Solicitor's Opinion 85 I.D. 275 (1978) relating to analysis of cumulative effects during consultation pursuant to sec. 7 of the Endangered Species Act, and the July 24, 1978, memorandum, which was a supplement to that opinion, are withdrawn. Any further legal advice on the matter will be provided by the Associate Solicitor for Conservation and Wildlife.

Cumulative Impacts Under Section 7 of the Endangered Species Act, M-36905 (Supp.) (Aug. 26, 1981)
88 I.D. 903

Earlier Solicitor's Opinions on cumulative impact analysis have been withdrawn. Solicitor's Opinion M-36905 (Supp.), 88 I.D. 903 (1981). Sec. 7 consultation under the Endangered Species Act must consider past and present impacts of all projects and human activities, whether private, state or federal. Consultation must also consider the cumulative impacts of other proposed future federal projects in the vicinity which have undergone sec. 7 consultation and received

ENDANGERED SPECIES ACT OF 1973--Continued

SECTION 7--Continued

Consultation--Continued

favorable biological opinions. Finally, consideration should also be given to the impacts of proposed state or private actions whose completion prior to the completion of the federal project subject to consultation is reasonably certain.

Cumulative Impacts Under Section 7 of the Endangered Species Act, M-36938 (Aug. 27, 1981) 88 I.D. 903

If a Federal agency decides that its actions will not affect endangered or threatened species or their habitat, the agency is not required to consult the Fish and Wildlife Service unless requested by the Service. 50 CFR 402.04(a)(2).

Southwest Resource Council, Inc., National & Arizona Wildlife Federations, 73 IBLA 39 (May 11, 1983)

Critical Habitat

Designation of an area as a critical habitat pursuant to sec. 7 of the Endangered Species Act of 1973, as amended, 16 U.S.C.A. § 1536 (West Supp. 1980), does not necessarily foreclose oil and gas leasing in that area.

The Secretary of the Interior may, in his discretion, reject any offer to lease Federal lands for oil and gas, upon a determination supported by facts of record that the leasing would not be in the public interest because it is incompatible with uses of the lands which are worthy of preservation. Where the land has been designated a critical habitat pursuant to sec. 7 of the Endangered Species Act of 1973, as amended, 16 U.S.C.A. § 1536 (West Supp. 1980), and where BLM determines that oil and gas development would result in an unavoidable adverse impact, rejection of a lease offer will be affirmed in the absence of countervailing compelling reasons.

Endrar K. Bartlet, Ingal Energy Corp., 57 IBLA 319 (Sept. 1, 1981)

ENVIRONMENTAL POLICY ACT
(See also National Environmental Policy Act of 1969--if included in this Index.)

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record.

Julie Adams et al., 45 IBLA 252 (Feb. 4, 1980)

Sierra Club et al., 57 IBLA 79 (Aug. 21, 1981)

Where it is implicit in an administrative decision that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in

ENVIRONMENTAL POLICY ACT--Continued

accordance with established procedures, and is the reasonable result of his study of such record.

James I. Thompson, 51 IBLA 154 (Nov. 26, 1980)

An appeal seeking review of an informational BLM handout containing a proposal for various land uses because the proposal was made without the filing of an Environmental Impact Statement will be dismissed where the document in question implements no policy or action, does not adversely affect appellant, and where it appears that an EIS is being, or will be prepared in connection with any BLM recommendations or reports based on land use proposals for the Coos Bay District, as required by the National Environmental Policy Act of 1969.

Cascade Holistic Economic Consultants and Oregon Wilderness Coalition, 58 IBLA 332 (Oct. 16, 1981)

BLM's incorporation into its western Oregon forest management planning process of Northern Spotted Owl conservation guidelines, developed by a State-Federal interagency task force, is not a major Federal action requiring a regional environmental impact statement where the spotted owls and the preservation of their habitat are significant considerations in existing sustained yield unit environmental impact statements.

National Wildlife Federation et al., 62 IBLA 73 (Feb. 25, 1982)

A determination that a proposed action will not have a significant impact on the environment will be affirmed on appeal where the record establishes that a hard look at environmental problems has been taken, relevant areas of environmental concern have been identified, and the determination is the reasonable result of the environmental analysis.

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer in good faith, based upon a proper and sufficient record compiled in accordance with established environmental analysis procedures, and is the reasonable result of the study of such record.

Southwest Resource Council, Inc., National & Arizona Wildlife Federations, 73 IBLA 39 (May 11, 1983)

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based on a proper and sufficient environmental analysis compiled according to established procedures, and is the reasonable conclusion from such record.

Colorado Open Space Council, 73 IBLA 226 (May 31, 1983)

Where the Bureau of Land Management assesses the cumulative impacts of approving multiple permits to drill for oil and gas in a wilderness study area and wild horse range and makes an area-wide determination to permit such oil and gas development because it would have no significant effect on the area, an appeal of that determination challenging the adequacy of the

ENVIRONMENTAL POLICY ACT--Continued

environmental assessment of the cumulative impacts is not premature.

Animal Protection Institute of America, Sierra Club, Colorado Open Space Council, 79 IBLA 94 (Feb. 17, 1984) 91 I.D. 115

A determination that a proposed action will not have a significant impact on the environment will be affirmed on appeal where the record establishes environmental problems have been considered, relevant areas of environmental concern have been identified, and the determination is reasonable.

Utah Wilderness Ass'n, 80 IBLA 64 (Mar. 30, 1984) 91 I.D. 165

ENVIRONMENTAL QUALITY
(See also Water Pollution Control--if included in this Index.)

GENERALLY

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on environmental analysis reports for the Uinta National Forest, special protective stipulations are not unreasonable, per se.

Oil and gas lessees must bear the expenses occasioned by compliance with stipulations for the protection of other land use values.

Diane B. Katz, 47 IBLA 177 (May 7, 1980)

The Bureau of Land Management may require execution of a no surface occupancy stipulation prior to issuance of a noncompetitive oil and gas lease only where there is evidence that less stringent alternatives would not adequately accomplish the intended purpose of avoiding erosion and protecting the recreational and scenic value of an area.

Melvin A. Brown, 53 IBLA 45 (Feb. 27, 1981)

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record does not show that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper departmental purposes, a decision requiring stipulations will be set aside and remanded for reconsideration.

James E. Sullivan, 54 IBLA 1 (Apr. 1, 1981)

James M. Chudnov, 62 IBLA 16 (Feb. 23, 1982)

Although the Bureau of Land Management may require such special stipulations as are necessary for protection of the lands embraced in any oil and gas lease, such special stipulations must be supported by valid reasons weighed by the Department with due regard for the public interest. A decision to impose a no surface occupancy stipulation will be set aside and the case remanded where there is no data in the record to support the decision and no indication that less stringent stipulations were considered.

Max B. Lewis, 56 IBLA 293 (July 28, 1981)

ENVIRONMENTAL QUALITY--Continued

GENERALLY--Continued

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

A.C.O.T.S., 60 IBLA 1 (Nov. 12, 1981)

Where separate lease stipulations are proposed by different agencies having management responsibilities for the same land, and their combined effect is to preclude the lessee from operating on any portion of the lease, the case will be remanded for possible modification or substitution to accommodate leasing operations where it appears that neither agency intended that the lessee be barred from surface occupancy of the entire leasehold.

Boris F. Stroock, 63 IBLA 119 (Apr. 2, 1982)

A determination by BLM refusing to issue an oil and gas lease on the ground that the lands applied for are within outstanding natural areas will be set aside and remanded for clarification where BLM's declarations as to the public interest are conclusory and where the record indicates that approximately half the lands rejected may not actually lie within areas of outstanding environmental values.

Bachelt Production, Inc., 68 IBLA 75 (Oct. 21, 1982)

A provision in a readjusted coal lease requiring the lessee to conduct operations so as to avoid damage "to non-Federal lands in the vicinity of the leased lands," and "where practicable, to repair" such damage as does occur, subject to the approval of the lessor, is improper, unenforceable, and void.

It is proper to include in a readjusted coal lease a provision requiring the lessee to conduct at its own expense a survey and inventory archaeological and paleontological values prior to approval of a mining plan or any activity that would disturb the surface of the land.

A readjusted coal lease may properly require that buildings and surface structures be painted in a color which conforms or blends with the natural color of the surrounding area in order to mitigate negative visual impacts in a nearby recreation area where the lessee fails to establish that compliance with the requirement is not infeasible.

Blackhawk Coal Co., 68 IBLA 96 (Oct. 26, 1982)

Where the Bureau of Land Management imposes a no surface occupancy stipulation on certain lands in an oil and gas lease offer and rejects the remainder of the lands in the offer stating that all lands in the offer are in the Jackson Canyon Bald Eagle Roost, and there is no information in the record to support a distinction between the lands available for leasing subject to stipulation and those considered unavailable, the decision will be set aside and the case remanded for reconsideration.

Fortune Oil Co., 68 IBLA 288 (Nov. 19, 1982)

ENVIRONMENTAL QUALITY--Continued

GENERALLY--Continued

The Board of Land Appeals will affirm a decision requiring execution of a no surface occupancy stipulation where the record identifies the resource requiring such protection and explains why less stringent alternatives would be insufficient to provide it. Where the case record does not contain an adequate explanation referable to the specific land included in the lease offer, the record is inadequate for adjudication of the appeal and the case will be remanded to the Bureau of Land Management.

James H. Chudnov, John L. Rensinger, 70 IBLA 225 (Jan. 24, 1983)

A determination that a proposed action will not have a significant impact on the environment will be affirmed on appeal where the record establishes that a hard look at environmental problems has been taken, relevant areas of environmental concern have been identified, and the determination is the reasonable result of the environmental analysis.

Southwest Resource Council, Inc., National & Arizona Wildlife Federations, 73 IBLA 39 (May 11, 1983)

It is proper to include in a readjusted coal lease a provision requiring the lessee to conduct at its own expense a survey and inventory of archaeological and paleontological values prior to approval of a mining plan or any activity that would disturb the surface of the land.

Gulf Oil Corp., Pittsburg & Midway Coal Mining Co., 73 IBLA 328 (June 8, 1983)

Allegations that stipulations included in a notice of a competitive phosphate lease offer improperly favored one bidder over all other potential bidders will not serve as a basis for disturbing the lease sale where the record does not support such allegations, but does, in fact, support a finding that the stipulations were reasonably directed toward environmental protection.

John D. Archer, 74 IBLA 323 (July 28, 1983)

The Bureau of Land Management may properly require an oil and gas lease offeror to execute no surface occupancy stipulations as a condition precedent to issuance of an oil and gas lease for land identified as critical habitat for bighorn sheep where the record explains why less stringent alternatives would not provide sufficient protection. However, where the record is inadequate to resolve issues raised by appellant and BLM files no response to the appeal, the case will be remanded to BLM to provide adequate support for its decision.

James H. Chudnov, 76 IBLA 167 (Sept. 28, 1983)

The Board of Land Appeals will affirm a decision rejecting an oil and gas lease offer because of important geological features in the lands sought where the record supports the need to protect the resource and the offeror fails to indicate how leasing would be compatible with protection.

The Board of Land Appeals will affirm a decision requiring execution of a no surface occupancy stipulation where the record identifies the resource requiring such protection and explains why less stringent alternatives would be insufficient to provide it. Where the case record does not contain an adequate explanation

ENVIRONMENTAL QUALITY--Continued

GENERALLY--Continued

referable to the specific land included in the lease offer, the record is inadequate for adjudication of the appeal and the case will be remanded to the Bureau of Land Management.

James H. Chudnov, John L. Rensinger, 77 IBLA 73 (Nov. 8, 1983)

ENVIRONMENTAL STATEMENTS

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record.

Julie Adams et al., 45 IBLA 252 (Feb. 8, 1980)

Sierra Club et al., 57 IBLA 79 (Aug. 21, 1981)

Where a programmatic environmental impact statement (EIS) has been completed and this has been supplemented by a site-specific environmental analysis concerning the impacts, mitigating measures, and alternatives for a specified timber sale, the law does not require preparation of an individual EIS for the timber sale in the absence of a material change in circumstances or departure from policy covered in the overall EIS.

Preserve Our Scenic Environment, 47 IBLA 276 (May 15, 1980)

Where it is implicit in an administrative decision that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record.

James I. Thompson, 51 IBLA 154 (Nov. 26, 1980)

BLM's incorporation into its western Oregon forest management planning process of Northern Spotted Owl conservation guidelines, developed by a State-Federal interagency task force, is not a major Federal action requiring a regional environmental impact statement where the spotted owls and the preservation of their habitat are significant considerations in existing sustained yield unit environmental impact statements.

National Wildlife Federation et al., 62 IBLA 73 (Feb. 25, 1982)

A decision to implement a vegetative management program will be affirmed where it is based on an environmental assessment which reflects an evaluation of the environmental impacts of the program sufficient to support an informed judgment.

Dolores M. Liesen, 67 IBLA 72 (Sept. 10, 1982)

ENVIRONMENTAL QUALITY--Continued

ENVIRONMENTAL STATEMENTS--Continued

A decision to implement a vegetative management program will be affirmed insofar as it is based on an environmental assessment which reflects an evaluation of the environmental impacts of the program sufficient to support an informed judgment. However, to the extent the record does not show that a salient aspect of the program has been assessed, and that aspect falls within the scope of the Board's jurisdiction, it may not be implemented until an adequate analysis of all relevant factors has been prepared.

SOCATS et al. (On Reconsideration), 72 IBLA 9 (Apr. 4, 1983)

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer in good faith, based upon a proper and sufficient record compiled in accordance with established environmental analysis procedures, and is the reasonable result of the study of such record.

Southwest Resource Council, Inc., National & Arizona Wildlife Federations, 73 IBLA 39 (May 11, 1983)

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based on a proper and sufficient environmental analysis compiled according to established procedures, and is the reasonable conclusion from such record.

Colorado Open Space Council, 73 IBLA 226 (May 31, 1983)

Protest to a decision to implement a management and/or control program for black-tailed prairie dogs is properly denied where the decision is based on an environmental assessment which reflects an evaluation of the environmental impacts sufficient to support an informed judgment.

Defenders of Wildlife, 79 IBLA 62 (Feb. 13, 1984)

Where the Bureau of Land Management assesses the cumulative impacts of approving multiple permits to drill for oil and gas in a wilderness study area and wild horse range and makes an area-wide determination to permit such oil and gas development because it would have no significant effect on the area, an appeal of that determination challenging the adequacy of the environmental assessment of the cumulative impacts is not premature.

Animal Protection Institute of America, Sierra Club, Colorado Open Space Council, 79 IBLA 94 (Feb. 17, 1984) 91 I.D. 115

The National Environmental Policy Act of 1969, 42 U.S.C. § 4332(2)(C) (1976), requires preparation of an environmental impact statement whenever a proposed major Federal action will significantly affect the quality of the human environment.

The test for determining the extent to which treatment of a subject in an environmental impact statement for a multistage project may be deferred depends on two

ENVIRONMENTAL QUALITY--Continued

ENVIRONMENTAL STATEMENTS--Continued

factors: (1) whether obtaining more detailed useful information is "meaningfully possible" at the time when the environmental impact statement for an earlier stage is prepared, and (2) how important it is to have the additional information at an earlier stage in determining whether or not to proceed with the project.

Where a multistage project can be modified or changed in the future to minimize or eliminate environmental hazards disclosed as a result of information not presently available, and where the Government reserves the power to make such modification or change thereafter, deferment of analysis of that unavailable information does not violate the National Environmental Policy Act.

When a proposed action is a critical agency decision which will result in irreversible and irretrievable commitments of resources to an action which will produce a significant impact on the environment, an environmental impact statement is required.

Sierra Club, The Mono Lake Committee, 79 IBLA 240 (Mar. 1, 1984)

A determination that a proposed action will not have a significant impact on the environment will be affirmed on appeal where the record establishes environmental problems have been considered, relevant areas of environmental concern have been identified, and the determination is reasonable.

Utah Wilderness Ass'n, 80 IBLA 60 (Mar. 30, 1984) 91 I.D. 165

Where application is made for suspension of unitized oil and gas leases in order to preserve them from expiration pending approval of an application for permission to drill, and where the suspension is granted at the discretion of the authorized officer on condition that permission to drill may be denied upon a finding that drilling operations would result in unacceptable impacts on the wilderness characteristics of the area, an environmental impact statement on the effects of such drilling which fails to consider the alternative of refusing permission to drill is an inadequate basis for a decision to permit drilling.

Sierra Club et al. (On Judicial Remand), 80 IBLA 251 (May 2, 1984)

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that an environmental impact statement need not be filed, that decision will be affirmed on review if it appears to be the reasonable conclusion of a proper and sufficient environmental analysis compiled according to established procedures and it was made by an authorized officer, in good faith, based upon such record.

United States v. Albert O. Hussan et al., 81 IBLA 271 (June 8, 1984)

A decision to implement a vegetative management program with herbicide spraying will be reversed where it is based on an environmental assessment which fails to include a "worst case" evaluation of the environmental impacts of the proposed program, and where the record fails to document effects upon the environment of the proposed spraying program.

Save Our ecoSystems, Inc., 81 IBLA 326 (June 19, 1984)

ENVIRONMENTAL QUALITY--Continued

ENVIRONMENTAL STATEMENTS--Continued

A decision to utilize the herbicide 2,4-D in a vegetation management program will be vacated where it is based on an environmental assessment which lacks a worst case analysis and the record discloses uncertainty as to the effect of the herbicide on the human environment.

Sierra Club, Grand Canyon Chapter, Arizona, 81 IBLA 352 (June 25, 1984)

A decision to utilize herbicides including 2,4-D in a vegetation management program will be vacated where it is based on an environmental assessment which lacks a worst case analysis and the record discloses uncertainty regarding the effect of the herbicides on the human environment.

Although a worst case analysis may be performed in the context of an environmental assessment prepared to supplement a programmatic environmental impact statement, the environmental assessment becomes the functional equivalent of an environmental impact statement and the minimum 45-day comment period for a draft environmental impact statement is applicable.

Applegate Citizens Opposed to Toxic Sprays (ACOTS), Southern Oregon Citizens Against Toxic Sprays (SOCATS), 81 IBLA 398 (June 29, 1984)

Denial of a protest of a determination to proceed with a private exchange will be vacated and the case remanded where the record fails to reflect an evaluation of the environmental impacts sufficient to support an informed judgment.

Where the record shows that missing information is material to an agency decision on a private land exchange, it must be gathered and included in an environmental assessment. Only where the costs of obtaining the information are exorbitant or the means of obtaining it are beyond the state of the art must the agency weigh the need for the action against the risk and severity of possible adverse impacts of proceeding in the face of uncertainty. And only in the case of a determination to proceed in the face of uncertainty must a worst case analysis be conducted in accordance with 40 CFR 1502.22.

National Wildlife Federation, 82 IBLA 303 (Sept. 5, 1984)

A management plan decision for the Yaquina Head Outstanding Natural Area implementing actions to remove various structures and develop a visitors center and to impose restrictions on hang gliding will be affirmed on appeal where the decision is based on an environmental assessment which reflects an evaluation of reasonable alternatives and is sufficient to support an informed judgment. Such a determination may not be overcome by a mere difference of opinion.

Oregon Shores Conservation Coalition, Bruce Waugh, 83 IBLA 1 (Sept. 17, 1984)

A decision to implement a vegetative management program affecting rights-of-way including application of the herbicide 2,4-D will be vacated where it is based upon an environmental analysis which does not include a worst case analysis as required by 40 CFR 1502.22, and which fails to document possible effects of proposed spraying upon the human environment.

Where a programmatic environmental impact statement has been completed and has been supplemented by a site-specific environmental assessment discussing the impacts, mitigating measures, and alternatives for specified spraying projects, which form the basis for a final decision to use herbicides, including 2,4-D, the environmental assessment must also contain a worst case analysis pursuant to 40 CFR 1502.22.

Save Our ecoSystems, Inc., 84 IBLA 82 (Dec. 5, 1984)

HERBICIDES

A decision to implement a vegetative management program with herbicide spraying will be reversed where it is based on an environmental assessment which fails to include a "worst case" evaluation of the environmental impacts of the proposed program, and where the record fails to document effects upon the environment of the proposed spraying program.

Save Our ecoSystems, Inc., 81 IBLA 326 (June 19, 1984)

A decision to utilize the herbicide 2,4-D in a vegetation management program will be vacated where it is based on an environmental assessment which lacks a worst case analysis and the record discloses uncertainty as to the effect of the herbicide on the human environment.

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A decision to utilize herbicides including 2,4-D in a vegetation management program will be vacated where it is based on an environmental assessment which lacks a worst case analysis and the record discloses uncertainty regarding the effect of the herbicides on the human environment.

Although a worst case analysis may be performed in the context of an environmental assessment prepared to supplement a programmatic environmental impact statement, the environmental assessment becomes the functional equivalent of an environmental impact statement and the minimum 45-day comment period for a draft environmental impact statement is applicable.

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Where a programmatic environmental impact statement has been completed and has been supplemented by a site-specific environmental assessment discussing the impacts, mitigating measures, and alternatives for specified spraying projects, which form the basis for a final decision to use herbicides, including 2,4-D, the environmental assessment must also contain a worst case analysis pursuant to 40 CFR 1502.22.

Save Our ecoSystems, Inc., 84 IBLA 82 (Dec. 5, 1984)

EQUAL ACCESS TO JUSTICE ACT

GENERALLY

Although the Equal Access to Justice Act, 5 U.S.C. § 504 (1982), may be characterized as a remedial statute, this does not support the proposition that it should be construed liberally. Every waiver of sovereign immunity is remedial, and statutes waiving sovereign immunity such as the Equal Access to Justice Act must be strictly construed.

An award of attorney's fees under the Equal Access to Justice Act, 5 U.S.C. § 504 (1982), is properly denied when the applicant is a corporation which fails to demonstrate that its net worth combined with that of its affiliates is not more than $5 million.

An application for an award of attorney's fees under the Equal Access to Justice Act, 5 U.S.C. § 504 (1982), is properly denied when special circumstances make an award unjust. An award is unjust when 49 percent of the applicant corporation's stock is held by one of the nation's largest companies which shares the production and operating costs with the majority shareholder in proportion to its percentage share of ownership.

Even though a party may have prevailed in an adversary proceeding, an award of attorney's fees under the Equal Access to Justice Act, 5 U.S.C. § 504 (1982), is properly denied where the position of the agency was substantially justified. In order to establish that its action was substantially justified, the Government is not required to establish that its decision to proceed was based on a substantial probability of prevailing. The standard was intended to ensure that the Government is not deterred from advancing in good faith a novel but credible interpretation of the law.

Kaycee Bentonite Corp., 79 IBLA 182 (Feb. 28, 1984)
91 I.D. 138

ADVERSARY ADJUDICATION

The Equal Access to Justice Act clearly provides that the position of the United States in an adversary adjudication need not be presented by legal counsel. The Government's position is represented if other Government employees take an active adversarial role in the case.

Under 43 CFR 4.603(a) (48 FR 17596 (Apr. 25, 1983)), the Department of the Interior has excluded from coverage under the Equal Access to Justice Act all adversary adjudications conducted by the Department except those that are specifically required by a statute.

In re Attorney's Fees Request of DNA--People's Legal Services, Inc., 11 IBIA 285 (Sept. 9, 1983)
90 I.D. 389

Under 5 U.S.C. § 504 (1982) and 43 CFR 4.603, 48 FR 17596 (Apr. 25, 1983), an adversary adjudication is one required by statute to be conducted by the Secretary under 5 U.S.C. § 554 (1982). Because there is no statutory requirement that a mining claim contest be conducted under 5 U.S.C. § 554 (1982), mining claim contests are not proceedings covered by Equal Access to Justice Act.

Kaycee Bentonite Corp., 79 IBLA 182 (Feb. 28, 1984)
91 I.D. 138

EQUAL ACCESS TO JUSTICE ACT--Continued

APPLICATION

When a decision disposing of the issues on appeal is entered, but the Board retains jurisdiction to review the response to its decision, an application for attorney's fees under the Equal Access to Justice Act, filed before the entrance of a decision or order finally concluding the litigation, may be (1) dismissed without prejudice as premature, (2) stayed until the completion of all proceedings, or (3) decided with an opportunity for additional action in accordance with the decision following completion of all proceedings.

In re Attorney's Fees Request of DNA--People's Legal Services, Inc., 11 IBIA 285 (Sept. 9, 1983)
90 I.D. 389

AWARDS

Pro bono representation and representation by a legal services organization do not constitute "special circumstances" within the meaning of 5 U.S.C. § 504(a)(1) (Supp. V 1981) so as to make an award of attorney's fees under the Equal Access to Justice Act unjust.

An award of attorney's fees under the Equal Access to Justice Act may include compensation for work performed before Oct. 1, 1981, the effective date of the Act.

In re Attorney's Fees Request of DNA--People's Legal Services, Inc., 11 IBIA 285 (Sept. 9, 1983)
90 I.D. 389

EQUITABLE ADJUDICATION

GENERALLY

Where BLM classifies a 4-acre tract as suitable for disposal under the Small Tract Act, thereby segregating it from acquisition under other public land laws, then grants an individual a lease thereon with option to purchase, pursuant to which the lessee constructs buildings and occupies the tract, the protest and application of an Alaska Native, made for the first time 12 years later, will be rejected, as a matter of law and equity where the Native was claiming 160 acres of different land during the preceding 6 years, and had made no assertion of interest in the small tract, but rather had expressly acknowledged the existence of the leasehold.

Evelyn Alexander, 45 IBLA 28 (Jan. 14, 1980)

Where a State Office rejects a Native allotment application because it was not timely filed and did not have the required certification and land description, and where it is shown such deficiencies were beyond applicant's control, the case will be remanded to the State Office to allow 60 days for the deficiencies to be cured, and for the State Office, if it finds substantial compliance with the law, to apply doctrine of equitable adjudication and then to accept the application with the late filing, proper certification, and amended land description, all else being regular.

Herbert Herreaga, 45 IBLA 43 (Jan. 14, 1980)

EQUITABLE ADJUDICATION--Continued

GENERALLY--Continued

Where over the course of several decades patented land has been conveyed according to the description in the patent by willing buyers and sellers in "arm's length" transactions, the subsequent grantees of the original entrymen had a duty to identify the land that they were purchasing, and the Government will not amend the patent to substitute other public land simply because the present owner believes, or even proves, that certain of the land settled by the original entryman was misdescribed by him, absent any showing of a basis for equitable relief.

George Val Shoy, 46 IBLA 101 (Feb. 29, 1980)

Equitable adjudication cannot be properly invoked on behalf of an appellant who has no interest in the entry subject to the proposed adjudication.

Mary Olympic, 47 IBLA 58 (Apr. 14, 1980)

No decision of any Federal court, or any formal decision or instruction issued by the Department of the Interior has ever purported to hold that a mining claimant is not required under 30 U.S.C. § 28 (1976) to perform annual assessment work. Relevant court decisions deal not with the question whether oil shale claimants are required to comply with the provisions of sec. 28, but whether the United States is a beneficiary of a failure to perform the assessment work, and such decisions expressly note that a mining claimant is required to perform labor of $100 annually for each claim.

The defense of laches is not available against the Government in cases involving public lands. Even were laches determined to be an available defense, it would clearly be circumscribed by the same limitations surrounding the doctrine of estoppel.

United States v. Catlin Bohan et al., United States v. Tyson Corp., et al., United States v. Aidabelle Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 248

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by a State Office of BLM, of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM State Office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Donald W. Corner, Fred L. Engle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondents) (On Judicial Remand), 50 IBLA 306 (Oct. 14, 1980)

D. P. Woodson, Jr., et al., 51 IBLA 378 (Dec. 31, 1980)

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of fact upon which a party was led to rely to his ultimate detriment.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

EQUITABLE ADJUDICATION--Continued

GENERALLY--Continued

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Hope Petroleum Corp., et al., 54 IBLA 194 (Apr. 23, 1981) 88 I.D. 479

Wilbur G. Downs et al., 54 IBLA 271 (Apr. 28, 1981)

Robert E. Dalbaar et al., 55 IBLA 200 (June 16, 1981)

Resource Service Co., Inc., Grace E. Greco, 55 IBLA 343 (June 26, 1981)

Woods Petroleum Corp., et al., 55 IBLA 348 (June 26, 1981)

Floyd O. Lochner, 56 IBLA 271 (July 28, 1981)

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

The Department is not estopped from rejecting an oil and gas lease offer, or canceling a lease issued pursuant thereto, because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Ipesco Oil Co., et al., 54 IBLA 260 (Apr. 28, 1981)

Equitable adjudication of an application to purchase a trade manufacturing site claim filed at least 12 years after the land has been withdrawn must be denied as substantial compliance with the law has not been made where neither occupancy of the site prior to the withdrawal nor after the withdrawal could validly be considered under the law.

Stuart Grant Banstad, 55 IBLA 223 (June 18, 1981)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the secretarial level. Such reversal upon Departmental review does not constitute retrospective application of a new rule.

Richard B. McDonald, Resource Service Co., Inc., 56 IBLA 12 (June 30, 1981)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at

EQUITABLE ADJUDICATION--Continued

GENERALLY--Continued

the Secretarial level, and where there was no affirmative misconduct by BLM employees.

Alex Sachen, Resource Service Co., Inc., 56 IBLA 116 (July 16, 1981)

Nancy L. Stewart, Resource Service Co., Inc., 56 IBLA 122 (July 16, 1981)

Jack Zuckerman et al., 56 IBLA 193 (July 22, 1981)

Robert Semanko, Mary L. Hollebon, Resource Service Co., Inc., 58 IBLA 340 (Oct. 19, 1981)

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of material fact upon which a person was led to rely to his or her ultimate detriment.

Argee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

The Department is not barred by the equitable doctrines of laches or waiver from declaring oil shale placer mining claims null and void, since, until patent issues, it has the power and duty to invalidate adverse interests in public lands as required by governing laws.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

Although the Small Tract Act of June 1, 1938, was repealed by the Federal Land Policy and Management Act of 1976, this repeal was made expressly subject to any existing "land use right or authorization," including a vested contractual equitable property right. Thus, the repeal of the former by the latter did not remove the Department's authority to meet its ministerial duty to pass legal title where a binding contract to do so had been created prior to the enactment of FLPMA.

Chester F. Dawson, 73 IBLA 27 (May 9, 1983)

The Department is not estopped from contesting the validity of a mining claim on a charge of substantial noncompliance with the requirement for performance of annual labor mandated by 30 U.S.C. § 28 (1976) merely because the claimants relied on previous official declarations that the Department had no authority to enforce compliance with the statute, and were thereby misled to believe they could ignore it with impunity and still demand the benefits of the General Mining Law.

United States v. Energy Resources Technology Land, Inc., et al., 74 IBLA 117 (June 30, 1983)

Where a stranger to the original patentee acquires a certain, specific tract of land through mesne conveyances and then seeks to have the patent amended so that he can acquire other land instead, he must demonstrate first that there was an error in the patent's land description and, second, that he is deserving as a matter of equity and justice to be granted that which was actually earned by the original patentee.

George Val Snow (On Judicial Remand), 79 IBLA 261 (Mar. 7, 1984)

EQUITABLE ADJUDICATION--Continued

GENERALLY--Continued

Where the claimant of a trade and manufacturing site substantially complies with the requirements of the Act of May 14, 1898, as amended, 43 U.S.C. §§ 687a-687a-6 (1982), and regulations promulgated pursuant to that Act, equitable adjudication may be invoked, however, where a claimant fails to comply with a requirement which is unrelated to the Act of May 14, 1898, and is jurisdictional in nature, equitable adjudication cannot properly be invoked.

Donna J. Waidtlow, 82 IBLA 247 (Aug. 28, 1984)

SUBSTANTIAL COMPLIANCE

Where a Native allotment applicant has not established use and occupancy of the lands identified in his or her allotment application, the applicant has not substantially complied with the Alaska Native Allotment Act and equitable adjudication under 43 CFR 1871.1-1 cannot be properly invoked.

Mary Olympic, 47 IBLA 58 (Apr. 14, 1980)

Equitable adjudication of an application to purchase a trade manufacturing site claim filed at least 12 years after the land has been withdrawn must be denied as substantial compliance with the law has not been made where neither occupancy of the site prior to the withdrawal nor after the withdrawal could validly be considered under the law.

Stuart Grant Rosetad, 55 IBLA 223 (June 18, 1981)

Equitable adjudication may be invoked to permit consideration of a homesite purchase application that was not filed within the time required, where substantial compliance with the law has been made and valid existing rights were established before the land was withdrawn by Public Land Order 5418.

Larry L. Lowenstein, 57 IBLA 95 (Aug. 25, 1981)

Where the claimant of a trade and manufacturing site substantially complies with the requirements of the Act of May 14, 1898, as amended, 43 U.S.C. §§ 687a-687a-6 (1982), and regulations promulgated pursuant to that Act, equitable adjudication may be invoked, however, where a claimant fails to comply with a requirement which is unrelated to the Act of May 14, 1898, and is jurisdictional in nature, equitable adjudication cannot properly be invoked.

Donna J. Waidtlow, 82 IBLA 247 (Aug. 28, 1984)

ESTOPPEL

The general rule is that reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Estoppel is available as a defense against the Government if the Government's wrongful conduct threatens to work a serious injustice and if the public's interest would not be unduly damaged by the imposition of estoppel.

Estoppel of the Government is an extraordinary remedy, especially as it relates to public lands,

ESTOPPEL--Continued

and is to be applied with the greatest care and circumspection.

Royal Harris, 45 IBLA 87 (Jan. 17, 1980)

The general rule is that reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Dennis L. Lattery, 45 IBLA 219 (Jan. 31, 1980)

Marko and Tarrow Lewis, 46 IBLA 257 (Mar. 27, 1980)

The elements of an estoppel are the following: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury.

Estoppel of the Government is an extraordinary remedy, especially as it relates to public lands, and is to be applied with the greatest care and circumspection.

State of Alaska, 46 IBLA 12 (Feb. 20, 1980)

Bert M. Smith, Paul Smith v. Bureau of Land Management, 48 IBLA 385 (July 11, 1980)

The general rule is that reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

The United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

Darrell P. Riggs, Karen Sue Riggs, 46 IBLA 132 (Mar. 19, 1980)

George M. Murphy, 48 IBLA 123 (May 30, 1980)

The United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

Dorothea M. Taylor, Robert Taylor, 46 IBLA 198 (Mar. 24, 1980)

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Nevada Pacific Co., Inc., 46 IBLA 208 (Mar. 24, 1980)

Thomas Taggart, 46 IBLA 350 (Apr. 8, 1980)

Tina Anderson, 47 IBLA 348 (May 21, 1980)

Robert W. Miller, Marjorie Hipper Miller, 51 IBLA 364 (Dec. 29, 1980)

Alex Pinkham, Mary Anne Pinkham, 52 IBLA 149 (Jan. 16, 1981)

Lynn Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369

Harriet C. Shaftel, 79 IBLA 228 (Feb. 29, 1984)

ESTOPPEL--Continued

A party seeking to estop the Office of Surface Mining Reclamation and Enforcement from asserting that the party did not have a small operator exemption for a particular permit must clearly demonstrate its entitlement to the estoppel.

Daniel Bros. Coal Co., 2 IBSMA 45 (Apr. 10, 1980) 87 I.D. 138

Reliance on incomplete records maintained by Federal land offices cannot confer upon a hardrock prospecting permittee any rights in derogation of a prior permittee.

ASARCO, Inc., 47 IBLA 14 (Apr. 11, 1980)

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements.

Alva F. Rockwell and Alva A. Rockwell, 47 IBLA 272 (May 13, 1980)

Darlene I. Byrnes et al., 49 IBLA 243 (Aug. 18, 1980)

Estoppel will not lie where assertedly misleading advice is timely rebutted by the adoption of a regulation clarifying the advice given.

Alice E. Deetz, 48 IBLA 59 (May 29, 1980)

No decision of any Federal court, or any formal decision or Instruction issued by the Department of the Interior has ever purported to hold that a mining claimant is not required under 30 U.S.C. § 28 (1976) to perform annual assessment work. Relevant court decisions deal not with the question whether oil shale claimants are required to comply with the provisions of sec. 28, but whether the United States is a beneficiary of a failure to perform the assessment work, and such decisions expressly note that a mining claimant is required to perform labor of $100 annually for each claim.

United States v. Catlin Bohne et al., United States v. Exxon Corp. et al., United States v. Aidabelle Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 248

Estoppel will not lie where assertedly misleading advice is timely rebutted by regulations clarifying the advice given.

Clayton H. Read, Gerald A. Byrnes, 49 IBLA 271 (Aug. 18, 1980)

The general rule is that reliance upon erroneous or incomplete information or opinions provided by any officer, agent, or employee of the Department cannot operate to vest any right not authorized by law.

Energy Trading Inc., 50 IBLA 9 (Sept. 5, 1980)

Palmyra Mines, Inc., 53 IBLA 89 (Mar. 2, 1981)

Adobe Oil & Gas Corp., 73 IBLA 263 (June 7, 1983)

LBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

Stephen M. Thompson, 84 IBLA 146 (Dec. 12, 1984)

ESTOPPEL--Continued

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by a State Office of BLM, of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM State Office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Donald H. Cover, Fred L. Engle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Bantekdar, Bureau of Land Management (Respondents) (On Judicial Remand), 50 IBLA 306 (Oct. 14, 1980)

D. R. Weedon, Jr., et al., 51 IBLA 378 (Dec. 31, 1980)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Frederick H. Larson v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

Simon A. Rife, 56 IBLA 378 (Aug. 3, 1981)

James E. Tibbals, Janet D. Tibbals, 58 IBLA 42 (Sept. 17, 1981)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Gerard C. Barrows, 71 IBLA 262 (Mar. 22, 1983)

Warren L. Jacobs, 71 IBLA 385 (Mar. 29, 1983)

Alyson A. Allison, James M. Allison III, 72 IBLA 333 (Apr. 29, 1983)

Lone Star Steel Co., 79 IBLA 345 (Mar. 22, 1984)

Viking Resources Corp., 80 IBLA 245 (Apr. 30, 1984)

Rogue River Outfitters Ass'n, 83 IBLA 151 (Oct. 10, 1984)

The elements of an estoppel are the following: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury.

Estoppel of the Government is an extraordinary remedy, especially as it relates to public lands, and is to be applied with the greatest care and circumspection.

Coronado Oil Co., 52 IBLA 308 (Feb. 10, 1981)

A copy of a document is not considered to be among the number filed if it is only received and date-stamped and returned to an applicant as evidence of receipt. Such acknowledgement of receipt by Bureau of Land Management personnel does not constitute a determination that the filing was complete or that all the documents recited in the cover letter were included. BLM is not required to retain that copy of the document, contrary to an applicant's instructions, in order to make the filing complete.

Metro Energy, Inc., 52 IBLA 369 (Feb. 19, 1981)

ESTOPPEL--Continued

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination. The erroneous acceptance of rental payment a year later cannot create such authority nor estop the the Government from regarding the lease as having terminated.

Jack J. Grynberg, 53 IBLA 165 (Mar. 12, 1981)

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of fact upon which a party was led to rely to his ultimate detriment.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

Reliance on erroneous information provided by a Bureau of Land Management employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements.

John Plutt, Jr., et al., 53 IBLA 313 (Mar. 25, 1981)

Lynas Mining Co., 54 IBLA 165 (Apr. 21, 1981)

West Fork Mining Co., 60 IBLA 370 (Dec. 22, 1981)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

Keith E. Ferrell, 67 IBLA 181 (Sept. 21, 1982)

Recordation of an unpatented mining claim does not render valid any claim which would not otherwise be valid under applicable law. Acceptance by BLM of recordation documents does not constitute a recognition of the validity of the claim and BLM is not estopped to declare the claim null and void where it was located on land withdrawn from mining location at the time of the location.

William C. Reinau, Richard H. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Hope Petroleum Corp. et al., 54 IBLA 194 (Apr. 23, 1981) 88 I.D. 479

Wilbur G. Reeves et al., 54 IBLA 271 (Apr. 28, 1981)

Robert E. Belknap et al., 55 IBLA 200 (June 16, 1981)

Resource Service Co., Inc., Grace E. Greco, 55 IBLA 343 (June 26, 1981)

Woods Petroleum Corp. et al., 55 IBLA 348 (June 26, 1981)

Floyd O. Lochner, 56 IBLA 271 (July 28, 1981)

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

ESTOPPEL--Continued

The Department is not estopped from rejecting an oil and gas lease offer, or canceling a lease issued pursuant thereto, because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Inexco Oil Co. et al., 54 IBLA 260 (Apr. 28, 1981)

Acceptance for recordation of a timely filed certificate of location of unpatented mining claim and negotiation of the check for the required service fee creates no estoppel to subsequently declare the claim abandoned and void for failure to file timely the required evidence of assessment work or notice of intention to hold.

Margaret E. Peterson, 55 IBLA 136 (June 4, 1981)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the secretarial level. Such reversal upon Departmental review does not constitute retrospective application of a new rule.

Richard E. McDonald, Resource Service Co., Inc., 56 IBLA 12 (June 30, 1981)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level, and where there was no affirmative misconduct by BLM employees.

Alex Sachon, Resource Service Co., Inc., 56 IBLA 116 (July 16, 1981)

Nancy L. Stewart, Resource Service Co., Inc., 56 IBLA 122 (July 16, 1981)

Jack Zuckerman et al., 56 IBLA 193 (July 22, 1981)

Robert Sesanko, Barr L. Hollebon, Resource Service Co., Inc., 58 IBLA 340 (Oct. 19, 1981)

Where the Bureau of Land Management file pertaining to a particular mining claim group contains information showing the claims to be null and void, the assignee who has failed to check the file runs the risks which flow from failure to so check that public record.

Gary Willis, 56 IBLA 217 (July 22, 1981)

ESTOPPEL--Continued

Reliance on a Bureau of Land Management pamphlet containing erroneous information does not relieve a claimant of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements.

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

Blanche W. Peterson, 67 IBLA 388 (Oct. 8, 1982)

Failure to disavow a state memorandum implying OSM approval of its contents or failure to object to the issuance of a state permit containing terms inconsistent with Federal regulations does not constitute action that estops OSM from taking an enforcement action.

Mountain Enterprises Coal Co., 3 IBSMA 338 (Sept. 25, 1981) 88 I.D. 861

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost through lack of enforcement by some of its officers.

Clyde K. Kobleman, 58 IBLA 268 (Oct. 8, 1981) 88 I.D. 915

Janet A. Rodgers, 58 IBLA 275 (Oct. 8, 1981)

Evidence of annual assessment work must be delivered to and received by the proper BLM office in order to be filed. Depositing a document in the mails does not constitute filing. Reliance on erroneous information provided by BLM employees which is contrary to regulation does not relieve a mining claimant of this obligation.

Joe L. Watts, 59 IBLA 127 (Oct. 26, 1981)

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owners of mining claims of an obligation imposed on them by statute or relieve them of the consequences imposed by statute for failure to comply with its requirements. Estoppel is an extraordinary remedy, especially as it relates to public lands and is to be applied with the greatest care and circumspection.

Ronald E. Guntert, Marion G. Guntert, 60 IBLA 200 (Nov. 27, 1981)

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of material fact upon which a person was led to rely to his or her ultimate detriment.

Argee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

The requirement that an oil and gas lease offeror disclose all parties in interest is not ambiguous, and the rejection of offers filed prior to this Board's decision in Lola I. Doe, 31 IBLA 394 (1977), for violation of the regulations requiring disclosure of such interests and prohibiting multiple filings did not constitute a retrospective application of a new Departmental interpretation of the regulations.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

ESTOPPEL--Continued

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

Estoppel of the Government, especially where public lands are concerned, is a remedy applicable only to extraordinary circumstances. A sine qua non of estoppel of the Government is affirmative misconduct by an authorized agent or officer that results in a misrepresentation of fact upon which there is detrimental reliance. BLM's apparently innocent silence at the time mining claim documents were filed does not estop the Government from later declaring mining claims invalid for failure to file other required documents.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

While employees of the Department might be required to either forward or return documents transmitted to the wrong office, no estoppel can arise where the alleged failure to forward or return missent mail was occasioned by the fact that the document was not actually received by the Department.

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties, nor can reliance upon information or opinion of any officer, agent, or employee, or on records maintained by land offices, operate to vest any right not authorized by law.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

James H. W. Tseng, 69 IBLA 387 (Jan. 4, 1983)

Howard K. Davis, 70 IBLA 7 (Jan. 6, 1983)

J. Pat Kaufman, 71 IBLA 183 (Mar. 10, 1983)

ESTOPPEL--Continued

Failure to file timely appeal in conformity to Departmental regulations precludes appellant from obtaining review of Administrative Law Judge's initial decision as well as collateral orders.

Estate of George Swift Bird, 10 IBIA 63 (Aug. 16, 1982)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through erroneous interpretations of the regulations allegedly provided by Departmental employees.

Dennis E. Joy, 66 IBLA 260 (Aug. 17, 1982)

Richard F. Carroll (On Reconsideration), 76 IBLA 151 (Sept. 27, 1983) 90 I.D. 432

Estoppel will not lie against the United States where there is no evidence of an affirmative misrepresentation or an affirmative concealment of a material fact by the Government and the party asserting the estoppel cannot claim ignorance of the true facts because the facts are a matter of public record.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982) 89 I.D. 496

Harry S. Hills, 71 IBLA 302 (Mar. 22, 1983)

Frederick W. Lower, 76 IBLA 195 (Oct. 6, 1983)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers.

D. H. Yates, 70 IBLA 134 (Jan. 14, 1983)

The Secretary of the Interior is not estopped by the principles of res judicata or finality of administrative action from correcting, reversing, or overruling an erroneous decision by subordinates or predecessors in interest. The Board of Land Appeals, in exercising the Secretary's review authority as fully and finally as might the Secretary, is not required to accept as precedent erroneous decisions made by the Secretary's subordinates.

Pathfinder Mines Corp., 70 IBLA 264 (Jan. 26, 1983) 90 I.D. 10

Estoppel of the Government, especially where public lands are concerned, is a remedy applicable only to extraordinary circumstances. A sine qua non of estoppel of the Government is affirmative misconduct by an authorized officer which results in a misrepresentation of fact upon which there is detrimental reliance. Unless a wrong was consciously committed, the failure to correct a misunderstanding is insufficient grounds for estoppel.

An essential element of a claim for estoppel is that the party asserting it must be ignorant of the material facts. Since all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations, a party cannot successfully plead ignorance of the rules governing oil and gas rental payment procedures without presentation of extraordinary circumstances which overcome the presumption.

Francis I. Furlong II, 73 IBLA 67 (May 16, 1983)

ESTOPPEL--Continued

The Department is not estopped from contesting the validity of a mining claim on a charge of substantial noncompliance with the requirement for performance of annual labor mandated by 30 U.S.C. § 28 (1976) merely because the claimants relied on previous official declarations that the Department had no authority to enforce compliance with the statute, and were thereby misled to believe they could ignore it with impunity and still demand the benefits of the General Mining Law.

United States v. Energy Resources Technology Land, Inc., et al., 74 IBLA 117 (June 30, 1983)

Estoppel against the Government is an extraordinary remedy. In order to establish estoppel, it must be shown that the party to be estopped knew the facts and either intended that its conduct be relied upon or acted so as to cause reliance upon its conduct, and that the party asserting estoppel was ignorant of the true facts and detrimentally relied upon the other party's conduct. Estoppel will not be found where there was no affirmative misrepresentation or misconduct by a Government official.

Native Americans for Community Action v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 214 (July 1, 1983) 90 I.D. 283

Estoppel will not lie against the Government where the record establishes that a party is properly chargeable with knowledge of the true facts, regardless of whether those facts were actually known by that party.

Celeste C. Grynberg, 74 IBLA 180 (July 18, 1983)

Reliance on erroneous information provided by a Bureau of Land Management employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute or regulation, or create rights not authorized by law.

John L. Grassmeier, 77 IBLA 156 (Nov. 16, 1983)

Where the record establishes that, but for the actions of the Department in improperly approving an exchange, a state would have properly exercised its exchange rights pursuant to applicable law, the Department will be estopped from subsequently asserting the exchange was improper where, as here, it would no longer be possible for the state to exercise its exchange rights.

State of Oregon et al., I, 78 IBLA 255 (Jan. 10, 1984) 91 I.D. 14

An essential element of a claim for estoppel is that the party asserting it must be ignorant of the true facts. Since, however, all persons are presumed to have knowledge of relevant statutory and regulatory provisions, an individual may not premise a claim of estoppel on information or advice contrary to such a provision, since the individual is properly charged with knowledge of the true facts.

Tom Hurd, 80 IBLA 107 (Apr. 3, 1984)

ESTOPPEL--Continued

The Department is not estopped to dismiss an appeal challenging the production royalty set in a competitive coal lease, where the appellant failed to protest the notice of the lease sale, by virtue of the Department's subsequent refusal to provide information essential to determining the validity of the challenged royalty.

Coastal States Energy Co., 80 IBLA 274 (May 4, 1984)

Where there is an interval of several years between the filing of a mining claim location notice with BLM and BLM's decision that such claim was void from its inception, having been located on land that was closed to mineral entry, laches or estoppel will not bar BLM's decision that the claim is invalid, notwithstanding the claimant's good faith expenditure of labor and money for the benefit of the claim during the intervening years. BLM has no affirmative duty to mineral locators to promptly check the legal status of every claim filed by them and to apprise such claimants of its findings.

Mac A. Stevens, 84 IBLA 124 (Dec. 10, 1984)

EVIDENCE

GENERALLY

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of the assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

Where mineral reports submitted in connection with a previous contest recited only that a valuable mineral had been discovered, but failed to include a mineral examiner's assessment of the quantity and quality of the valuable mineral, marketability, or costs of extraction and transportation, and where the uncontradicted opinion of the Government's witness was that the sampling method was improper, the Administrative Law Judge was correct in according little weight to the reports.

United States v. Richard G. Clemens et al., 45 IBLA 64 (Jan. 17, 1980)

Exclusive use of a leasing service address on offers to lease, promotional material which emphasizes the sales ability of the service, past use of a form agreement which created an enforceable interest in prospective leases, past actions of the leasing service related thereto, and allegations of a tacit understanding between the service and its clients are speculative and insufficient as a matter of law to demonstrate the existence of a scheme which might cause rejection of the offers under 43 CFR 3112.5-2.

Ervin J. Powers, 45 IBLA 186 (Jan. 30, 1980)

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered. If the Government fails to make a sufficient prima facie case against a mining claim, the claimant may move to have the contest dismissed and rest his case. However, when the claimant goes forward with his evidence, the Administrative Law Judge must consider the evidence presented and weigh it in accordance with its probative value. In choosing to rebut the case, the claimant bears the burden of doing so by

EVIDENCE--Continued

GENERALLY--Continued

a preponderance of the evidence and bears the risk of nonpersuasion if he fails.

United States v. Clare Williamson and Lapine Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

Evidence submitted on appeal after an initial decision in a mining contest may not be relied upon in making a final decision but may only be considered to determine if the hearing should be reopened.

United States v. Ludvig G. Rosenkranz, 46 IBLA 109 (Feb. 29, 1980)

United States v. Alice W. Rouse et al., 56 IBLA 36 (July 8, 1981)

The decision of an Administrative Law Judge will not be disturbed on appeal where the preponderance of the evidence supports the result reached, and the appellants have not pointed out any error in the decision.

United States v. Roy Peterson & Charles R. Sweet, 47 IBLA 92 (Apr. 23, 1980)

While the testimony of a Government mineral examiner that he/she has examined a mining claim and found no evidence of mineralization which would support a discovery, is normally sufficient to establish a prima facie case, such a conclusion must be premised on a correct standard of law. Where a Government mineral examiner applies a standard which is not correct under the law, his/her opinion as to a claim's validity cannot serve, by itself, to establish a prima facie case of invalidity.

United States v. George C. Hooker et al., 48 IBLA 22 (May 27, 1980)

The Board adopts a decision of an Administrative Law Judge holding mining claims null and void for lack of discovery of a valuable deposit of an uncommon variety of limestone, where nondiscovery is established by the totality of the evidence.

United States v. Joseph J. Segna et al., 49 IBLA 73 (July 22, 1980)

The postmark date of a rental payment for an oil and gas lease is generally deemed to be the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at a date earlier than indicated by the postmark.

Kenneth W. Macek, 49 IBLA 153 (July 30, 1980)

Andrew H. Nelson, 58 IBLA 220 (Sept. 30, 1981)

Bryan Colley, 71 IBLA 299 (Mar. 22, 1983)

The Board adopts a decision of an Administrative Law Judge holding a placer mining claim null and void for lack of discovery of a valuable mineral deposit within the limits of the claim, where nondiscovery clearly is established by the evidence of record.

United States v. Charles M. Ledford et al., 49 IBLA 353 (Aug. 29, 1980)

EVIDENCE--Continued

GENERALLY--Continued

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark on the payment envelope will be assumed to indicate the date of mailing in the absence of evidence to the contrary. Payment due on Oct. 1, 1980, bearing a postmark date of Sept. 30, 1980, does not reflect reasonable diligence.

Elizabeth A. Christensen, 52 IBLA 113 (Jan. 13, 1981)

Settlement agreements compromising prior trespasses may be considered an admission of liability only where, by the terms of a settlement, liability is admitted. Where, however, liability has been initially determined in a Departmental adjudication, such a determination is properly considered in a subsequent hearing. As probative of the issue of "repeated" violations, absent a stipulated settlement which expressly vacates the factual determinations made in the prior adjudication.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 (Feb. 19, 1981) 88 I.D. 275

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Lynn Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369

Robert E. Pennell, Clair E. Colburn, d.b.a. Colfenoch Mining Ass'n, 56 IBLA 43 (July 8, 1981)

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

Fahey Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

Edgar W. Cook, Marlene Cook, 58 IBLA 358 (Oct. 20, 1981)

Jayne A. McHargue, 61 IBLA 163 (Jan. 25, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Arvin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

Vienna Silver Mines Co., Inc., 67 IBLA 130 (Sept. 16, 1982)

John Heaton, 68 IBLA 206 (Nov. 10, 1982)

Melvin Bradshaw, 68 IBLA 390 (Nov. 23, 1982)

Estate of Woodie Nichols, 69 IBLA 382 (Jan. 4, 1983)

Inez McDorman, Audrey Pilger, 72 IBLA 383 (May 5, 1983)

James D. Ross, Maria J. Ross, 72 IBLA 395 (May 5, 1983)

George P. Newcomb, 73 IBLA 104 (May 23, 1983)

Humbug Mining Co., 73 IBLA 270 (June 7, 1983)

Harold L. Long, 73 IBLA 280 (June 7, 1983)

EVIDENCE--Continued

GENERALLY--Continued

Rex Mining Co., 73 IBLA 284 (June 7, 1983)

Ray McKee, Cheryl McKee, 73 IBLA 311 (June 7, 1983)

Wayne N. Hunt, 73 IBLA 315 (June 7, 1983)

Paul P. Smith et al., 73 IBLA 336 (June 8, 1983)

Hugh Sprague, 73 IBLA 386 (June 15, 1983)

Page Investment Co., 74 IBLA 163 (July 12, 1983)

Bruce Naylor, Bill Barney, Darrell Taylor, 74 IBLA 201 (July 18, 1983)

Leonard E. Snider, Sr., 74 IBLA 213 (July 18, 1983)

Hughes Minerals, Inc., 74 IBLA 217 (July 18, 1983)

Frank Bongos, 74 IBLA 367 (July 28, 1983)

Parke Potter, 74 IBLA 397 (Aug. 2, 1983)

Hackay Bar Corp., 75 IBLA 57 (Aug. 5, 1983)

Paul T. Ryan, Melvin V. Lust, 75 IBLA 76 (Aug. 10, 1983)

Devon E. Hurst, 75 IBLA 149 (Aug. 18, 1983)

Dale Rossi, Judy Rossi, 75 IBLA 262 (Aug. 26, 1983)

Moonwalker, Inc., 76 IBLA 53 (Sept. 19, 1983)

Robert W. Hughes, 76 IBLA 99 (Sept. 21, 1983)

Charles Hayo, Mario G. Hayo, 76 IBLA 107 (Sept. 21, 1983)

Betty E. Baxter, 76 IBLA 188 (Oct. 6, 1983)

John V. Balding, 76 IBLA 218 (Oct. 17, 1983)

Cronyite Corp., American Pumice Products, Inc., 76 IBLA 236 (Oct. 17, 1983)

Adolf Piechaaan (Trust), 76 IBLA 357 (Oct. 24, 1983)

Homestake Mining Co., 77 IBLA 235 (Nov. 29, 1983)

The burden of the proponent is not simply to preponderate in the evidence produced; its burden is to produce a preponderance of credible evidence, and the trier of fact is not required to believe or give any weight to testimony which is inherently incredible. The trier of fact, having presided at the hearing and observed the witnesses, is in the best position to judge the weight to be accorded testimony.

United States v. William J. Smith, Sr., et al., 54 IBLA 12 (Apr. 6, 1981)

Evidence submitted on appeal after an initial decision in a mining contest may not be relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. J. L. Moss and Mary F. Moss, 54 IBLA 355 (May 12, 1981)

Where an oil and gas lease offeror fails to respond within a prescribed period of time to an order to submit specific information necessary to determine whether his offer is valid, it is appropriate to reject the offer.

Ina Wiley, 54 IBLA 367 (May 18, 1981)

EVIDENCE--Continued

GENERALLY--Continued

A preference right lease applicant must be allowed to perform additional drilling tests to prove that it discovered commercial quantities of coal during the term of its prospecting permit even though that permit has expired, where the record reflects that a satisfactory demonstration of such discovery was made under the regulatory standards in effect during the term of the permit and revised regulations imposing more stringent requirements of proof of the discovery are applied to the lease application after expiration of the permit.

Mike Bell Mining and Oil Co., 55 IBLA 324 (June 26, 1981)

On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision. The powers of an agency reviewing an initial or recommended decision of an Administrative Law Judge are greater than those of an appellate court reviewing the decision of a trial judge.

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

The burden of the proponent is not simply to preponderate in the evidence produced; its burden is to produce a preponderance of credible evidence, and the trier of fact is not required to believe or give any weight to testimony which is inherently incredible.

United States v. John McDowell and Miguel Munez, 56 IBLA 100 (July 15, 1981)

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark on the payment envelope will be assumed to indicate the date of mailing in the absence of evidence to the contrary. Payment due on Jan. 2, 1981, bearing a postmark date of the same day does not reflect reasonable diligence.

Arnold L. Gilberg, 57 IBLA 46 (Aug. 17, 1981)

Where an oil and gas lease offeror fails to respond within a prescribed period of time to an order to submit specific information necessary to determine whether offeror is qualified, the offer is properly rejected.

Judith Gail Bell, 57 IBLA 139 (Aug. 25, 1981)

Under the Uniform Appraisal Standards for Federal Land Acquisitions (1973), evidence of sums paid by condemning authorities for similar properties, regardless of whether condemnation proceedings have begun, is inadmissible to determine the fair market value of a particular property.

Denver and Rio Grande Western Railroad Co., 58 IBLA 4 (Sept. 15, 1981)

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Where the date marked on an envelope by a private postage meter conflicts with the postmark made by a United States post office, the United States postmark will be deemed the

EVIDENCE--Continued

GENERALLY--Continued

date of mailing is the absence of satisfactory corroborating evidence that the mailing occurred earlier.

Max H. Young, 60 IBLA 224 (Nov. 30, 1981)

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

Where a protestant against the issuance of an oil and gas lease supports his allegations that the lease offer is not qualified with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed for failure of the protestant to make positive proof of his allegations. Instead, the protest should be adjudicated on its merits after all available information has been developed.

Patricia C. Hiker, 62 IBLA 150 (Mar. 5, 1982)

Where, in the course of an appeal from the rejection of an oil and gas lease application for other reasons, the pleadings and evidence raise for the first time the question of the existence of an outstanding undisclosed interest in the application, the Board will not decide that issue, but in no event may a lease be granted the appellant unless and until the question is ultimately resolved in appellant's favor.

Lynda Bagley Doyle, 65 IBLA 340 (July 16, 1982)

A cooperative agreement for the private maintenance of livestock under the protection of the Wild Free-Roaming Horses and Burros Act may be summarily canceled by the Bureau of Land Management upon good and sufficient evidence that the terms of the agreement have been violated by depriving the animals of adequate food, water, and health care and/or by subjecting them to inhumane treatment. The deteriorating condition of the animals themselves, and credible reports by third parties of substandard care, constitutes such good and sufficient evidence, and the decision to cancel will be affirmed in the absence of a showing that pursuasive countervailing evidence exists.

Dennis Turnipseed, 66 IBLA 63 (July 29, 1982)

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard S. Arbo, 70 IBLA 244 (Jan. 25, 1983)

EVIDENCE--Continued

GENERALLY--Continued

The true nature of the relationship between apparently separate business entities is a question of fact.

Walch Logging Co., Inc., Rant & Russell, Inc. v. Assistant Area Director (Economic Development), Portland Area Office, Bureau of Indian Affairs, 11 IBIA 85 (Mar. 18, 1983) 90 I.D. 88

Where, on appeal from the automatic termination of an oil and gas lease pursuant to 30 U.S.C. § 188(b), appellant submits an affidavit in support of its assertion that no termination could occur under the statute because there was present on the lease a well capable of producing oil or gas in paying quantities on the anniversary date of the lease, and that statement is absolutely false, the misrepresentation is one of material fact which, if knowingly and willfully made, constitutes a criminal violation of 18 U.S.C. § 1001 (1976).

Funk Exploration, 73 IBLA 111 (May 23, 1983)

A claim for an equitable adjustment is sustained in part, where it is determined that weather conditions at the site could reasonably have been of an intensity to constitute a storm event within the "gray area" of a risk of loss agreement entered into by the parties at a preproposal conference, pursuant to which the Government, upon such determination, agreed to participate in the reasonable reconstruction costs of the facility.

Appeal of Pettijohn Engineering Co., Inc., IFCA-1346-4-80 (May 26, 1983)

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by the contestee shows that there has not been a discovery, it may be used in reaching a decision that the claim is invalid because of a lack of discovery, regardless of any defects in the Government's prima facie case.

United States v. Oscar F. & Gary K. Anderson, 83 IBLA 170 (Oct. 15, 1984)

The burden of the mining claimant is to produce a preponderance of credible evidence to overcome the Government's prima facie case against the validity of the claim. The trier of fact is not required to believe or give any weight to testimony which is inherently incredible. Therefore, when there is a gross disparity in the assay results of samples taken from the same points in a mining claim, and the trier of fact gives more weight to the test results which he finds are more credible, and his finding is supported by substantial evidence, the Board will not disturb that finding.

United States v. Marvin C. Ranger et al., 84 IBLA 66 (Nov. 30, 1984)

ADMISSIBILITY

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of the assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling

EVIDENCE--Continued

ADMISSIBILITY--Continued

objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard G. Clemans et al., 45 IBLA 64 (Jan. 17, 1980)

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard S. Arbo, 70 IBLA 244 (Jan. 25, 1983)

Where the lessee under a noncompetitive oil and gas lease, which is canceled to the extent it includes land which had been determined to be within a known geologic structure prior to issuance of the lease, submits probative evidence contravening the determination by the Geological Survey, a hearing will be ordered so that a complete record may be developed. Only evidence pertaining to the period prior to lease issuance will be admissible.

Celeste C. Grynberg, 74 IBLA 180 (July 18, 1983)

Where a simultaneous oil and gas lease applicant, whose application has been rejected because it covers land within a known geologic structure, submits probative evidence contravening the determination that the land is presumptively productive of oil and gas, which is not fully rebutted, but where, nonetheless, questions of fact remain unresolved by the record, a hearing is appropriate to establish a sufficient record to permit decision.

Lloyd Chemical Sales, Inc., 82 IBLA 182 (Aug. 13, 1984)

BURDEN OF PROOF

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered. If the Government fails to make a sufficient prima facie case against a mining claim, the claimant may move to have the contest dismissed and rest his case. However, when the claimant goes forward with his evidence, the Administrative Law Judge must consider the evidence presented and weigh it in accordance with its probative value. In choosing to rebut the case, the claimant bears the burden of doing so by a preponderance of the evidence and bears the risk of nonpersuasion if he fails.

United States v. Clara Williamson and Lapine Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

Where, in the hearing of a mining claim contest in which the presence of a mineral deposit within the limits of a claim is at issue and the claim is accessible, it is established that the Government mineral examiner made no professional examination of certain of the contested claims, the testimony of the Government mineral examiner, without more, is insufficient to establish a prima facie case of invalidity.

United States v. Gerald Hess, 46 IBLA 1 (Feb. 13, 1980)

EVIDENCE--Continued

BURDEN OF PROOF--Continued

When the Government contests a mining claim on a charge of lack of discovery, the Government has the burden of proving a prima facie case; the burden then shifts to the mining claimant to prove by a preponderance of the evidence that discovery exists.

United States v. Ludvig G. Rosenkranz, 46 IBLA 109 (Feb. 29, 1980)

Where the current fair rental value of a small tract lease has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error.

Hyatt Lake Homeowners Ass'n, 48 IBLA 159 (June 9, 1980)

In a Government contest proceeding to determine the validity of a mining claim, the claimant is always the proponent of the rule or order, always the one claiming to have earned the benefit of the mining laws through his compliance therewith. Regardless of whether the issue on which the validity of the claim rests is discovery, mode of location, or performance of assessment work, the relative position and obligation of the contestant and the contestee remain the same.

United States v. Catlin Robne et al., United States v. Exxon Corp. et al., United States v. Aidebello Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 248

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bert W. Smith, Paul Smith v. Bureau of Land Management, 48 IBLA 385 (July 11, 1980)

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

Ruskin Lingo, Jr. v. Bureau of Land Management, 76 IBLA 170 (Sept. 30, 1983)

When the United States contests a mining claim, it has assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint. The burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case. The United States has established a prima facie case when a qualified Government mining engineer testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable mineral deposit.

United States v. Ubehebe Lead Mines Co., 49 IBLA 1 (July 15, 1980)

EVIDENCE--Continued

BURDEN OF PROOF--Continued

The burden of proof as to the character of land applied for under the Swamp Land Acts falls upon the applicant.

State of California, Stockdale Development Corp., 51 IBLA 3 (Oct. 28, 1980)

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that an individual has committed a grazing trespass if that finding is in accordance with, and supported by, reliable, probative and substantial evidence.

Where the evidence as to specific trespass indicates that, of a number of cattle counted, some were located on intermingled private land, but there were no barriers, either natural or artificial, which would have prevented the cattle on private land from going onto the public land, it is proper to find that all cattle counted would tend to consume forage at a rate proportional to the ratio of forage available on private and public lands. The burden then shifts to the grazing licensee to rebut this presumption.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 (Feb. 19, 1981) 88 I.D. 275

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence.

Bureau of Land Management v. Holland Livestock Ranch and John J. Casey, 54 IBLA 247 (Apr. 27, 1981)

Where the Government contests the validity of a mining claim, it bears only the burden of establishing a prima facie case of lack of discovery; the burden then shifts to the claimant to overcome the Government's showing by a preponderance of the evidence. A prima facie case is established when a Government mineral examiner testifies that he examined the claim and found insufficient evidence of the discovery of a valuable mineral deposit.

United States v. Leon Morce and Thomas Rokita, 59 IBLA 268 (Oct. 29, 1981)

A mining claimant appealing a BLM decision declaring his claims abandoned and void for failure to file annual proof of assessment work has the burden of showing that he had actually filed with BLM for the year in question. That burden of proof is increased by the established legal presumption that official acts of public officers are regular. If the burden of proof is not carried, the presumptions of FLPMA remain operative.

Ronald H. Atkins, 61 IBLA 364 (Feb. 16, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)

EVIDENCE--Continued

BURDEN OF PROOF--Continued

Robert J. King, L. K. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

Where the current fair rental value of a cabin site has been determined in accordance with accepted appraisal procedures and the permittee contends that the rental is excessive, the burden is upon the permittee to prove by positive, substantial evidence that the appraisal is in error.

Homer A. Stroud et al., 9 OHA 257 (Apr. 9, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

Herbert Clark, 73 IBLA 195 (May 26, 1983)

Wayne M. Hunt, 73 IBLA 315 (June 7, 1983)

Devon M. Hurst, 75 IBLA 149 (Aug. 18, 1983)

Dale Rossi, Judy Rossi, 75 IBLA 262 (Aug. 26, 1983)

Homer Owens, 75 IBLA 335 (Aug. 30, 1983)

Betty K. Baxter, 76 IBLA 188 (Oct. 6, 1983)

Ralph Kubinski, 76 IBLA 224 (Oct. 17, 1983)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has rejected oil and gas lease applications because of alleged failure of applicant to have filed the proper and complete corporate qualifications, and appellant adduces evidence in support of its contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has carried its burden of proof of showing that BLM most probably received the documents.

Pennzoil Co., 64 IBLA 392 (June 17, 1982)

EVIDENCE--Continued

BURDEN OF PROOF--Continued

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, received timely by BLM. Appellant in this case has not carried the burden of proof by showing that BLM received the documents.

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where BLM states that it did not receive certain instruments, it is the responsibility of the appellant to show that they were, in fact, received.

Howard E. Thompson, 65 IBLA 79 (June 23, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was delivered to show that it was, in fact, timely received by BLM. Appellant in this case has not carried his burden of proof by showing that BLM received the documents.

Edwin P. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, timely received by BLM.

Fawn Rupp, 65 IBLA 277 (July 12, 1982)

Manuel R. Hernandez, 65 IBLA 281 (July 12, 1982)

Victor Negsted, 66 IBLA 31 (July 23, 1982)

William R. Gaechter et al., 66 IBLA 230 (Aug. 16, 1982)

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by

EVIDENCE--Continued

BURDEN OF PROOF--Continued

substantial evidence that a decision is improper or unreasonable.

Hughin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

Where the Board remands a Government contest for additional evidence needed to ascertain whether a mineral patent applicant has made a discovery, the burden of establishing a prima facie case is properly assigned to the Government.

United States v. Pittsburgh Pacific Co., 68 IBLA 342 (Nov. 22, 1982) 89 I.D. 586

When the Government contests the mineral character of a 10-acre portion of a placer mining claim, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

United States v. Cecil Bell et al., 68 IBLA 367 (Nov. 22, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where one disputes the accuracy of public land surveys made by public officials, it is his responsibility to show that they are, in fact, incorrect. Mere allegations that the surveys may be incorrect are insufficient to rebut the presumption.

Robert E. Ehrman, Jr., 69 IBLA 290 (Dec. 23, 1982)

Where the reasonable rental value of Government-furnished quarters has been determined in accordance with accepted appraisal procedures pursuant to Departmental directives, and the occupant alleges that his rent is excessive in relation to rates prevailing in the local community, the burden is on the occupant to prove by positive, specific, and substantial evidence that the appraisal is in error.

Barry C. Wilson, 5 OHA 79 (Jan. 18, 1983)

When the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of refuting the Government's case by a preponderance of the evidence.

United States v. Florence Cannon, 70 IBLA 328 (Feb. 1, 1983)

When the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge. A prima facie case has been made when a Government mineral examiner testifies that he has examined the exposed workings on a claim and has found the evidence of mineralization insufficient to support a finding of discovery of a valuable mineral deposit.

The mining claimant has the ultimate burden of refuting the Government's case by a preponderance of evidence.

United States v. T. J. Jones, Robert H. Jones, 72 IBLA 52 (Apr. 12, 1983)

It is the obligation of the appellant to show error. Therefore, when a statement of reasons does not with some particularity show adequate reasons for appeal and support the allegations with evidence showing error, the appeal cannot be afforded favorable consideration.

United States v. Connor et al., 72 IBLA 254 (Apr. 27, 1983)

Bob G. Howell, 75 IBLA 113 (Aug. 12, 1983)

Where an analysis of all relevant evidence persuades the Board that the contractor failed to establish by sufficient evidence, its burden that a storm event was of such intensity as to be totally unforeseeable, the contractor cannot escape some responsibility for risk of loss of a tide station, and some resulting liability for the reasonable cost of reconstruction of the facility.

Appeal of Pettijohn Engineering Co., Inc., IBCA-1346-4-80 (May 26, 1983)

The mere filing of a small tract application does not create in the applicant any right or interest in the land. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1976), cannot acquire any right or interest in the land by virtue of administrative delay in processing the application. When the current fair market value of the land has been determined in accordance with accepted procedures, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error.

Bethe McConkey, Robert L. Cook, 74 IBLA 4 (June 21, 1983)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

When the Government contests the validity of a mining claim on the basis of lack of discovery, it bears only the burden of going forward with sufficient evidence to establish a prima facie case. Once a prima facie case is presented, the claimant must present evidence which is sufficient to overcome the Government's showing on those issues raised.

Where the Government fails to present sufficient evidence to establish a prima facie case, the claimant need not present evidence in order to prevail. If a

claimant, however, does present evidence, the determination of the validity of a claim must be made on the basis of the record as a whole, and not just a part of the record. A claimant need not affirmatively establish the existence of a discovery where there has been no prima facie case. The only risk that the claimant runs in such a situation is the risk that the evidence as a whole will establish by a preponderance of the evidence that an element of discovery is not present.

United States v. Eva B. Pool et al., 78 IBLA 215 (Jan. 6, 1984)

Where an issue in an appeal involving a simultaneous oil and gas lease application is the existence or nonexistence of materials defining the relationship between the priority applicant and its filing service, the applicant, as the party with peculiar means of knowledge enabling it to prove the nonexistence of such materials, has the burden of doing so. Failure to do so may give rise to an inference that the applicant's evidence is unfavorable.

Hal Carlson, Jr., 78 IBLA 333 (Jan. 24, 1984)

Where an issue in an appeal involving a simultaneous oil and gas lease application is the existence or nonexistence of an agreement between the lessee as priority applicant and her assignee which would have resulted in a violation of 43 CFR 3102.2-6(a) and (b), the lessee is the party with peculiar means and knowledge enabling her to show the nonexistence of such agreement. Failure or refusal to do so may give rise to an inference that the lessee's evidence is unfavorable.

Patricia C. Alker, 79 IBLA 123 (Feb. 22, 1984)

A presumption of regularity supports the official acts of public officers and absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Suggestion that BLM may not have investigated a mining claimant's good faith in locating a claim which includes a water source is insufficient to rebut the presumption of regularity.

Desert Survivors, 80 IBLA 111 (Apr. 3, 1984)

Where a qualified expert, hired by mining claimants to evaluate contested claims, informs a Government mineral examiner that certain claims have no mineral values, the mineral examiner has no affirmative obligation to sample those claims. Testimony of the Government mineral examiner as to this conversation, unless impeached in cross-examination, is sufficient to establish a prima facie case that those claims are invalid.

United States v. Janet R. Copple et al., 81 IBLA 109 (May 30, 1984)

In a mining claim contest, the Government establishes a prima facie case of invalidity sufficient to shift the burden of proving otherwise to the claimant where the Government mineral examiner testifies that he has examined the claim and can find no evidence of mineralization or where he cannot examine the claim because it is covered with snow and ice.

United States v. Albert F. Parker et al., 82 IBLA 344 (Sept. 12, 1984)

EVIDENCE--Continued

BURDEN OF PROOF--Continued

Implementation of the Taylor Grazing Act of 1934, as amended, is committed to the discretion of the Secretary of the Interior. An adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with the provisions of the Federal range code for grazing, 43 CFR Part 4100.

Clyde L. Loring, Douglas L. Boyd v. Bureau of Land Management, 83 IBLA 29 (Sept. 24, 1984)

CREDIBILITY

Where a mining claimant submits evidence on appeal which supports a conclusion that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring a mining claim abandoned and void for failure to timely file the required documentation will be set aside.

L. E. Garrison, 52 IBLA 131 (Jan. 16, 1981)

Where a preponderance of the evidence supports a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring a mining claim abandoned and void for failure to file timely the required documentation will be vacated.

Bernard J. Braker, 54 IBLA 332 (May 5, 1981)

Bruce L. Baker, Robert C. Baker, 55 IBLA 55 (May 29, 1981)

S. F. Cook, 68 IBLA 176 (Nov. 5, 1982)

Donna Bernhardt, 73 IBLA 207 (May 27, 1983)

Where the testimony of appellant's only witness testifying with respect to contract performance was found unworthy of belief and not credible, the Board holds that it has the discretion to reject all the testimony of such witness except that which has been corroborated; and the Board concludes, that except for one of the claims for an equitable adjustment conceded by the Government, there was no corroboration of the discredited testimony, and, therefore, the remaining claims of appellant must be denied for failure to sustain the burden of proof.

Appeal of Scope, Inc., IBCA-1094-1-76 (June 16, 1981) 88 I.D. 590

Where a preponderance of the evidence does not support a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring a mining claim abandoned and void for failure to file timely the required documentation will be affirmed.

Harvell Mining Co., Wilford F. Montgomery, 56 IBLA 236 (July 22, 1981)

EVIDENCE--Continued

CREDIBILITY--Continued

Where a preponderance of the evidence does not support a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring mining claims abandoned and void for failure to file timely the required documentation will be affirmed.

James Waldman, 65 IBLA 180 (June 29, 1982)

Where simultaneous oil and gas lease applicants assert that their filings included sufficient fees and were grouped separately from another group of filings with insufficient fees that was transmitted in the same parcel, but fail to submit sufficient evidence to prove the separate grouping, the decision of the BLM to return all filings because of insufficient fees will be affirmed.

Fred L. Engle et al., 66 IBLA 94 (Aug. 4, 1982)

Where under a contract for the construction of a road and a bridge involving a substantial amount of unclassified excavation, the contractor's general superintendent and the then project engineer and the then project inspector testified in support of their widely divergent views as to the representations allegedly made by the Government representatives to the general superintendent during tours of the site to the effect that the slope stakes when placed would fall beneath a prominent ledge of rock known as caprock, the Board accepts the corroborated testimony of the general superintendent over the uncorroborated testimony of the project engineer but it refuses to accept the testimony of the general superintendent over that of the project inspector where the former's testimony is not corroborated with respect to the representations attributed to the inspector.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

Where an applicant submits evidence which supports a conclusion that all five copies of his noncompetitive lease offer were timely filed as required by the regulations in 43 CFR 3111.1-1(a), a decision rejecting that offer for failure to comply with the applicable regulation by filing only four copies of the lease offer will be set aside.

Robert G. Lyon (On Reconsideration), 73 IBLA 288 (June 7, 1983)

The Board of Indian Appeals will show deference to an Administrative Law Judge's determination of the credibility of evidence and testimony.

San Day IV v. Area Director, Navajo Area Office, Bureau of Indian Affairs & Window Rock Mall, Ltd. v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 9 (Oct. 6, 1983)

CREDIBILITY OF WITNESSES

Where the resolution of a case is influenced by the Administrative Law Judge's findings of credibility, which in turn are based on reaction to the demeanor of

EVIDENCE--Continued

CREDIBILITY OF WITNESSES--Continued

the witnesses, and such findings are supported by substantial evidence, the Board will not ordinarily disturb them.

United States v. Gerald N. Braniff, 59 IBLA 337 (Nov. 5, 1981)

HEARSAY

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of the assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard G. Clemans et al., 45 IBLA 64 (Jan. 17, 1980)

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard S. Arbo, 70 IBLA 244 (Jan. 25, 1983)

PREPONDERANCE

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when such minerals were no longer subject to location, the claimant, as proponent of the rule, has the ultimate burden of proof as to validity of the claim. The Government, however, must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on each claim.

United States v. Clara Williamson and Lapine Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claims were withdrawn from mineral location, the claimant, as proponent of the claims' validity, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to

EVIDENCE--Continued

PREPONDERANCE--Continued

show by a preponderance of credible evidence that a qualifying discovery has been made on the claims.

Uncontradicted evidence of absence of production from mining claims over a period of 18 years prior to the withdrawal of the area from mineral location is sufficient, without more, to establish a prima facie case of invalidity of the claim. This evidence gives rise to a presumption that the mineral on the claims could not have been profitably marketed, but claimants may overcome this presumption by proving that they could have extracted and sold the mineral at a profit prior to the withdrawal date with convincing factual evidence of conditions actually prevailing at that time. Where the claimant presents only uncertain, speculative, and conjectural evidence suggesting that it could have sold the mineral at a profit if certain conditions had prevailed on the withdrawal date, it has not overcome the presumption of nonmarketability, and the claims are properly declared null and void.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

In the Department's appellate process involving review of decisions made by subordinate officers and employees, the Secretary, or an appeals board with authority to act as fully and finally as might the Secretary, is not so limited in the scope of review and decisionmaking as to be required to affirm such decisions as are supported merely by "substantial evidence" or which are perceived not to be arbitrary or capricious, unless such a limitation on the scope of appellate review has been imposed by the Secretary himself in a duly promulgated regulation or he has been so constrained by enacted law. Otherwise, the Secretary, as chief executive officer of the Department with full supervisory powers, has plenary authority to review de novo all official actions and to decide appeals on the basis of a preponderance of the evidence in cases involving substantive rights, or on the basis of public policy or public interest in cases involving the exercise of discretion.

United States Fish & Wildlife Service, 72 IBLA 218 (Apr. 25, 1983)

PRESUMPTIONS

Where a mining claimant merely asserts that because of a 9-day difference between the posting of an envelope and the date received stamp of BLM, BLM may have mishandled notices of location submitted in attempted compliance with the requirements of 43 CFR 3833.1-2(b), allegedly causing them to be date stamped by BLM as untimely, and there is nothing else in the record to support this conjecture he has not met the burden of rebutting the presumption that BLM officials have properly discharged their duties in receiving and promptly date stamping all such notices tendered to them.

Henry D. Friedman, 49 IBLA 97 (July 28, 1980)

Where oil and gas lease applicants contend that BLM wrongly excluded three of their simultaneous offers from a drawing for not paying the filing fees when in fact the fees had accompanied the offers and been deposited by BLM, but fail to provide sufficient evidence of such payments after having been afforded reasonable opportunity to do so, the duties of the BLM officials will be presumed to have been properly discharged.

Cassius C. Epperson et al., 50 IBLA 231 (Sept. 30, 1980)

EVIDENCE--Continued

PRESUMPTIONS--Continued

There is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties. Where the record reveals no conclusive evidence that an appeal was filed timely, but the responsible official has referenced in correspondence that the appeal was timely, the presumption of administrative regularity will attach and the appeal considered as timely filed.

Frederick W. Larson v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

An employee's uncorroborated affidavit stating that a separate statement concerning parties in interest was sent for each oil and gas lease offer is insufficient to rebut the legal presumption that administrative officials have properly discharged their duties and have not misplaced or lost the document in issue.

Metro Energy, Inc., 52 IBLA 369 (Feb. 19, 1981)

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Lynn Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369

Robert E. Pennell, Clair E. Colburn, d.b.a. Colfranch Mining Ass'n, 56 IBLA 43 (July 8, 1981)

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

Faber Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

Edgar W. Cook, Marlene Cook, 58 IBLA 358 (Oct. 20, 1981)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Arvin P. Kanzler, 62 IBLA 224 (Mar. 10, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

Vienna Silver Mines Co., Inc., 67 IBLA 130 (Sept. 16, 1982)

John Benton, 68 IBLA 206 (Nov. 10, 1982)

Melvin Bradshaw, 68 IBLA 390 (Nov. 23, 1982)

Estate of Woodie Nichols, 69 IBLA 382 (Jan. 4, 1983)

Inez McDorman, Audrey Pilger, 72 IBLA 383 (May 5, 1983)

James D. Ross, Maria J. Ross, 72 IBLA 395 (May 5, 1983)

George P. Haycock, 73 IBLA 104 (May 23, 1983)

Hughes Mining Co., 73 IBLA 270 (June 7, 1983)

Harold L. Long, 73 IBLA 280 (June 7, 1983)

Rex Mining Co., 73 IBLA 284 (June 7, 1983)

Ray McKee, Cheryl McKee, 73 IBLA 311 (June 7, 1983)

Paul P. Smith et al., 73 IBLA 336 (June 8, 1983)

EVIDENCE--Continued

PRESUMPTIONS--Continued

Hugh Sprague, 73 IBLA 386 (June 15, 1983)

Page Investment Co., 74 IBLA 163 (July 12, 1983)

Bruce Baylor, Bill Barney, Darrell Taylor, 74 IBLA 201 (July 18, 1983)

Leonard E. Spider, Sr., 74 IBLA 213 (July 18, 1983)

Hughes Minerals, Inc., 74 IBLA 217 (July 18, 1983)

Frank Benson, 74 IBLA 367 (July 28, 1983)

Parke Potter, 74 IBLA 397 (Aug. 2, 1983)

Paul T. Ryan, Melvin T. Lunt, 75 IBLA 76 (Aug. 10, 1983)

Moonwalker, Inc., 76 IBLA 53 (Sept. 19, 1983)

Robert W. Hughes, 76 IBLA 99 (Sept. 21, 1983)

Charles Mayo, Marie G. Mayo, 76 IBLA 107 (Sept. 21, 1983)

John V. Balding, 76 IBLA 218 (Oct. 17, 1983)

Crownite Corp., American Pumice Products, Inc., 76 IBLA 236 (Oct. 17, 1983)

Adolf Dieckmann (Trust), 76 IBLA 357 (Oct. 24, 1983)

Homestake Mining Co., 77 IBLA 235 (Nov. 29, 1983)

Where a regulation requires that an oil and gas lease offer be accompanied by a separate statement, and appellant's offer is rejected for noncompliance therewith, appellant's showing that he has made it a past business practice to comply with the regulation in other instances must be regarded as evidence tending to support his assertion that he submitted the statement in this instance. However, such evidence, while cognizable, is insufficient to prove such an assertion without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

John Walter Starks, 55 IBLA 266 (June 25, 1981)

Harold K. Wilson, 67 IBLA 21 (Sept. 3, 1982)

There is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their duties. Where an official BLM record does not reflect any payment for advance first-year annual rental for an oil and gas lease but does contain a dated statement by BLM's receiving clerk indicating that no money was received when the lease applicant filed her offer with BLM, it is presumed that no payment was made, in the absence of a clear showing to the contrary by the applicant.

Theresa Jibilian, 57 IBLA 354 (Sept. 8, 1981)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Affidavits and other evidence, including a shipping notice and a delivery receipt, indicating that the information required by 43 CFR 3102.2-7(b), in connection with noncompetitive oil and gas lease offers, was submitted timely to BLM is not sufficient to overcome the presumption that public officials have properly

EVIDENCE--Continued

PRESUMPTIONS--Continued

discharged their duties and have not misplaced or lost the document in issue where the corroborating evidence fails to relate the submission directly to the lease application at issue.

Lawrence E. Dye, 57 IBLA 360 (Sept. 8, 1981)

There is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their duties. Where the official time and date stamp of a BLM office is impressed upon a document, it is presumed that the impression is accurate, in the absence of a clear showing to the contrary by appellant.

Whelan's Mining and Exploration, Inc., 58 IBLA 127 (Sept. 24, 1981)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

H. S. Rademacher, 58 IBLA 152 (Sept. 25, 1981) 88 I.D. 873

George Fauver, 62 IBLA 399 (Mar. 25, 1982)

The presumption of regularity which supports the official acts of public officers in the discharge of their duties must, for reasons of public policy and under burden of proof analysis, be accorded priority over the presumption that documents properly mailed are duly delivered. Thus, when Government files do not indicate that a document was received, an appellant must show not merely that the document was properly transmitted, but that it was, in fact, actually received.

Bernard S. Storper, 60 IBLA 67 (Nov. 19, 1981)

Daniel D. Wyles, 64 IBLA 339 (June 10, 1982)

Anglo Resources, Inc., 70 IBLA 106 (Jan. 12, 1983)

The presumption that BLM officials properly discharge their duties in receiving and promptly date stamping official filings tendered them is not overcome by unsupported allegations of mining claimants that BLM lost or misprocessed their evidence of assessment work.

Juanita J. Papagiou, Mildred Lucille Gulick, 60 IBLA 128 (Nov. 24, 1981)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. Unsupported and uncorroborated allegations do not constitute probative evidence.

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

EVIDENCE--Continued

PRESUMPTIONS--Continued

The presumption of regularity supports the acts of public officers and, in the absence of clear evidence to the contrary, they are presumed to have properly discharged their official duties.

Don Cook, 60 IBLA 255 (Dec. 4, 1981)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, where appellant fails to present evidence to establish that proof of annual assessment work was filed with the Bureau of Land Management, then it is presumed that the officials properly discharged their duties.

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McGregor, 61 IBLA 163 (Jan. 25, 1982)

A mining claimant appealing a BLM decision declaring his claims abandoned and void for failure to file annual proof of assessment work has the burden of showing that he had actually filed with BLM for the year in question. That burden of proof is increased by the established legal presumption that official acts of public officers are regular. If the burden of proof is not carried, the presumptions of FLPMA remain operative.

Ronald E. Atkins, 61 IBLA 364 (Feb. 16, 1982)

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

Lor Yokum, 62 IBLA 27 (Feb. 24, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)

Robert J. King, L. E. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

EVIDENCE--Continued

PRESUMPTIONS--Continued

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Diane M. Hoerndt, Richard M. Myers, 62 IBLA 288 (Mar. 16, 1982)

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

Helena Silver Mines, Inc., 65 IBLA 287 (July 13, 1982)

David G. Still, 66 IBLA 35 (July 23, 1982)

Alan T. Treen, James L. Barnes, 66 IBLA 334 (Aug. 26, 1982)

Magma Power Co., et al., 68 IBLA 201 (Nov. 10, 1982)

Arden F. Griffith et al., 68 IBLA 295 (Nov. 19, 1982)

James A. Huff, Elizabeth B. Young, 69 IBLA 31 (Nov. 26, 1982)

Phil E. Parks, 69 IBLA 48 (Nov. 29, 1982)

Susan S. Simmons, 69 IBLA 84 (Nov. 30, 1982)

Dudley L. Davis, 69 IBLA 127 (Dec. 8, 1982)

Charles M. Shannon, Ruth Kunkel, 69 IBLA 300 (Dec. 23, 1982)

James A. Huff, Elizabeth B. Young, 69 IBLA 368 (Jan. 3, 1983)

Lake Number 5, Inc., 70 IBLA 14 (Jan. 6, 1983)

William C. Niederer et al., 70 IBLA 55 (Jan. 10, 1983)

Robert Paoluccio, II, et al., 70 IBLA 118 (Jan. 13, 1983)

Zada Anderson et al., 70 IBLA 122 (Jan. 13, 1983)

Robert G. Lynn, 70 IBLA 141 (Jan. 17, 1983)

Eugene W. Walch, Jr., 72 IBLA 30 (Apr. 5, 1983)

White Rose Corp., 72 IBLA 80 (Apr. 13, 1983)

There is a rebuttable presumption that BLM acts regularly with respect to allegedly filed mining claim documents. That presumption can be overcome only by a showing of substantial evidence tending to disprove the regularity of BLM's action in the particular instance in question; upon such a showing, the Board decides the case without further reference to the presumption and by preponderance of the evidence. Mailing a document is not evidence that BLM ever received it, and does not satisfy the recording requirement nor rebut the presumption of regularity.

Robert L. Race et al., 63 IBLA 1 (Mar. 25, 1982)

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to

EVIDENCE--Continued

PRESUMPTIONS--Continued

the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

D. F. Colmon, 63 IBLA 221 (Apr. 15, 1982)

Stanley Sipp, 64 IBLA 257 (June 2, 1982)

Norbert Clark, 73 IBLA 195 (May 26, 1983)

Homer Owens, 75 IBLA 335 (Aug. 30, 1983)

Ralph Kubinski, 76 IBLA 224 (Oct. 17, 1983)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has rejected oil and gas lease applications because of alleged failure of applicant to have filed the proper and complete corporate qualifications, and appellant adduces evidence in support of its contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has carried its burden of proof of showing that BLM most probably received the documents.

Pennzoil Co., 64 IBLA 392 (June 17, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, received timely by BLM. Appellant in this case has not carried the burden of proof by showing that BLM received the documents.

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where BLM states that it did not receive certain instruments, it is the responsibility of the appellant to show that they were, in fact, received.

Howard F. Thompson, 65 IBLA 79 (June 23, 1982)

EVIDENCE--Continued

PRESUMPTIONS--Continued

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, timely received by BLM.

Manuel R. Hernandez, 65 IBLA 281 (July 12, 1982)

Victor Hemsted, 66 IBLA 31 (July 23, 1982)

William R. Gaechter et al., 66 IBLA 230 (Aug. 16, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, affidavits which serve only to declare the affiants' assumption, surmise, or deduction that such documents must have been included in an envelope received by BLM are inadequate to overcome the presumption where there is no direct evidence to establish that the documents were actually transmitted by the sender and BLM personnel disclaim receiving them.

Lynda Bagley Dorn, 65 IBLA 340 (July 16, 1982)

Where a regulation requires that an oil and gas lease application be accompanied by a separate statement, appellant's mere allegation that the statement was submitted is insufficient to prove such an assertion without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Janet Thompson, 65 IBLA 383 (July 20, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, the presumption is not overcome merely by the submission of an affidavit that the document was mailed. Rather, BLM's denial of its receipt can be rebutted only by substantial countervailing evidence, as an instrument is not "filed" by depositing it in the mail, but only when it is delivered to and received by the proper BLM office.

Glenn M. Gallagher, 66 IBLA 49 (July 27, 1982)

Where a simultaneously filed oil and gas lease application was rejected because BLM asserts that the applicant's filing service failed to provide a list of names and addresses of participating applicants for whom it served as agent, as required by 43 CFR 3102.2-6(a) (1981), the legal presumption of regularity which supports the official acts of Government officers will be treated as rebutted upon presentation of sufficient evidence to show that the list probably was received by BLM.

Elizabeth D. Anne, 66 IBLA 126 (Aug. 10, 1982)

EVIDENCE--Continued

PRESUMPTIONS--Continued

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. A copy of a letter addressed to BLM providing the required information coupled with a return receipt card showing receipt thereof will rebut the inference of nonreceipt arising from the absence of the document from the file.

Philip Scatorro, 68 IBLA 8 (Oct. 18, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that a lease rental check was enclosed in the same envelope together with other documents that were received by BLM must be corroborated by other evidence to establish filing where there is no evidence of receipt of the payment in the file.

R. E. French, 69 IBLA 66 (Nov. 30, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where one disputes the accuracy of public land surveys made by public officials, it is his responsibility to show that they are, in fact, incorrect. Mere allegations that the surveys may be incorrect are insufficient to rebut the presumption.

Robert E. Thrasp, Jr., 69 IBLA 290 (Dec. 23, 1982)

Where a simultaneous oil and gas lease application was rejected because BLM asserts that the applicant's filing service failed to provide a list of names and addresses of participating applicants for whom it served as agent, as required by 43 CFR 3102.2-6(b) (1981), the legal presumption of regularity which supports the official acts of Government officers will not be treated as rebutted upon presentation of insufficient evidence to show that the list probably was received by BLM.

Neil Hirsch, 70 IBLA 307 (Jan. 28, 1983)

A legal presumption of regularity supports the official acts of public officers acting in their official capacities.

Walch Logging Co., Inc., Dant & Russell, Inc. v. Assistant Area Director (Economic Development), Portland Area Office, Bureau of Indian Affairs, 11 IBIA 85 (Mar. 18, 1983) 90 I.D. 88

Where there is no evidence of receipt of a check, in payment of the first year's advance rental pursuant to 43 CFR 3112.4-1(a), the presumption that BLM employees have properly discharged their duties and not lost or misplaced the check is not overcome by evidence that the check was received where the applicant submits an affidavit that the check was enclosed in the same envelope with other documents that were received by BLM and includes a copy of his personal checkbook register showing that a check was issued to BLM but not cashed.

Richard H. Sulig, 72 IBLA 251 (Apr. 27, 1983)

EVIDENCE--Continued

PRESUMPTIONS--Continued

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

Wayne H. Hunt, 73 IBLA 315 (June 7, 1983)

Peron H. Hurst, 75 IBLA 149 (Aug. 18, 1983)

Dale Bossi, Judy Bossi, 75 IBLA 262 (Aug. 26, 1983)

Betty E. Baxter, 76 IBLA 188 (Oct. 6, 1983)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, a statement that a lease rental check was enclosed in the same envelope together with other documents that were received by BLM must be corroborated by other evidence to establish a tender of rental where there is no evidence of receipt of the payment in the file.

Carl A. Peterson, 73 IBLA 347 (June 10, 1983)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that documents were enclosed in the same envelope together with other documents that were received by BLM must be corroborated by other evidence to establish filing where there is no evidence of receipt of the missing documents.

LPS Associates, Inc., 74 IBLA 192 (July 18, 1983)

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, the presumption is not overcome merely

EVIDENCE--Continued

PRESUMPTIONS--Continued

by the submission of an affidavit that the document was mailed. Rather, BLM's denial of its receipt can be rebutted only by substantial countervailing evidence, as an instrument is not "filed" by depositing it in the mail, but only when it is delivered to and received by the proper BLM office.

Mackay Bar Corp., 75 IBLA 57 (Aug. 5, 1983)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, the presumption is not overcome merely by the submission of an affidavit that the document was mailed. Rather, BLM's denial of its receipt can be rebutted only by substantial countervailing evidence, as an instrument is not "filed" by depositing it in the mail, but only when it is delivered to and received by the proper BLM office.

Thomas Johnson, 77 IBLA 20 (Oct. 31, 1983)

Where an issue in an appeal involving a simultaneous oil and gas lease application is the existence or nonexistence of materials defining the relationship between the priority applicant and its filing service, the applicant, as the party with peculiar means of knowledge enabling it to prove the nonexistence of such materials, has the burden of doing so. Failure to do so may give rise to an inference that the applicant's evidence is unfavorable.

Hal Carlson, Jr., 78 IBLA 333 (Jan. 24, 1984)

Where an issue in an appeal involving a simultaneous oil and gas lease application is the existence or nonexistence of an agreement between the lessee as priority applicant and her assignee which would have resulted in a violation of 43 CFR 3102.2-6(a) and (b), the lessee is the party with peculiar means and knowledge enabling her to show the nonexistence of such agreement. Failure or refusal to do so may give rise to an inference that the lessee's evidence is unfavorable.

Patricia C. Elker, 79 IBLA 123 (Feb. 22, 1984)

A presumption of regularity supports the official acts of public officers and absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Suggestion that BLM may not have investigated a mining claimant's good faith in locating a claim which includes a water source is insufficient to rebut the presumption of regularity.

Desert Survivors, 80 IBLA 111 (Apr. 3, 1984)

Where there is no evidence of receipt of a check in payment of the first year's advance rental pursuant to 43 CFR 3112.4-1(a) (1982), the presumption that BLM employees have properly discharged their duties and not lost or misplaced the check is not overcome by an affidavit executed by applicant which states that the check was enclosed in the same envelope with other documents received by BLM, which affidavit includes a copy of applicant's personal checkbook register showing a check was issued to BLM.

S. H. Perinero, 80 IBLA 153 (Apr. 9, 1984)

EVIDENCE--Continued

PRESUMPTIONS--Continued

A presumption of regularity attends the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their duties. This presumption of regularity is applicable to the official acts of a Government mineral examiner who takes samples from mining claims and sends them to an independent assay company to determine their mineral content for the purpose of establishing whether a valuable mineral deposit has been discovered.

United States v. Marvin C. Ramsey et al., 84 IBLA 66 (Nov. 30, 1984)

Where there is no evidence of receipt by BLM of the required number of copies of a noncompetitive oil and gas lease offer, the presumption that BLM employees have properly discharged their duties and not lost or misplaced the lease offer documents is not overcome by a statement that the offer was enclosed in the same envelope with another lease offer received by BLM but not rejected for this defect.

U.S.E. Foundation Ltd., Inc., 84 IBLA 199 (Dec. 27, 1984)

PRIMA FACIE CASE

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when such minerals were no longer subject to location, the claimant, as proponent of the rule, has the ultimate burden of proof as to validity of the claim. The Government, however, must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on each claim.

United States v. Clare Williamson and Lapine Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

Where, in the hearing of a mining claim contest in which the presence of a mineral deposit within the limits of a claim is at issue and the claim is accessible, it is established that the Government mineral examiner made no professional examination of certain of the contested claims, the testimony of the Government mineral examiner, without more, is insufficient to establish a prima facie case of invalidity.

The mere fact that mining claims are allegedly located in the same kind of area with the same topography as other claims where there has been no discovery does not, without more, support the conclusion that there is no discovery on the former claims. Geologic inference drawn from such alleged similarities is insufficient by itself to show that no discovery has been made on the claims.

Uncontradicted evidence of nonproduction of a mining claim, which has continued over a period of years, is sufficient, without more, to establish a prima facie case of invalidity of the mining claim.

United States v. Gerald Megs, 46 IBLA 1 (Feb. 13, 1980)

The assertion that annual assessment work has not been performed is the assertion of a negative fact. If an examination of the mining claims and the nearby lands does not reveal the accomplishment of the required work, and there is no record of any such work having been performed, then evidence to this effect would be sufficient to establish a prima facie case. It would then devolve

EVIDENCE--Continued

PRIMA FACIE CASE--Continued

countervailing evidence that he has substantially complied with the statute.

United States v. Catlin Bohne et al., United States v. Exxon Corp. et al., United States v. Aidabelle Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 248

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

United States v. Grosvenor B. Montagert et al., 63 IBLA 35 (Mar. 30, 1982)

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claims were withdrawn from mineral location, the claimant, as proponent of the claims' validity, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a qualifying discovery has been made on the claims.

Uncontradicted evidence of absence of production from mining claims over a period of 18 years prior to the withdrawal of the area from mineral location is sufficient, without more, to establish a prima facie case of invalidity of the claim. This evidence gives rise to a presumption that the mineral on the claims could not have been profitably marketed, but claimants may overcome this presumption by proving that they could have extracted and sold the mineral at a profit prior to the withdrawal date with convincing factual evidence of conditions actually prevailing at that time. Where the claimant presents only uncertain, speculative, and conjectural evidence suggesting that it could have sold the mineral at a profit if certain conditions had prevailed on the withdrawal date, it has not overcome the presumption of nonmarketability, and the claims are properly declared null and void.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

In an oil shale mining claim contest, the Government bears only the burden of going forward with sufficient evidence to establish a prima facie case of invalidity, and the burden then shifts to the claimant to overcome this showing by a preponderance of the evidence. However, since abandonment and lack of good faith are questions of intent, the Government bears the ultimate burden of proving these charges.

Where evidence creates only inferences of lack of good faith in the location and holding of mining claims and fails to show clearly that these claims were abandoned, these charges are not sustained.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

EVIDENCE--Continued

PRIMA FACIE CASE--Continued

The Government has established a prima facie case of the lack of discovery of a valuable mineral deposit on mining claims where a Government mineral examiner testifies that, based on assays of his samples taken from the claims, the mineral deposit is not of sufficient quality to justify expenditure of capital with a reasonable prospect of success in developing a valuable producing mine. Such an opinion is sufficient to establish a prima facie case where it is based in part upon comparison with the minimum acceptable grade of ore at an operating mine and in part upon an analysis of prior reports of exploration of the claims.

United States v. James A. Walker, 77 IBLA 90 (Nov. 14, 1983)

A prima facie case is made where sufficient evidence is presented to establish the essential facts. Prima facie evidence is that evidence that will justify a finding in favor of the one presenting the evidence. It is not necessary to present evidence that is compelling, and the determination must be made on a case-by-case basis. An important factor in making a determination regarding the amount of evidence required for a prima facie case is the availability of the evidence and the difficulty which may reasonably be encountered in obtaining the evidence.

S & H Coal Co. & Jewell Smokeless Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 79 IBLA 350 91 I.D. 159 (Mar. 22, 1984)

Where a qualified expert, hired by mining claimants to evaluate contested claims, informs a Government mineral examiner that certain claims have no mineral values, the mineral examiner has no affirmative obligation to sample those claims. Testimony of the Government mineral examiner as to this conversation, unless impeached in cross-examination, is sufficient to establish a prima facie case that those claims are invalid.

United States v. Janet B. Copple et al., 81 IBLA 109 (May 30, 1984)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quality of the minerals insufficient to support a finding of discovery based on conventional methods of mining, a prima facie case is established. A contestee may overcome the prima facie case by probative evidence that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing the quality and quantity of minerals found by specialized mining methods.

United States v. Carl Dresselhaus et al., 81 IBLA 252 (June 8, 1984)

SUFFICIENCY

Exclusive use of a leasing service address on offers to lease, promotional material which emphasizes the sales ability of the service, past use of a form agreement which created an enforceable interest in prospective leases, past actions of the leasing service related thereto, and allegations of a tacit understanding between the service and its clients are speculative and insufficient as a matter of law to demonstrate the

EVIDENCE--Continued

SUFFICIENCY--Continued

existence of a scheme which might cause rejection of the offers under 43 CFR 3112.5-2.

Kevin J. Powers, 45 IBLA 186 (Jan. 30, 1980)

The mere fact that mining claims are allegedly located in the same kind of area with the same topography as other claims where there has been no discovery does not, without more, support the conclusion that there is no discovery on the former claims. Geologic inference drawn from such alleged similarities is insufficient by itself to show that no discovery has been made on the claims.

United States v. Gerald Hess, 46 IBLA 1 (Feb. 13, 1980)

While the testimony of a Government mineral examiner that he/she has examined a mining claim and found no evidence of mineralization which would support a discovery, is normally sufficient to establish a prima facie case, such a conclusion must be premised on a correct standard of law. Where a Government mineral examiner applies a standard which is not correct under the law, his/her opinion as to a claim's validity cannot serve, by itself, to establish a prima facie case of invalidity.

United States v. George C. Hooker et al., 48 IBLA 22 (May 27, 1980)

Where oil and gas lease applicants contend that BLM wrongly excluded three of their simultaneous offers from a drawing for not paying the filing fees when in fact the fees had accompanied the offers and been deposited by BLM, but fail to provide sufficient evidence of such payments after having been afforded reasonable opportunity to do so, the duties of the BLM officials will be presumed to have been properly discharged.

Cassius C. Peterson et al., 50 IBLA 231 (Sept. 30, 1980)

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that an individual has committed a grazing trespass if that finding is in accordance with, and supported by, reliable, probative and substantial evidence.

Where the evidence as to specific trespass indicates that, of a number of cattle counted, some were located on intermingled private land, but there were no barriers, either natural or artificial, which would have prevented the cattle on private land from going onto the public land, it is proper to find that all cattle counted would tend to consume forage at a rate proportional to the ratio of forage available on private and public lands. The burden then shifts to the grazing licensee to rebut this presumption.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 88 I.D. 275 (Feb. 19, 1981)

An employee's uncorroborated affidavit stating that a separate statement concerning parties in interest was sent for each oil and gas lease offer is insufficient to rebut the legal presumption that administrative officials have properly discharged their duties and have not misplaced or lost the document in issue.

Metro Energy, Inc., 52 IBLA 369 (Feb. 19, 1981)

EVIDENCE--Continued

SUFFICIENCY--Continued

The burden of the proponent is not simply to preponderate in the evidence produced; its burden is to produce a preponderance of credible evidence, and the trier of fact is not required to believe or give any weight to testimony which is inherently incredible. The trier of fact, having presided at the hearing and observed the witnesses, is in the best position to judge the weight to be accorded testimony.

United States v. William J. Smith, Sr., et al., 54 IBLA 12 (Apr. 6, 1981)

After holding a hearing pursuant to the Administrative Procedure Act, an Administrative Law Judge may properly find that a person has committed a grazing trespass if that finding is in accordance with and supported by reliable, probative, and substantial evidence.

Bureau of Land Management v. Holland Livestock Ranch and John J. Casey, 54 IBLA 247 (Apr. 27, 1981)

Where a regulation requires that an oil and gas lease offer be accompanied by a separate statement, and appellant's offer is rejected for noncompliance therewith, appellant's showing that he has made it a past business practice to comply with the regulation in other instances must be regarded as evidence tending to support his assertion that he submitted the statement in this instance. However, such evidence, while cognizable, is insufficient to prove such an assertion without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

John Walter Starks, 55 IBLA 266 (June 25, 1981)

Harold E. Wilson, 67 IBLA 21 (Sept. 3, 1982)

The burden of the proponent is not simply to preponderate in the evidence produced; its burden is to produce a preponderance of credible evidence, and the trier of fact is not required to believe or give any weight to testimony which is inherently incredible.

United States v. John McDowell and Miguel Nunez, 56 IBLA 100 (July 15, 1981)

The effect of a notation on a document stating that in a conveyance to the State of Wyoming "all petroleum" was reserved to the United States is overcome by evidence of more authoritative records establishing that petroleum was not reserved, and that such a reservation would have been contrary to the statute which conditioned the conveyance under the prevailing circumstances, so that an oil and gas lease offer for the purported reserved petroleum was properly rejected.

Charles H. Whitlock, 57 IBLA 252 (Aug. 28, 1981)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Affidavits and other evidence, including a shipping notice and a delivery receipt, indicating that the information required by 43 CFR 3102.2-7(b), in connection with noncompetitive oil and gas lease offers, was submitted timely to BLM is not sufficient to overcome the presumption that public officials have properly

EVIDENCE--Continued

SUFFICIENCY--Continued

discharged their duties and have not misplaced or lost the document in issue where the corroborating evidence fails to relate the submission directly to the lease application at issue.

Lawrence E. Dye, 57 IBLA 360 (Sept. 8, 1981)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

H. S. Radenacher, 58 IBLA 152 (Sept. 25, 1981) 88 I.D. 873

George Fauver, 62 IBLA 399 (Mar. 25, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. Unsupported and uncorroborated allegations do not constitute probative evidence.

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, where appellant fails to present evidence to establish that proof of annual assessment work was filed with the Bureau of Land Management, then it is presumed that the officials properly discharged their duties.

Herman Pilty, 61 IBLA 113 (Jan. 6, 1982)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Jayne A. McBargue, 61 IBLA 163 (Jan. 25, 1982)

Diane M. Berndt, Richard W. Myers, 62 IBLA 288 (Mar. 16, 1982)

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

Helena Silver Mines, Inc., 65 IBLA 287 (July 13, 1982)

David G. Still, 66 IBLA 33 (July 23, 1982)

Alan T. Trees, James L. Barnes, 66 IBLA 334 (Aug. 26, 1982)

Magma Power Co., et al., 68 IBLA 201 (Nov. 10, 1982)

Arden F. Griffith et al., 68 IBLA 295 (Nov. 19, 1982)

James A. Huff, Elizabeth H. Young, 69 IBLA 31 (Nov. 26, 1982)

Phil E. Parks, 69 IBLA 48 (Nov. 29, 1982)

Susan S. Simmons, 69 IBLA 84 (Nov. 30, 1982)

EVIDENCE--Continued

SUFFICIENCY--Continued

Dudley L. Davis, 69 IBLA 127 (Dec. 8, 1982)

Charles W. Shannon, Ruth Runkel, 69 IBLA 300 (Dec. 23, 1982)

James A. Huff, Elizabeth H. Young, 69 IBLA 368 (Jan. 3, 1983)

Lane Number 5, Inc., 70 IBLA 14 (Jan. 6, 1983)

William C. Biederer et al., 70 IBLA 55 (Jan. 10, 1983)

Robert Paoluccio, II, et al., 70 IBLA 118 (Jan. 13, 1983)

Zada Anderson et al., 70 IBLA 122 (Jan. 13, 1983)

Robert G. Lynn, 70 IBLA 141 (Jan. 17, 1983)

Eugene W. Welch, Jr., 72 IBLA 30 (Apr. 5, 1983)

White Rose Corp., 72 IBLA 80 (Apr. 13, 1983)

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)

Robert J. King, L. K. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

Herbert Clark, 73 IBLA 195 (May 26, 1983)

Wayne G. Hunt, 73 IBLA 315 (June 7, 1983)

Devon E. Hurst, 75 IBLA 149 (Aug. 18, 1983)

Dale Rossi, Judy Rossi, 75 IBLA 262 (Aug. 26, 1983)

EVIDENCE--Continued

SUFFICIENCY--Continued

Hoyt Owens, 75 IBLA 335 (Aug. 30, 1983)

Betty E. Parker, 76 IBLA 188 (Oct. 6, 1983)

Ralph Kubinski, 76 IBLA 224 (Oct. 17, 1983)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has rejected oil and gas lease applications because of alleged failure of applicant to have filed the proper and complete corporate qualifications, and appellant adduces evidence in support of its contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has carried its burden of proof of showing that BLM most probably received the documents.

Pennzoil Co., 64 IBLA 392 (June 17, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, received timely by BLM. Appellant in this case has not carried the burden of proof by showing that BLM received the documents.

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where BLM states that it did not receive certain instruments, it is the responsibility of the appellant to show that they were, in fact, received.

Howard E. Thompson, 65 IBLA 79 (June 23, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was delivered to show that it was, in fact, timely received by BLM. Appellant in this case has not carried his burden of proof by showing that BLM received the documents.

Edwin P. Kennedy, Jr., 65 IBLA 114 (June 25, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states it did not receive the instrument, the

EVIDENCE--Continued

SUFFICIENCY--Continued

burden is on the one asserting that it was received to show that it was, in fact, timely received by BLM.

Pawn Rupp, 65 IBLA 277 (July 12, 1982)

Manuel R. Hernandez, 65 IBLA 281 (July 12, 1982)

Victor Negsted, 66 IBLA 31 (July 23, 1982)

William E. Gaechter et al., 66 IBLA 230 (Aug. 16, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, affidavits which serve only to declare the affiants' assumption, surmise, or deduction that such documents must have been included in an envelope received by BLM are inadequate to overcome the presumption where there is no direct evidence to establish that the documents were actually transmitted by the sender and BLM personnel disclaim receiving them.

Lynda Bayley Dove, 65 IBLA 380 (July 16, 1982)

Where a regulation requires that an oil and gas lease application be accompanied by a separate statement, appellant's mere allegation that the statement was submitted is insufficient to prove such an assertion without corroboration. A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

Janet Thompson, 65 IBLA 383 (July 20, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, the presumption is not overcome merely by the submission of an affidavit that the document was mailed. Rather, BLM's denial of its receipt can be rebutted only by substantial countervailing evidence, as an instrument is not "filed" by depositing it in the mail, but only when it is delivered to and received by the proper BLM office.

Glenn W. Gallagher, 66 IBLA 49 (July 27, 1982)

A cooperative agreement for the private maintenance of livestock under the protection of the Wild Free-Roaming Horses and Burros Act may be summarily canceled by the Bureau of Land Management upon good and sufficient evidence that the terms of the agreement have been violated by depriving the animals of adequate food, water, and health care and/or by subjecting them to inhumane treatment. The deteriorating condition of the animals themselves, and credible reports by third parties of substandard care, constitutes such good and sufficient evidence, and the decision to cancel will be affirmed in the absence of a showing that pursuasive countervailing evidence exists.

Dennis Turnipseed, 66 IBLA 63 (July 29, 1982)

EVIDENCE--Continued

SUFFICIENCY--Continued

Where substantial evidence of record supports BLM's rejection of a lease application on the basis of its finding that another party holds an undisclosed interest therein, the mere denial of that fact by the applicant is insufficient to overturn the decision on appeal.

Audrey Jean Foston, 67 IBLA 117 (Sept. 16, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. A copy of a letter addressed to BLM providing the required information coupled with a return receipt card showing receipt thereof will rebut the inference of nonreceipt arising from the absence of the document from the file.

Philip Scaturro, 68 IBLA 8 (Oct. 18, 1982)

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end. A finding that land is mineral in character may be based wholly on inferential evidence.

United States v. Cecil Bell et al., 68 IBLA 367 (Nov. 22, 1982)

Where there are disputed facts determinative of the legal issues posed therefrom, this Board has the discretionary authority to order a hearing on the matter before an Administrative Law Judge pursuant to 43 CFR 4.415.

Patricia C. Elker, 70 IBLA 211 (Jan. 24, 1983)

Mining claims located for a nonmetalliferous mineral on land which is withdrawn from mineral location for nonmetalliferous minerals are properly declared null and void ab initio. Such claims are not preserved by a recitation in the location notices that the claims were located for "bentonite and other minerals" where the claimant himself admits that there has been no evaluation of the claims "for other minerals besides bentonite," which is nonmetalliferous.

L. M. Groom, 70 IBLA 228 (Jan. 24, 1983)

A legal presumption of regularity supports the official acts of public officers acting in their official capacities.

Welch Logging Co., Inc., Dant & Russell, Inc., v. Assistant Area Director (Economic Development), Portland Area Office, Bureau of Indian Affairs, 11 IBIA 85 (Mar. 18, 1983) 90 I.D. 88

Pursuant to 43 CFR 2650.4-7(b), a transportation easement for public access may not be reserved across Native lands where there exists a reasonable alternative route of transportation across publicly owned lands. Where the reasonableness of an alternate route is put in dispute and the facts of record are insufficient to find that a BLM decision not to reserve an easement based on that route is supported by a rational basis, this Board has the discretionary authority to

EVIDENCE--Continued

SUFFICIENCY--Continued

order a hearing in the matter before an Administrative Law Judge pursuant to 43 CFR 4.415.

State of Alaska, 71 IBLA 256 (Mar. 21, 1983)

Doron, Ltd. (On Reconsideration), 77 IBLA 219 (Nov. 28, 1983)

Disputed allegations do not constitute evidence and cannot be accepted as proof of facts. Where a contractor asserts that a termination is a breach because it involves a lack of good faith motivated by a specific intent to injure the contractor but offers no evidence to support the constituent facts necessary to find such a breach, no breach may be found.

The principle that the Government may not use the termination for convenience clause where at the time of entering the contract it had the intention to use that clause is not applicable in the absence of any evidence to support the existence of that intention. Even if such a factual circumstance were demonstrable, however, a contractor may not recover where it submits no proof of any damage resulting from that circumstance.

Appeal of David R. Brown, Jr., IBCA-1600-7-82 (Mar. 31, 1983)

It is the obligation of the appellant to show error. Therefore, when a statement of reasons does not with some particularity show adequate reasons for appeal and support the allegations with evidence showing error, the appeal cannot be afforded favorable consideration.

United States v. Connor et al., 72 IBLA 254 (Apr. 27, 1983)

Bob G. Howell, 75 IBLA 113 (Aug. 12, 1983)

Where an analysis of all relevant evidence persuades the Board that the contractor failed to establish by sufficient evidence, its burden that a storm event was of such intensity as to be totally unforeseeable, the contractor cannot escape some responsibility for risk of loss of a tide station, and some resulting liability for the reasonable cost of reconstruction of the facility.

Appeal of Pettijohn Engineering Co., Inc., IBCA-1346-7-80 (May 26, 1983)

Where in a government contest of certain association placer mining claims the contestant charges and proves prima facie that specific 10-acre tracts are nonmineral in character and thus subject to exclusion from the claims, a finding by the Administrative Law Judge that such tracts are mineral in character will be reversed on appeal where the basis for that finding was mere unsupported conjecture by an expert witness that there is "a strong possibility" that beds of rich oil shale underlie those tracts. Such evidence is insufficient to rebut the prima facie showing by a preponderance of evidence.

United States v. Energy Resources Technology Land, Inc., et al., 74 IBLA 117 (June 30, 1983)

EVIDENCE--Continued

SUFFICIENCY--Continued

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, the presumption is not overcome merely by the submission of an affidavit that the document was mailed. Rather, BLM's denial of its receipt can be rebutted only by substantial countervailing evidence, as an instrument is not "filed" by depositing it in the mail, but only when it is delivered to and received by the proper BLM office.

Mackay Bar Corp., 75 IBLA 57 (Aug. 5, 1983)

Thomas Johnson, 77 IBLA 20 (Oct. 31, 1983)

Where appellants aver, without offering proof to show the basis of their averment, that lands which were the subject of appellants' oil and gas lease offer were acquired by the United States, Bureau of Land Management correctly rejected the offer to lease lands shown on Government records not to be in United States ownership.

James M. Chudnow, John L. Messinger, 75 IBLA 69 (Aug. 10, 1983)

The Board of Indian Appeals will not disturb an Administrative Law Judge's finding of fact that is supported by substantial evidence in the record.

San Day IV v. Area Director, Navajo Area Office, Bureau of Indian Affairs & Window Rock Mall, Ltd. v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 9 (Oct. 6, 1983)

A mining claimant has not preponderated on the question of discovery of a valuable mineral deposit where the evidence establishes that further exploratory drilling is required to ascertain the extent of the only mineralized zone with significant potential prior to the investment of capital with a reasonable prospect of success in developing a valuable mine.

United States v. James A. Walper, 77 IBLA 90 (Nov. 14, 1983)

An inheritable property right in an allotment is created only if an applicant fully complies with the requirements of the Native Allotment Act before his or her death. When an applicant has submitted evidence of the required use and occupancy of the allotment that is disputed during adjudication of the application, the applicant's heirs may properly submit additional evidence to support the applicant's claims.

Katsiland, Inc., et al., 77 IBLA 347 (Dec. 5, 1983)

A presumption of regularity supports the official acts of public officers and absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Suggestion that BLM may not have investigated a mining claimant's good faith in locating a claim which includes a water source is insufficient to rebut the presumption of regularity.

Desert Survivors, 80 IBLA 111 (Apr. 3, 1984)

EVIDENCE--Continued

SUFFICIENCY--Continued

BLM may properly take immediate possession of wild free-roaming horses, in accordance with 43 CFR 4740.4-3(e), where there is sufficient evidence in terms of the physical condition of the animals and the credible reports of third parties that the animals are being inhumanely treated, i.e., that they lack necessary food and shelter, have failed to receive medical treatment, and are subject to substandard animal husbandry practices.

Kathryn E. Spring, 82 IBLA 26 (July 5, 1984)

Where an applicant for a trade and manufacturing site alleges that she timely mailed a notice of appeal of a decision setting forth estimated cost of survey but there is no evidence to indicate that it was ever received by the proper Bureau of Land Management office, the applicant must bear the consequences.

Donna J. Waidtlow, 82 IBLA 247 (Aug. 28, 1984)

A hearing is not necessary in the absence of a material issue of fact, which, if proven, would alter the disposition of the matter. An oral hearing on a color-of-title application will be denied where there are no allegations of fact which would establish the color-of-title claim.

Kip C. Evans, 82 IBLA 319 (Sept. 6, 1984)

The burden of the mining claimant is to produce a preponderance of credible evidence to overcome the Government's prima facie case against the validity of the claim. The trier of fact is not required to believe or give any weight to testimony which is inherently incredible. Therefore, when there is a gross disparity in the assay results of samples taken from the same points in a mining claim, and the trier of fact gives more weight to the test results which he finds are more credible, and his finding is supported by substantial evidence, the Board will not disturb that finding.

A presumption of regularity attends the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their duties. This presumption of regularity is applicable to the official acts of a Government mineral examiner who takes samples from mining claims and sends them to an independent assay company to determine their mineral content for the purpose of establishing whether a valuable mineral deposit has been discovered.

United States v. Marvin C. Ramsey et al., 84 IBLA 66 (Nov. 30, 1984)

WEIGHT

While the testimony of a Government mineral examiner that he/she has examined a mining claim and found no evidence of mineralization which would support a discovery, is normally sufficient to establish a prima facie case, such a conclusion must be premised on a correct standard of law. Where a Government mineral examiner applies a standard which is not correct under the law, his/her opinion as to a claim's validity cannot serve, by itself, to establish a prima facie case of invalidity.

United States v. George C. Hooker et al., 48 IBLA 22 (May 27, 1980)

EVIDENCE--Continued

WEIGHT--Continued

Assay reports have limited probative value concerning the existence of a valuable mineral deposit on a mining claim when they are not supported by sufficient evidence to show how and where the samples were taken and how the samples were treated.

United States v. William J. Smith, Sr., et al., 54 IBLA 12 (Apr. 6, 1981)

Where the testimony of appellant's only witness testifying with respect to contract performance was found unworthy of belief and not credible, the Board holds that it has the discretion to reject all the testimony of such witness except that which has been corroborated; and the Board concludes, that except for one of the claims for an equitable adjustment conceded by the Government, there was no corroboration of the discredited testimony, and, therefore, the remaining claims of appellant must be denied for failure to sustain the burden of proof.

Appeal of Scops, Inc., IBCA-1094-1-76 (June 16, 1981) 88 I.D. 590

Where the resolution of a case is influenced by the Administrative Law Judge's findings of credibility, which in turn are based on reaction to the demeanor of the witnesses, and such findings are supported by substantial evidence, the Board will not ordinarily disturb them.

United States v. Gerald H. Braniff, 59 IBLA 337 (Nov. 5, 1981)

A determination by the Bureau of Land Management of the carrying capacity for a unit of the Federal range will be reversed where substantial evidence establishes error in the determination.

Chris Claridge v. Bureau of Land Management, 71 IBLA 46 (Feb. 18, 1983)

Where under a contract for the construction of a road and a bridge involving a substantial amount of unclassified excavation, the contractor's general superintendent and the then project engineer and the then project inspector testified in support of their widely divergent views as to the representations allegedly made by the Government representatives to the general superintendent during tours of the site to the effect that the slope stakes when placed would fall beneath a prominent ledge of rock known as caprock, the Board accepts the corroborated testimony of the general superintendent over the uncorroborated testimony of the project engineer but it refuses to accept the testimony of the general superintendent over that of the project inspector where the former's testimony is not corroborated with respect to the representations attributed to the inspector.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

Assay reports have limited probative value concerning the existence of a valuable mineral deposit on a mining claim when they are not supported by sufficient evidence to show how and where the samples were taken.

United States v. Albert F. Parker et al., 82 IBLA 344 (Sept. 12, 1984) 91 I.D. 271

EVIDENCE--Continued

WEIGHT--Continued

The failure of an expert witness, such as a Government mineral examiner, to remain current with all the literature concerning practices in his field may affect the weight but not the admissibility of his testimony. The trier of fact who presides at a hearing has an opportunity to observe witnesses and is in the best position to judge the weight to be accorded the testimony of the expert.

United States v. Marvin C. Ramsey et al., 84 IBLA 66 (Nov. 30, 1984)

EXCHANGES OF LAND
(See also Indian Lands, Private Exchanges, State Exchanges, Wildlife Refuges & Projects--if included in this Index.)

GENERALLY

Where an oil and gas lease has inadvertently been issued for land, part of which was the subject of a forest exchange application, the cancellation of that part of the lease will be reversed if the exchange application did not include the mineral estate and has been withdrawn by the proponent, and no other obstacle or objection to the lease exists.

Kerr-McGee Corp., 46 IBLA 156 (Mar. 19, 1980)

An exchange application tendered pursuant to 43 CFR Subpart 3526 is properly rejected by BLM where a preference right lease applicant has not demonstrated to the Secretary that he has a preference right to a lease.

John S. Wold, Eugene Y. Simons, 48 IBLA 106 (May 30, 1980)

"Public land laws." Under 43 CFR 2091.2-3 (1979), a state exchange application segregated the selected public lands from appropriation under the public land laws, including the mining laws. The term "public land laws" is ordinarily used to refer to statutes governing the alienation of public land, and generally is distinguished from both "mining laws," referring to statutes governing the mining of hard minerals on public lands, and "mineral leasing laws," a term used to designate that group of statutes governing the leasing of public lands for oil, gas, and other selected minerals. Udall v. Tallman, 380 U.S. 1, 19 (1965).

Dale E. Armstrong, 53 IBLA 153 (Mar. 12, 1981)

A protest against approval of a proposed land exchange, pursuant to sec. 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716 (1976), is properly dismissed where the protestant has not established that BLM did not adequately consider the public interest or that the lands exchanged are not of equal value.

P. F. Mostoya, 70 IBLA 93 (Jan. 11, 1983)

Seven Star Ranch, Inc., 78 IBLA 366 (Jan. 30, 1984)

EXCHANGES OF LAND--Continued

GENERALLY--Continued

An application for an exchange of land pursuant to sec. 206 of FLPMA requires first a determination that the public interest will be well served by the exchange and, second, that the total value of the Federal land does not exceed the value of the offered land by more than 25 percent. Where, during the pendency of an appeal from the rejection of a proposal to exchange oil shale lands, certain economic events occur which both diminish the advantage of the exchange to the public interest and increase the disparity in the relative values of the offered and selected lands, the decision will be affirmed without an evidentiary hearing on the previous evaluations of the two properties.

Superior Oil Co. (Appellant), Cleveland-Cliffs Iron Co., & Sohio Shale Oil Co. (Intervenors), 78 IBLA 60 (Dec. 16, 1983)

While there is no Departmental policy absolutely forbidding multiparty exchanges under sec. 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716 (1976), no such exchange can be approved unless the land ultimately acquired by the United States benefits a Federal natural resource management program.

Harry H. Bailey, 79 IBLA 362 (Mar. 23, 1984)

Where a national conservation organization challenges a Bureau of Land Management determination to proceed with a private exchange, that organization satisfies the requirements of 43 CFR 4.410 by establishing that it is a "party to a case" and that it is adversely affected because its membership uses the public land in question.

Denial of a protest of a determination to proceed with a private exchange will be vacated and the case remanded where the record fails to reflect an evaluation of the environmental impacts sufficient to support an informed judgment.

Where the record shows that missing information is material to an agency decision on a private land exchange, it must be gathered and included in an environmental assessment. Only where the costs of obtaining the information are exorbitant or the means of obtaining it are beyond the state of the art must the agency weigh the need for the action against the risk and severity of possible adverse impacts of proceeding in the face of uncertainty. And only in the case of a determination to proceed in the face of uncertainty must a worst case analysis be conducted in accordance with 40 CFR 1502.22.

National Wildlife Federation, 82 IBLA 303 (Sept. 5, 1984)

FOREST EXCHANGES

Where a deed embracing certain base lands is tendered to the United States in an application for an exchange under the Forest Lieu Exchange Act, Act of June 4, 1897, 30 Stat. 31, which title is based on a deed issued for state school lands to a fictitious individual, such deed vests no title in the United States. Where, however, the state deed is issued to a real person, even though it may have been fraudulently obtained from the state, acceptance by the United States of the exchange application is sufficient to vest title in the United States to the base property, even though that title might be subject to defeasance in a proper proceeding.

Where the United States had accepted an application for a forest lieu exchange under the provisions of the Act of June 4, 1897, 30 Stat. 31, title to the base

EXCHANGES OF LAND--Continued

FOREST EXCHANGES--Continued

property vested in the United States. Such title was not divested by either the subsequent refusal of the United States to complete the exchange or by the acquisition of the selection rights emanating from the acceptance of the application by a third-party which had been defrauded of the base lands through the actions of the original applicant.

Where the United States had accepted an application for a forest lieu exchange under the provisions of the Act of June 4, 1897, 30 Stat. 31, which application was based on base lands fraudulently secured from a state, and the state subsequently obtained a quitclaim from the applicant of all his interest in the lands, the state did not regain title to the base lands but rather was vested with all selection rights which had properly appertained to the exchange application.

Where the record establishes that, but for the actions of the Department in improperly approving an exchange, a state would have properly exercised its exchange rights pursuant to applicable law, the Department will be estopped from subsequently asserting the exchange was improper where, as here, it would no longer be possible for the state to exercise its exchange rights.

Under the United States Supreme Court's decision in Wyoming v. United States, 255 U.S. 489 (1921), an application for a forest lieu exchange was accepted by the filing of a proper exchange and the acceptability of an exchange was to be judged with reference to the facts existing at the time of filing. The actual acceptance of an exchange application, however, even if based on a misapprehension of the facts, vested title to the offered lands in the United States.

The classification of land as Supplement A, B, or C, by the Oregon Supreme Court in State v. Hyde, 88 Or. 1, 169 P. 757 (1918), is not binding on the United States as to the factual predicates thereof, particularly as the United States was not a party to the case.

When a state obtained a quitclaim deed from a forest lieu applicant whose application had been accepted by the United States, the state merely acquired the same rights to complete the selection which were possessed by the original applicant. Where the state failed to record this forest lieu selection right under the Act of Aug. 5, 1955, 69 Stat. 534, or tender such right for payment under the Act of July 6, 1960, 74 Stat. 334, all rights flowing from the forest lieu selection right to either complete an exchange or have the base property reconveyed terminated.

While it is a general rule that adverse possession does not run against a state, this rule does not apply as against the United States. Where the United States has maintained open and notorious possession of certain parcels of land for over 80 years, the United States has acquired title to those parcels through adverse possession even though the record title holder was a state.

State of Oregon et al., I, 78 IBLA 255 (Jan. 10, 1984)
91 I.D. 14

EXECUTIVE ORDERS AND PROCLAMATIONS

A Presidential proclamation, which extended the boundaries of a forest reserve and which specifically stated that prior proclamations respecting the reserve were "superseded," had the effect of and was construed as restoring to entry lands earlier withdrawn by a Secretarial order which reserved from public entry, for protection of giant sequoia trees, a township situated within the boundaries of the forest reserve. This conclusion is particularly compelling in view of the long continued course of administrative action treating the subject township as having been restored to entry for

EXECUTIVE ORDERS AND PROCLAMATIONS--Continued

purposes of prospecting, locating and developing mineral resources, subject to compliance with the rules and regulations pertaining to forest reserves.

Dolores Olsen and Wesley H. Hace, et al., 45 IBLA 232 (Feb. 4, 1980)

Withdrawals remain in force until specifically revoked or modified by competent authority. The Alaska National Interest Lands Conservation Act, P.L. 96-478 (94 Stat. 2371), does not affect the existence or validity of Public Land Order No. 5250.

Larry McMaster et al., 76 IBLA 370 (Oct. 25, 1983)

FEDERAL EMPLOYEES AND OFFICERS
(See also Administrative Authority, Claims Against the United States, Officers & Employees--if included in this Index.)

GENERALLY

Idaho Economically Homogeneous Area survey failed to conform to 5 U.S.C. § 5911 (1976) and implementing regulations when values from urban and rural areas were averaged to reach rental values for an entire state without regard to difference in rents between cities and rural or small town localities. The rental rate figures derived from mere averaging of values does not result in reasonable values required by law.

Duane E. Edvenson, D-79-9 (Mar. 3, 1980)

Pursuant to 5 U.S.C. § 5911 (1976), the appraisal of Government-furnished quarters at the Polacca Day School, Hopi Indian Agency, by the Bureau of Indian Affairs, Phoenix Area Office, and the resulting adjustment of basic rental rates were based upon the reasonable value of the quarters to the employees in the circumstances under which provided, occupied, or made available.

Daniel L. Clavio, 4 OHA 54 (Sept. 11, 1980)

The presumption of regularity supports the acts of public officers and, in the absence of clear evidence to the contrary, they are presumed to have properly discharged their official duties.

Don Cook, 60 IBLA 255 (Dec. 4, 1981)

There is a rebuttable presumption that administrative officers properly discharge their duties and do not lose or misfile documents timely filed. Where, however, the BLM computer print-out indicates that evidence of assessment work was received for one of appellant's four mining claims, and where appellant submits a copy of proof of labor for all four claims which had been recorded in the proper county recording office and then submitted to BLM, and where BLM had no record of having issued any adverse decision for the fourth claim but appellant submitted a copy of the decision he had received, the cumulative evidence rebuts the presumption of regularity.

Robert T. Reynolds, 61 IBLA 52 (Dec. 31, 1981)

FEDERAL EMPLOYEES AND OFFICERS--Continued

GENERALLY--Continued

An upward amenity adjustment of 2 percent to basic rental rate is correctly calculated in accordance with the economically homogeneous area survey method, IRPR 114-52.303(b), when the number of amenities present for Government-furnished quarters is one more than the average number of amenities present in the private rental survey of comparable private housing in an economically homogeneous area in which the Government rental quarters are located.

Appeal of Barr T. Foss, 5 ONA 15 (Sept. 30, 1982)

Where a 7 percent limitation on increases in net basic rental rates was not applied to the rate previous to the one resulting from a survey of an economically homogeneous area, the case will be remanded for a determination of what amount should be credited to the employee for overpayment of rates in accordance with 41 CFR 114-52.602(a)3.

Where the record contains unreconciled allegations concerning facts necessary for the determination of the proper monthly basic rental rate, the case will be remanded for findings of fact.

Where improper guidelines were used to calculate the amenity adjustment for a particular quarters unit, and application of the correct standards to the record indicates that the contested amenities did not exist for that unit, the case will be remanded for a determination of the amenity adjustment in accordance with the correct standards.

The Consumer Price Index adjustment is correctly applied against an employee's biweekly rental payroll deduction.

Appeal of Robert W. Jones, 5 ONA 21 (Oct. 12, 1982)

The 7 percent limitation on rental rate increases imposed by Secretary Andrus to rental increases effective after Dec. 13, 1978, was properly restricted by implementing instructions of the Deputy Assistant Secretary--Policy, Budget, and Administration, to increases in the "net basic rental rate" and did not apply to any passthrough charge collected by the Government for utilities, furnishings, or related services that by law must reflect prevailing community rates.

There is no duplicative charge for furnishings where the monthly basic rental rate is calculated after deducting standard amounts for these items.

Tuba City Housing Appeals Ass'n, 5 ONA 33 (Oct. 12, 1982)

When appealing tenants fail to show that there was anything improper or contrary to stated policy about the compilation of data for and the conclusions of the Regional Survey of an Economically Homogeneous Area affecting the tenants' rentals, in particular with respect to exclusion of rental figures from certain communities in the area, the correct square footage used for tenants' quarters, additional charges for quarters' features not otherwise reflected in the survey's figures for comparable rentals, and incorrect deductions for lack of amenities, then the tenants may have no relief based only on the allegation of faults in the survey.

FEDERAL EMPLOYEES AND OFFICERS--Continued

GENERALLY--Continued

Where the relevant statements of law and policy require an annual adjustment in rentals for Government-furnished quarters according to a Consumer Price Index factor, there is no error when the Government increases rentals based upon that factor.

The deduction from rental for excessive heating costs is not constituted so as to provide a disincentive to conserve utility commodities; any successful conservation effort results in the loss of some portion of the excessive heating costs deduction but it also results in a higher out-of-pocket savings, thus normally creating a net savings.

The deduction from rentals for unusual transportation costs is a creation of law; the Government has no authority to set a deduction amount other than that prescribed by the relevant legal authority even though that authority has decreased over the years the amount allowable for the same distance of isolation.

A proper measure of the appropriateness of a rental charge is that it be set so as to create no barrier to the recruitment or retention of employees; nevertheless, that principle is merely a yardstick against which to measure whether the Government in setting rents has adhered to the principle of comparability and, in the absence of proof that such a barrier has been created while rentals otherwise appear to be comparable, appellants may obtain no relief on the mere allegation of the creation of such a barrier.

The Government reaps no "profit," as the authorities understand that term, when it charges a quarters rental which is otherwise comparable to the private housing market.

Appeal of Jan Perschon et al., 5 ONA 65 (Dec. 21, 1982)

Where the reasonable rental value of Government-furnished quarters has been determined in accordance with accepted appraisal procedures pursuant to Departmental directives, and the occupant alleges that his rent is excessive in relation to rates prevailing in the local community, the burden is on the occupant to prove by positive, specific, and substantial evidence that the appraisal is in error.

Barry C. Wilson, 5 ONA 79 (Jan. 18, 1983)

Jack T. Matuska, 5 ONA 346 (Aug. 24, 1984)

Rental rates for Government-furnished quarters located in one state may not be set by reference to an economically homogenous area survey compiled with respect to an area of three states none of which is the state of the Government-furnished quarters for which the review of rental rate setting is being had; setting rates in such a prohibited manner is erroneous and any rates so set will be set aside.

In the Matters of Lewis A. Guthrie et al., 5 ONA 108 (Mar. 15, 1983)

Increase of quarters rental rates must, under Departmental rules, reflect reasonable value consistent with rates charged for similar private housing in the locality.

Randal L. Andrews, Delbert L. McGuire, & Virgil A. Ruckdashel, 5 ONA 113 (Mar. 21, 1983)

Joan Rodgers et al., 5 ONA 178 (Sept. 19, 1983)

FEDERAL EMPLOYEES AND OFFICERS--Continued

GENERALLY--Continued

OMB Circular No. A-45 allows agencies to employ one of two alternative approaches to establish comparable rentals as a step in setting rental rates for Government-furnished quarters when the quarters are more than 5 miles away from an established community: either use the comparable rentals in a nearby representative community or conduct an economically homogeneous area survey; the Department, by regulation, has required the use of the latter of these alternatives when both are available. Thus, tenants' findings about rental rates in one particular community are irrelevant when the economically homogeneous area survey approach is used.

When an agency makes a downward adjustment to the basic rental rate for a lack of amenities in particular quarters as compared to the average number of amenities present in the comparable market, there is no surcharge to the basic rates for the amenities that are present.

The various authorities governing rental rate-setting clearly contemplate that some utility services to Government-furnished quarters will not be measured or metered; by providing that charges for such services in those circumstances will be established by reference to the average of such charges in the survey community, the authorities have insured that any resulting inequities to tenants will be kept to a minimum.

Although the Departmental handbook specifically requires ratesetting officials to deny the unusual transportation costs (UTC) deduction for quarters located less than 30 miles from the nearest established community, when quarters are 29.4 miles away from such a community and the proportionate increase in rentals is as great as in this case, it is conceivable that it could be demonstrated that the new rental rate would be unreasonable if not adjusted for transportation costs; under the circumstances of this case, ratesetting officials should treat this appeal as a request to the appropriate Departmental official under 400 DM 5.2B (1), for a determination regarding application of the UTC deduction.

The regulations governing the rental ratesetting process suggest permitting the participation of tenants in certain parts of the process but accord tenants no right to participate; insofar as the regulations provide no relief for the failure to allow participation and as tenants here neither allege nor prove any prejudice resulting from that failure, no relief may be granted.

The principle of comparability, which forms the basis for the ratesetting process, requires that the charge for an item of service be comparable to the charge for a comparable service in the comparison community. When the service is not provided or when some "service" is provided but it is so different from the comparison community service that it is inaccurate to term it comparable, then charging the rate for a comparison community service is inappropriate.

The principle of comparability, which forms the basis for the ratesetting process, requires that a basic rental rate for Government-furnished quarters be established by reference to private market rental housing in a similar state of maintenance and repair; when the private market average is for housing somewhere between fair and good condition and the Government housing to which the average applies is in fair or worse condition, a downward adjustment in the private market average should be made when applied to the particular Government unit.

Where a floor plan of a Government rental unit discloses on its face only ordinary patterns, finding that the unit is possessed of the "unusual design features" amenity is inappropriate unless the involved agency can demonstrate the amenity's presence; in the absence of

FEDERAL EMPLOYEES AND OFFICERS--Continued

GENERALLY--Continued

such a showing, a 2 percent decrease in the basic rental rate, is in order.

Appeal of Horace Traylor II et al., 5 OHA 117 (Mar. 22, 1983)

While meetings with employees are encouraged under the provisions of 41 CFR 114-52.601 to assure employee understanding of the process for establishing rental rates for Government-furnished quarters, such meetings are not mandated by these provisions.

Under limitations imposed by the Office of Management and Budget, the rental rate for Government-furnished quarters cannot be reduced to reflect unusual transportation costs by more than the maximum amount authorized by the Department's regulations at 41 CFR 114-52.302.

Under the provisions of 41 CFR 114-52.303, an adjustment to the basic rental rate of Government-furnished quarters is to be made to reflect the difference in the number of "amenities," as defined in 41 CFR 114-52.105(f), associated with the Government-furnished quarters as compared with the number of amenities associated with comparable private dwellings.

Under the provisions of 41 CFR 114-52.207, charges are to be added to the basic rental rate of Government-furnished quarters for furnishings provided by the Government.

To successfully challenge an element of a regional quarters survey used in calculating the basic rental rate for Government-furnished quarters, the employee/occupant must assert more than unsupported conclusions of fact.

Appeal of the Henry Mountain Resource Area Employees, 5 OHA 127 (Mar. 31, 1983)

The unusual transportation costs deduction for quarters located more than 30 miles from the nearest established community is the only permissible way to credit an employee for remoteness.

When appropriate, the Government may credit an employee with 90 percent of the heating costs in excess of $50 over the average seasonal heating costs in the area.

The principle of comparability, which forms the basis for the ratesetting process, requires that a basic rental rate for Government-furnished quarters be established by reference to private market rental housing in a similar state of maintenance and repair; when the private market average is for housing somewhere between fair and good condition and the Government housing to which the average applies is in fair or worse condition, a downward adjustment in the private market average should be made when applied to the particular Government unit.

Appeal of Agnes Wales, 5 OHA 215 (Oct. 26, 1983)

The unusual transportation costs deduction for quarters located more than 30 miles from the nearest established community is the only permissible way to credit an employee for remoteness. Where the maximum authorized deduction has already been provided, no further transportation deduction is available.

Appeal of Pamela D. Doyle, 5 OHA 219 (Nov. 2, 1983)

FEDERAL EMPLOYEES AND OFFICERS--Continued

GENERALLY--Continued

When quarters rental rate appeals arise in remote areas where it is not practical to hold hearings, the parties have a special obligation to assist in the resolution of the appeal by prompt and detailed responses to the Board's inquiries concerning the allegations presented to it.

Even if the appellant and the Area Director provide their telephone numbers for use by the Board in connection with an appeal, it is not proper under 4 CFR 4.27 for the Board to become involved in oral (ex parte) communications with either party except in the presence of the other party. Decisions by the Board can be made only on the basis of the appeal record, which includes the parties' initial submissions plus subsequent letters, memoranda, or documents from either side that have been made available to the other side.

Where there is no requirement in the law or regulations, and no other reasonable explanation is offered, for using different bases in making the various adjustments needed to calculate the net monthly basic rental rate for Government-furnished quarters, a consistent basis must be used, even if the instructions for calculating such adjustments on the Department's rental computation worksheet appear to indicate otherwise.

Where date stamps on correspondence indicate that mailing time is only 3 to 5 days one way, a period of 2 months is a sufficient time for the Board to await a reply to its inquiry from an agency respondent. At the end of that time, in the absence of sufficient rebuttal, the allegations of an appellant who claims below-average electrical consumption may be taken as true, and an appellant's monthly electricity bill may be adjusted by the Board accordingly, provided that the claims are not unreasonable.

Walter W. Duncan, 5 OHA 256 (Feb. 8, 1984)

Where a counsel moves to reopen a Board decision and the motion is granted, and the parties are given a period substantially in excess of the time requested in which to submit additional evidence but both fail to do so, the Board is entitled to dispose of the case by a summary affirmation of the original decision.

Jean Rodgers et al. (On Reconsideration), 5 OHA 266 (Feb. 24, 1984)

A decision by an officer of the BLM which does not fall within any of the enumerated exceptions in 43 CFR 4.410 is subject to appeal to the Board of Land Appeals and a BLM officer is without authority to state otherwise.

Utah Wilderness Ass'n, 80 IBLA 64 (Mar. 30, 1984)
91 I.D. 165

AUTHORITY TO BIND GOVERNMENT

The general rule is that reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Royal Harris, 45 IBLA 87 (Jan. 17, 1980)

Dennis L. Lattery, 45 IBLA 219 (Jan. 31, 1980)

Marko and Yarrow Lewis, 46 IBLA 257 (Mar. 27, 1980)

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

The general rule is that reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

The United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

Darrell P. Riggs, Karen Sue Riggs, 46 IBLA 132 (Mar. 19, 1980)

George W. Murphy, 48 IBLA 123 (May 30, 1980)

The United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

Dorothea M. Taylor, Robert Taylor, 46 IBLA 198 (Mar. 24, 1980)

Reliance on erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Nevada Pacific Co., Inc., 46 IBLA 208 (Mar. 24, 1980)

Thomas Taggart, 46 IBLA 350 (Apr. 8, 1980)

Tina Anderson, 47 IBLA 348 (May 21, 1980)

Robert W. Miller, Marjorie Ripper Miller, 51 IBLA 364 (Dec. 29, 1980)

Alex Pinkhas, Mary Anne Pinkhas, 52 IBLA 149 (Jan. 16, 1981)

Lynn Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369

William Adolph Yonkee et al., 54 IBLA 232 (Apr. 27, 1981)

Energy Trading, Inc., 55 IBLA 167 (June 9, 1981)

Robert E. Pennell, Clair M. Colburn, d.b.a. Colfenech Mining Ass'n, 56 IBLA 43 (July 8, 1981)

Del Rupp, 57 IBLA 297 (Aug. 31, 1981)

Grant Kirkham, Roberta Kirkham, 58 IBLA 131 (Sept. 24, 1981)

Wayne Cook, 58 IBLA 350 (Oct. 19, 1981)

Robert Wright, 61 IBLA 158 (Jan. 20, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

William J. McGrath, 62 IBLA 110 (Mar. 2, 1982)

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

Inexco Oil Co., 74 IBLA 260 (July 22, 1983)

Harriet C. Shaftel, 79 IBLA 228 (Feb. 29, 1984)

Reliance upon erroneous or incomplete information provided by employees of the Bureau of Land Management cannot create any rights not authorized by law.

Clayton H. Read and Gerald A. Myren, 49 IBLA 200 (Aug. 11, 1980)

Clayton H. Read, Gerald A. Myren, 49 IBLA 271 (Aug. 18, 1980)

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

The general rule is that reliance upon erroneous or incomplete information or opinions provided by any officer, agent, or employee of the Department cannot operate to vest any right not authorized by law.

Energy Trading Inc., 50 IBLA 9 (Sept. 5, 1980)

Palmyra Mines, Inc., 53 IBLA 89 (Mar. 2, 1981)

Adobe Oil & Gas Corp., 73 IBLA 263 (June 7, 1983)

LBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

Stephen M. Thompson, 84 IBLA 146 (Dec. 12, 1984)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by a State Office of BLM, of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM State Office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Donald W. Corer, Fred L. Engle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondents) (On Judicial Remand), 50 IBLA 306 (Oct. 14, 1980)

D. R. Weedon, Jr., et al., 51 IBLA 378 (Dec. 31, 1980)

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination. The erroneous acceptance of rental payment a year later cannot create such authority nor estop the the Government from regarding the lease as having terminated.

Jack J. Grynberg, 53 IBLA 165 (Mar. 12, 1981)

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of fact upon which a party was led to rely to his ultimate detriment.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

Reliance on erroneous information provided by a Bureau of Land Management employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements.

John Plutt, Jr., et al., 53 IBLA 313 (Mar. 25, 1981)

Lyman Mining Co., 54 IBLA 165 (Apr. 21, 1981)

West Fork Mining Co., 60 IBLA 370 (Dec. 22, 1981)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

The Government is not estopped from requiring the recalculation of royalty payments, even if it has accepted improper payments in the past.

FMC Corp., 54 IBLA 77 (Apr. 14, 1981)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Hope Petroleum Corp. et al., 54 IBLA 194 (Apr. 23, 1981) 88 I.D. 479

Wilbur G. Reeves et al., 54 IBLA 271 (Apr. 28, 1981)

Robert E. Belknap et al., 55 IBLA 200 (June 16, 1981)

Resource Service Co., Inc., Grace E. Greco, 55 IBLA 343 (June 26, 1981)

Woods Petroleum Corp. et al., 55 IBLA 348 (June 26, 1981)

Floyd O. Lochaby, 56 IBLA 271 (July 28, 1981)

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

The Department is not estopped from rejecting an oil and gas lease offer, or canceling a lease issued pursuant thereto, because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Inexco Oil Co. et al., 54 IBLA 260 (Apr. 28, 1981)

Reliance upon erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law.

Estoppel will not lie where allegedly misleading advice is timely rebutted by existing regulations negating the advice given.

Vincent M. D'Amico, Walt C. Stoppel, 55 IBLA 116 (June 3, 1981)

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the secretarial level. Such reversal upon Departmental review does not constitute retrospective application of a new rule.

Richard E. McDonald, Resource Service Co., Inc., 56 IBLA 12 (June 30, 1981)

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level, and where there was no affirmative misconduct by BLM employees.

Alex Sachen, Resource Service Co., Inc., 56 IBLA 116 (July 16, 1981)

Nancy L. Stewart, Resource Service Co., Inc., 56 IBLA 122 (July 16, 1981)

Jack Buckeraan et al., 56 IBLA 193 (July 22, 1981)

Robert Senasko, Mary L. Hollebon, Resource Service Co., Inc., 58 IBLA 340 (Oct. 19, 1981)

Reliance on a Bureau of Land Management pamphlet containing erroneous information does not relieve a claimant of an unpatented mining claim of an obligation imposed by statute, or create rights not authorized by law, or relieve the claimant of the consequences imposed by statute for failure to comply with its requirements.

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

Blanche W. Peterson, 67 IBLA 388 (Oct. 8, 1982)

Evidence of annual assessment work must be delivered to and received by the proper BLM office in order to be filed. Depositing a document in the mails does not constitute filing. Reliance on erroneous information provided by BLM employees which is contrary to regulation does not relieve a mining claimant of this obligation.

Joe L. Watts, 59 IBLA 127 (Oct. 26, 1981)

Equitable estoppel against the Government will not lie where there has been no affirmative misconduct by an authorized agent or officer resulting in a misrepresentation of material fact upon which a person was led to rely to his or her ultimate detriment.

Argee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

The erroneous opinion or information of a Federal officer, agent or employee cannot operate to vest any right not authorized by law.

George L. Hawkins, Wallace G. Heath, 66 IBLA 390 (Aug. 31, 1982)

Lamar & Christine Burnett, 78 IBLA 349 (Jan. 25, 1984)

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

Jantheia Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

The Secretary of the Interior is not estopped by the principles of res judicata or finality of administrative action from correcting, reversing, or overruling an erroneous decision by subordinates or predecessors in interest. The Board of Land Appeals, in exercising the Secretary's review authority as fully and finally as might the Secretary, is not required to accept as precedent erroneous decisions made by the Secretary's subordinates.

Pathfinder Mines Corp., 70 IBLA 264 (Jan. 26, 1983) 90 I.D. 10

The authority of the United States to enforce a public right or protect a public right or protect a public interest is not vitiated or lost by acquiescence of its officers, nor can reliance upon information or actions of any officer, agent, or employee operate to vest any right not authorized by law.

Bachalk Production, Inc., 71 IBLA 374 (Mar. 29, 1983)

The erroneous action of a Departmental employee cannot create rights not authorized by law or excuse compliance with a regulation.

Native Americans for Community Action v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 214 (July 1, 1983) 90 I.D. 283

Reliance on erroneous information provided by a Bureau of Land Management employee cannot relieve the owner of an unpatented mining claim of an obligation imposed by statute or regulation, or create rights not authorized by law.

John L. Grassmeier, 77 IBLA 156 (Nov. 16, 1983)

FEDERAL EMPLOYEES AND OFFICERS--Continued

AUTHORITY TO BIND GOVERNMENT--Continued

Neither the doctrine of equitable estoppel nor substantial fairness is available to offer appellant relief where reliance upon those doctrines is predicated upon circumstances which indicate appellant merely failed to make timely payment through its own neglect. The existence of a cover letter indicating a payment was sent where it subsequently appears there was no payment attached to the letter as shown, is insufficient alone to place the burden upon the Government to either establish it did not receive payment, or alternatively, to explain why it did not notify appellant of the apparent omission of payment from its letter.

Davis Oil Co., 79 IBLA 218 (Feb. 29, 1984)

A decision by an officer of the BLM which does not fall within any of the enumerated exceptions in 43 CFR 4.410 is subject to appeal to the Board of Land Appeals and a BLM officer is without authority to state otherwise.

Utah Wilderness Ass'n, 80 IBLA 64 (Mar. 30, 1984)
91 I.D. 165

INTEREST IN LANDS

The Bureau of Land Management properly rejects an application for a desert land entry, in accordance with 43 CFR 7.3, where the applicant indicates in her application that she is an employee, or the spouse or agent of an employee, of the Department of the Interior. In addition, where an individual seeking allowance of a desert land entry accepts employment with the Bureau of Land Management while her application is pending, such application must be rejected even if it is not reached for adjudication until after her employment with the Bureau has been terminated.

Karen (Johnson) Bradshaw, 75 IBLA 342 (Aug. 31, 1983)

FEDERAL GRANT AND COOPERATIVE AGREEMENT ACT OF 1977

DISTINCTION BETWEEN COOPERATIVE AGREEMENTS AND GRANTS

If substantial involvement is anticipated between the agency and the state a cooperative agreement is to be used to accomplish the public purpose of support. If no substantial involvement is anticipated a grant agreement should be executed to accomplish the public purpose of support or stimulation authorized by Federal statute. Because substantial involvement is anticipated in the instant matter, a grant agreement would be the proper vehicle for accomplishing the public purpose of support.

Selection of the Proper Legal Instrument (Contract, Grant or Cooperative Agreement) under Federal Grant and Cooperative Agreement Act of 1977 (P.L. 95-224) to be used in Funding Construction of Recreation Facilities Authorized under the Federal Water Project Recreation Act of 1965 (P.L. 89-72), M-36931 (Jan. 19, 1981)
88 I.D. 228

SELECTION OF INSTRUMENT

Secs. 5 and 6 of the Federal Grant and Cooperative Agreement Act of 1977 require an agency to use a grant or cooperative agreement and not a contract whenever, as in the instant matter, the principal purpose of the relationship between the agency and the state is the transfer of money, property or services or anything of

FEDERAL GRANT AND COOPERATIVE AGREEMENT ACT OF 1977 --Continued

SELECTION OF INSTRUMENT--Continued

value to a state or local government or other recipient to accomplish a public purpose of support or stimulation authorized by a Federal statute, rather than acquisition by purchase, lease, or barter, of property or services for direct benefit or use of the Federal Government.

Selection of the Proper Legal Instrument (Contract, Grant or Cooperative Agreement) under Federal Grant and Cooperative Agreement Act of 1977 (P.L. 95-224) to be used in Funding Construction of Recreation Facilities Authorized under the Federal Water Project Recreation Act of 1965 (P.L. 89-72), M-36931 (Jan. 19, 1981)
88 I.D. 228

USE OF A CONTRACT

Under sec. 4 of the Federal Grant and Cooperative Agreement Act of 1977, 41 U.S.C. § 501 (1976), a contract would not be used to transfer funds from a bureau to a state for the purpose of constructing recreational facilities on Government owned land when the transaction is accompanied by a long term lease of the land to the state because the principal purpose of the relationship is for the benefit of the state and not "for the direct benefit or use of the Federal Government."

Selection of the Proper Legal Instrument (Contract, Grant or Cooperative Agreement) under Federal Grant and Cooperative Agreement Act of 1977 (P.L. 95-224) to be used in Funding Construction of Recreation Facilities Authorized under the Federal Water Project Recreation Act of 1965 (P.L. 89-72), M-36931 (Jan. 19, 1981)
88 I.D. 228

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976
(See also Hearings--if included in this Index.)

GENERALLY

The townsite laws were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790, and the initiation of an occupancy claim pursuant to any of the repealed laws after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right which would survive FLPMA.

Royal Harris, 45 IBLA 87 (Jan. 17, 1980)

Dennis L. Lattery, 45 IBLA 219 (Jan. 31, 1980)

Darrell P. Biggs, Karen Sue Biggs, 46 IBLA 132 (Mar. 19, 1980)

Dorothea H. Taylor, Robert Taylor, 46 IBLA 198 (Mar. 24, 1980)

Thomas Taggart, 46 IBLA 350 (Apr. 8, 1980)

George W. Murphy, 48 IBLA 123 (May 30, 1980)

Stephen Kenyon et al., 51 IBLA 368 (Dec. 30, 1980)

Under sec. 701(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), wilderness review under sec. 603 of FLPMA is applicable to Oregon and California railroad (O&C) lands only to the extent that it is consistent with the Act of Aug. 28, 1937. The Act requires O&C lands to be managed for permanent forest production. No wilderness review is required where the O&C lands are being managed for commercial timber production.

Julie Adams et al., 45 IBLA 252 (Feb. 4, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

The provisions of sec. 603(a), FLPMA, requiring the Secretary to review those roadless areas of 5,000 acres or more having wilderness characteristics does not apply to reverted Oregon and California (O&C) Railroad lands classified as timberlands.

Oregon Wilderness Coalition, 45 IBLA 387 (Feb. 7, 1980)

Where regulations implementing sec. 314 of the Federal Land Policy and Management Act of 1976 require reference to the Bureau of Land Management serial number under which a mining claim is recorded for future recordings, a claimant fails to include the number when he files a notice of assessment work, and he is specifically informed of this and other requirements, but fails to furnish the number, the filing is unacceptable, and failure to comply with the filing requirements constitutes abandonment of the claim, as provided by the Act.

David V. Ogi, 45 IBLA 389 (Feb. 13, 1980)

The owner of an unpatented mining claim located prior to Oct. 21, 1976, has until Oct. 22, 1979, to record the location. Recordation is effected by filing a copy of the location notice or certificate with the proper BLM office.

Failure to comply with the regulations governing recordation of assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned.

H. L. Smith, 46 IBLA 62 (Feb. 22, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where, under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file a notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, the mining claim is properly declared abandoned and void.

John Walter Chaney, 46 IBLA 229 (Mar. 27, 1980)

Where BLM purportedly has appraised the property on which appellant allegedly has an occupancy lease issued pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732 (1976), and appellant submits evidence which raises a question as to whether the correct property was appraised, supported by a statement from an independent real estate appraiser, and presents other data which challenges the validity of the appraisal, the State Office decision will be vacated and the case remanded to BLM for consideration of whether a new appraisal is warranted.

James T. Brown, 46 IBLA 265 (Mar. 27, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Beryl Rhodes, 46 IBLA 287 (Mar. 31, 1980)

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a $5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Phyllis Wood et al., 46 IBLA 309 (Apr. 4, 1980)

Beth Ballory, 47 IBLA 296 (May 19, 1980)

Edward J. Szymkowski, Jr., 53 IBLA 310 (Mar. 25, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner.

Glen J. McCrorey and Delorin McCrorey, 46 IBLA 355 (Apr. 8, 1980)

Cleo Mar Fresh, Marjorie P. Peterts, 50 IBLA 363 (Oct. 16, 1980)

Robert E. Donahue, 50 IBLA 374 (Oct. 21, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

George Toole, 47 IBLA 89 (Apr. 21, 1980)

Arthur W. Schmidt, 47 IBLA 143 (May 6, 1980)

Virginia Edwards, 47 IBLA 301 (May 19, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official notice of location or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, failing which the claim is properly deemed abandoned and void.

Sheldon Harpen, 47 IBLA 118 (Apr. 28, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Timely transmittal of the documents to the wrong BLM Office does not meet the requirements where the documents are not filed in the proper office timely.

John S. Henson, 47 IBLA 129 (Apr. 29, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A document received by BLM on Oct. 24, 1979, is not timely filed.

Dright P. Kennedy, 47 IBLA 132 (Apr. 29, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Filing in a BLM District Office rather than the designated BLM State Office is not sufficient.

John Sloan, 47 IBLA 146 (May 6, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Fred A. Dunham, 47 IBLA 152 (May 6, 1980)

George J. Burnett, 50 IBLA 124 (Sept. 24, 1980)

Lorraine Mohr, 50 IBLA 147 (Sept. 26, 1980)

County of Imperial, 51 IBLA 250 (Dec. 15, 1980)

Stephen Greist, 51 IBLA 287 (Dec. 17, 1980)

The standard of review in the case of rights-of-way applications for domestic water pipelines is whether the decisions demonstrate a reasoned analysis of the factors involved, with due regard for the public interest. A decision by BLM, made in exercise of its discretion, will be affirmed in the absence of sufficient reason to disturb it.

"Public sentiment" and/or "public opposition" are not synonymous with "the public interest" as used in

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

FLPMA. That Act addresses the "national interest." BLM is not required to accede to the wishes of a vocal group in making its decision.

Where the bases of decisions rejecting rights-of-way applications for domestic water facility are contradicted by the Environmental Analysis Report on the project and alternatives enumerated therein, and where BLM failed to consider possible mitigating actions suggested by appellant, the decisions will be vacated and remanded for further consideration.

East Canyon Irrigation Co., 47 IBLA 155 (May 6, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Documents filed in the proper BLM office after that date cannot be accepted even if they were erroneously transmitted to the Montana Department of Natural Resources before that date and were on file with the county office.

Jeanne G. Owens, 47 IBLA 172 (May 7, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

M. E. Rogers, 47 IBLA 196 (May 7, 1980)

Edvin Forsberg, 47 IBLA 235 (May 13, 1980)

John Hudspeth, Florsine Hudspeth, 48 IBLA 99 (May 29, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of recording with BLM, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Documents received in the Bureau of Land Management's Burns, Oregon, District Office on Oct. 22, 1979, are not timely filed in the proper BLM office, where pursuant to 43 CFR 1821.2-1(d), the proper office with jurisdiction over the area in which the claim is located is the Oregon State Office in Portland, and the

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

documents are not received in the State Office until after Oct. 22, 1979.

Floyd Kaiser, 47 IBLA 204 (May 7, 1980)

The owner of an unpatented mining claim on Federal lands located prior to Oct. 21, 1976, had until Oct. 22, 1979, to record the location in the proper BLM office. Recordation is effected by filing a copy of the official record of the location notice or certificate with the proper BLM office and payment of a service charge of $5 per claim.

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid.

The owner of an unpatented mining claim on Federal land located prior to Oct. 21, 1976, had to file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recordation, whichever date is earlier, evidence of annual assessment work performed during the preceding assessment year, or a notice of intention to hold the mining claim.

Failure to comply with the regulations governing recordation of notice of location or assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned and is void.

G. H. Monk, 47 IBLA 213 (May 13, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Appellant's attempt to mail the documents on Saturday, Oct. 20, 1979, will not excuse late filing even though he was told by the Post Office that the documents would be in Phoenix by Monday, Oct. 22, 1979.

Ray P. Coffee, 47 IBLA 217 (May 13, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The requirements are not met where documents are not received by the proper BLM office until Oct. 25, 1979, even though the claimant had the envelope date stamped by a different BLM office on Oct. 22, 1979, before mailing it to the proper office.

Santa Fe Nuclear, Inc., 47 IBLA 220 (May 13, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 2, 1979, and the service fee therefor is not paid to BLM until Oct. 29, 1979, the recordation date of the notice is Oct. 29, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A notice relating to an unpatented mining claim located before Oct. 21, 1976, which is filed with BLM on Oct. 29, 1979, is not timely filed.

Charles P. Seel, 47 IBLA 229 (May 13, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned and is void. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, accompanied by the proper fee.

Carl A. Borgstrom, 47 IBLA 232 (May 13, 1980)

The statute and regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claims have been abandoned and are void.

Andrew W. Berg, 47 IBLA 238 (May 13, 1980)

Departmental regulations 43 CFR Subpart 3109 and 3120.2-3, and sec. 603 of the Federal Land Policy and Management Act of 1976 provide ample authority for the Bureau of Land Management to require oil and gas lessees to agree to wilderness protection stipulations.

Rocky Energy, Inc., 47 IBLA 284 (May 15, 1980)

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a $5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Roy Treseyne, 47 IBLA 289 (May 15, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the service fee therefor is not paid to BLM until Nov. 13, 1979, the recordation date of the notice is Nov. 13, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A notice relating to an unpatented mining claim located before Oct. 21, 1976, which is filed with BLM on Nov. 13, 1979, is not timely filed.

Loyal Dee Griggs, 47 IBLA 293 (May 15, 1980)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. As this is a mandatory requirement there is no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where, for a claim located after Oct. 21, 1976, the filing fee is not paid within 90 days after the date of location, the claim must be deemed abandoned and void.

David Mendenhall, 47 IBLA 298 (May 19, 1980)

Fleck Mining and Investment Co., 49 IBLA 187 (Aug. 6, 1980)

Gary Hansbrough, 50 IBLA 206 (Sept. 30, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a placer mining claim must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

Allen J. Maxwell, Mary A. Janusz, 47 IBLA 306 (May 19, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

Jean L. Greene, 47 IBLA 309 (May 19, 1980)

Andy Syndbad, 48 IBLA 87 (May 29, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned and is void. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979.

William and Marie Blanchard, 47 IBLA 312 (May 19, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 11, 1979, and the service fee therefor is not paid to BLM until Nov. 20, 1979, the recordation date of the notice is Nov. 20, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A notice relating to an unpatented mining claim located before Oct. 21, 1976, which is filed with BLM on Nov. 20, 1979, is not timely filed.

Frank Frenich, 47 IBLA 332 (May 21, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim, located after Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office within 90 days after the date of location of such claim, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

The "proper BLM office" is defined in 43 CFR 3833.0-5(g) as the BLM office which has jurisdiction over the area in which the claim is located, as specified in 43 CFR 1821.2-1(d). Where this latter regulation designates the Oregon State Office as the proper office, filing in a local Oregon office is not sufficient.

Tina Anderson, 47 IBLA 348 (May 21, 1980)

The owner of an unpatented mining claim located prior to Oct. 21, 1976, must record the location on or before Oct. 22, 1979. Recordation is effected by filing a copy of the location notice or certificate with the proper BLM Office.

The owner of an unpatented mining claim located prior to Oct. 21, 1976, and recorded with BLM in the calendar year 1977, must file affidavit of assessment work or notice of intention to hold the claim on or before Dec. 30 of the calendar year following the calendar year in which the claim was recorded with BLM and failure to comply with the regulations governing recordation of such instruments must result in a conclusive finding that the claim has been abandoned.

Where mining claimants attempt to record their claims on Oct. 28, 1977, which were located prior to

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Oct. 21, 1976, but do not submit the mandatory service fee, as required by 43 CFR 3833.1-2(d), until May 3, 1978, recordation of the claims is effective as of May 3, 1978, and the claimants are not required to file evidence of annual assessment work until Oct. 22, 1979.

W. Verne Kight, Eva M. Kight, 47 IBLA 351 (May 21, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the filing fee therefor is not paid to BLM until Mar. 10, 1980, the recordation date of the notice is Mar. 10, 1980.

Wilbur Martin, 47 IBLA 370 (May 21, 1980)

The Federal Land Policy and Management Act of 1976 does not provide the Bureau of Land Management or the Interior Board of Land Appeals with discretion to waive the effects of failure to comply with the recordation requirements.

Sylvan S. Hewitt, Dennis Wallace, 47 IBLA 393 (May 22, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Where a copy of the notice or certificate of location is on file at the BLM Phoenix District Office in relation to trespass action and the $5 filing fee is not received in the BLM Arizona State Office until after the deadline, the certificate of location is not timely filed and the mining claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Mitsuko Flick, 48 IBLA 1 (May 27, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that the Post Office assured the claimant that the documents would reach the Oregon State Office by Oct. 22, 1979, will not excuse the late filing.

Norman E. Brooks, 48 IBLA 16 (May 27, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location and related material for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. File means being received and date stamped by the proper BLM office. Failure to

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

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so file is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

Robert Billing et al., 48 IBLA 39 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode or placer mining claim must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner. A question as to the date of location is to be resolved according to state law, pursuant to 43 CFR 3833.0-5(b).

Larry Lahusen, Jay Coates, 48 IBLA 43 (May 29, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Pursuant to 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Ross W. Mathews, 48 IBLA 71 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Filing is accomplished when a document is delivered to and received by the proper office. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Under 43 CFR 3833.2-1(a), the owner of a mining claim located on Federal lands on or before Oct. 21, 1976, must file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. Filing is accomplished when a document is delivered to and received by the proper office. Failure to so file constitutes abandonment of the claim and renders the claim void.

Johnnie Finnegan, Don E. Gordon, Carl Holder, 48 IBLA 79 (May 29, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

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certificate of location of the claim with the proper Bureau of Land Management Office prior to Oct. 22, 1979. A copy of the location certificate, which is not an exact replica or machine copy of the recorded certificate, but which contains the same language and is filed timely will be accepted as complying with the laws and regulations.

Vilma Hartley, 48 IBLA 83 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode or placer mining claim must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute and abandonment of the claim by the owner.

Paul B. Rhodes, 48 IBLA 90 (May 29, 1980)

Where a claimant timely files notices of location for recordation of his mining claims and submits a sketch map and narrative description of the location of the claims sufficient to locate the claimed lands on the ground, and identifies the claims by section, township, range, meridian, and state, he has met the requirements of sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2(c)(5) and (6).

Robert H. Lawson, 48 IBLA 93 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2 and 3833.2-1, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location and a copy of the recorded affidavit of assessment work or notice of intention to hold the claim, with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim must be deemed abandoned and void.

Helen E. Wallace, 48 IBLA 127 (May 30, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A document required to be filed on or before Oct. 22, 1979, and received by BLM on Jan. 8, 1980, is not timely filed.

James E. Cooper, 48 IBLA 175 (June 9, 1980)

The statute and regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where, under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file a notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, the mining claim is properly declared abandoned and void.

Robert Alameda et al., 48 IBLA 178 (June 9, 1980)

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GENERALLY--Continued

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of recording with BLM, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), gives no authority to the Department of the Interior to accept for mining claim recordation documents submitted after the statutory time requirements as if they were timely filed in order to avoid the consequences of the statute.

John F. Sherwood, 48 IBLA 180 (June 9, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. Under 43 CFR 3833.1-2 there is no express requirement that a machine reproduction be provided. Accordingly, a handwritten duplicate of a notice of location is acceptable under the regulations.

H. C. Miles, 48 IBLA 214 (June 16, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

Under 43 CFR 3833.2-1(a), the owner of a mining claim located on Federal lands on or before Oct. 21, 1976, must file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. Failure to so file constitutes abandonment of the claim.

A. J. Grady, 48 IBLA 216 (June 16, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

"Fair market value." Under the Federal Land Policy and Management Act of 1976 and existing Departmental regulations to the extent practicable, a grantee must pay fair market value for a right-of-way on public land. "Fair market value" is the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

B & B Service, Inc., 48 IBLA 233 (June 17, 1980)

Northwestern Colorado Broadcasting Co., 49 IBLA 23 (July 15, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Joe Rapic, 48 IBLA 255 (June 26, 1980)

The townsite laws were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790. A claim under the townsite laws will be rejected where appellants have submitted no proof that they occupied the land prior to the effective date of FLPMA, Oct. 21, 1976, thus giving them a valid existing right which would have survived FLPMA.

Patsy Karl Noakok, Spiller A.C. Noakok, 48 IBLA 377 (July 11, 1980)

The owner of an unpatented mining claim on Federal land located prior to Oct. 21, 1976, had to file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recordation, whichever date is earlier, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Dollie L. Gleah, 48 IBLA 404 (July 11, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Don R. Bird et al., 49 IBLA 94 (July 22, 1980)

Herb Ballou, 49 IBLA 225 (Aug. 12, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

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and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner.

Rose Weaver, 49 IBLA 111 (July 28, 1980)

Cripple Creek Exploration Corp., 49 IBLA 190 (Aug. 6, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The statute and regulations governing recordation of mining claims are mandatory and where a mining claimant contends that he mailed his notices of location along with other documents which were received by the Bureau of Land Management 1 day after the filing date, the claims are properly declared abandoned and void.

G. E. Bergquardson, 49 IBLA 114 (July 28, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Filing in the Utah State Office rather than the Wyoming State Office is not sufficient.

Interstate Brick, 49 IBLA 125 (July 28, 1980)

Interstate Brick, 50 IBLA 107 (Sept. 17, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that appellant lost or misplaced the required documents and had to send away for new ones will not excuse late filing.

Gale E. Powell, 49 IBLA 173 (July 30, 1980)

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

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to constitute an abandonment of the claim by the owner and renders the claim void.

Glen Hocking, 49 IBLA 217 (Aug. 11, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. The owner of an unpatented mining claim, located after Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office within 90 days after the date of location of such claim. The statute and regulations governing recordation of mining claims are mandatory and where BLM has not received a notice of location, the claim is properly declared abandoned and void.

Margaret Covert, 50 IBLA 58 (Sept. 15, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that the documents had been deposited in the mail and postmarked by the postal authorities Oct. 22, 1979, will not excuse the late filing.

Helen Holland et al., 50 IBLA 121 (Sept. 24, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim.

Clifford J. Kelch, 50 IBLA 127 (Sept. 24, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented millsite located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. The owner of an unpatented millsite, located after Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office within 90 days after the date of location of such claim. The statute and regulations governing recordation of millsite claims are mandatory and where BLM has not received a notice of location, the claim is properly declared abandoned and void.

Wayne E. Clutts, 50 IBLA 379 (Oct. 22, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim must file a map, narrative, or sketch depicting the location of his mining claim or site. A BLM decision dated Aug. 22, 1980, effectively advising a claimant that his claims are void because no map has been filed within 30 days of July 16, 1979, will be set aside as erroneous where the file contains a map of the claims which is BLM date stamped Aug. 3, 1979.

George Phil Martinez, 51 IBLA 330 (Dec. 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. It also includes an exact reproduction, duplicate, or other acceptable evidence, except microfilm, of an amended instrument which may change or alter the description of the claim.

William E. Talbott et al., 52 IBLA 12 (Jan. 5, 1981)

Neither FLPMA nor the Taylor Grazing Act authorizes appropriation of water or provide an independent statutory basis for claims for water uses inconsistent in any way with the substantive requirements of state law.

Supplement to Solicitor Opinion No. M-36914, on Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (Supp.) (Jan. 16, 1981)
88 I.D. 253

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

Henri Gasek, 52 IBLA 200 (Jan. 26, 1981)

The standard of review in the case of a right-of-way application for a water diversion project is whether the decision demonstrated a reasoned analysis of the factors involved, with due regard for the public interest. A decision to reject such an application will not be affirmed where the record lacks sufficient reasons to support it.

Eugene T. Vogel, 52 IBLA 280 (Feb. 9, 1981) 88 I.D. 258

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

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When the owner of a lode or placer mining claim files a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim, he has complied with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2.

Lester L. Leonard, 54 IBLA 147 (Apr. 17, 1981)

The standard of review in the case of right-of-way applications for domestic water pipelines is whether the decision demonstrates a reasoned analysis of the factors involved with due regard for the public interest. A decision by BLM, made in exercise of its discretion, will be affirmed in absence of sufficient reason to disturb it.

Gary and Celia Boucher, 55 IBLA 272 (June 25, 1981)

The Federal Land Policy and Management Act of 1976 does not provide the Bureau of Land Management or the Interior Board of Land Appeals with discretion to waive the effects of failure to comply with the recordation requirements.

Sonny Chaspusys, 58 IBLA 29 (Sept. 16, 1981)

The Federal Land Policy and Management Act of 1976 requires the Secretary of the Interior to manage public lands under principles of "multiple use" and "sustained yield," and the statutory definition of these concepts recognizes the need for latitude and discretion in their implementation. As the Secretary's delegate, BLM has the responsibility of administering such policies and programs, and BLM must be accorded correlative powers of reasoned discretion in discharging these duties. Therefore, so long as the BLM policy or implementing action is based on a consideration of all relevant factors and is supported by the record, the Board will not disturb it absent a clear showing that it is contrary to statute or regulation or otherwise erroneous.

A.C.O.T.S., 60 IBLA 1 (Nov. 12, 1981)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim.

Vivian Sullivan Karlson, 60 IBLA 10 (Nov. 13, 1981)

With respect to the management of timber resources subject to the Act of Aug. 28, 1937, which relates to Oregon and California Railroad and Reconveyed Coos Bay Grant Lands, any conflict or inconsistency between that Act and the Federal Land Policy and Management Act of 1976 must be resolved in accordance with the former. However, where no relevant conflict is shown, FLPMA's definition of "sustained yield" will apply to both statutes.

A.C.O.T.S., 61 IBLA 166 (Jan. 25, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

Where lands are withdrawn by public land order within the jurisdiction of the Bureau of Land Management, such lands are not formally under the administration of the Department of Transportation, and 43 U.S.C. § 1714(i) (1976) does not apply to require the consent of the Secretary of Transportation to conveyance of such land to a Native corporation by the Bureau of Land Management under ANCSA.

The Secretary's power to delegate his withdrawal authority is limited by 43 U.S.C. § 1714(a) (1976). Where lands under withdrawal for other purposes are withdrawn for Native selection by § 11(a)(1) of ANCSA, subject to § 3(e) of the Act, such withdrawal is mandated by Congress and authority to revoke the previous withdrawal, as between the Secretary and the Bureau of Land Management, is not in issue.

Alaska Railroad, 7 ANCAB 8 (Mar. 26, 1982) 89 I.D. 118

Ultimate control of the disposition of public lands and resources belongs to Congress, and the responsibility of the Interior Department is to administer them in accordance with the dictates of the legislative branch. The Board is obliged to affirm BLM's declaration of mining claim abandonment and voidance, irrespective of appellant's argument that such result is contrary to other policies legislated by Congress, where appellant has not complied with the clear requirements of the FLPMA recordation provision.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

Where the current fair rental value of a cabin site has been determined in accordance with accepted appraisal procedures and the permittee contends that the rental is excessive, the burden is upon the permittee to prove by positive, substantial evidence that the appraisal is in error.

Homer A. Stroud et al., 4 OHA 257 (Apr. 9, 1982)

The Department's mining claim filing regulation providing for filing of information by owners of unpatented mining claims on public domain, and providing consequences for failing to file, does not violate any provision of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Francis Skow et al., 63 IBLA 235 (Apr. 19, 1982)

The standard of review in the case of a right-of-way application for a water diversion project is whether the decision demonstrates a reasoned analysis of the factors involved, with due regard for the public interest. A decision to reject such an application will be affirmed where there is insufficient basis in the record to disturb it.

Jack W. Mays, Gary L. Harrell, 66 IBLA 222 (Aug. 16, 1982)

Under sec. 701(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), wilderness review under sec. 603 of FLPMA is applicable to Oregon and California Railroad (O&C) lands only to the extent that it is consistent with the Act of Aug. 28, 1937. The Act requires O&C lands to be managed for permanent forest production. No wilderness review is

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GENERALLY--Continued

required where the O&C lands are being managed for commercial timber production.

Oregon Wilderness Coalition, 71 IBLA 67 (Feb. 22, 1983)

It is proper to reject an application for mineral patent where the official records disclose that the alleged claims have been conclusively determined to be abandoned and void for failure to comply with the recordation requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Mineral Investigation & Development Co., 71 IBLA 398 (Mar. 31, 1983)

Sec. 302 of the Federal Land Policy and Management Act of 1976 vests in the Secretary the responsibility to prevent unnecessary or undue degradation of the public lands. It also preserves a mining claimant's right of ingress and egress. Consequently, the grant of a right-of-way, which is directionary under the Act, is not the proper method of regulating a mining claimant's access in conjunction with surface management to prevent undue degradation. Rather, questions of access to mining claims are properly resolved under the surface management regulations at 43 CFR Subpart 3809 which were promulgated pursuant to sec. 302 and specifically address mineral entry, access, and operations.

Mosch Mining Co., 75 IBLA 153 (Aug. 18, 1983)
90 I.D. 382

BLM may properly condition the approval of a plan of operations for open pit mining on the acceptance of stipulations designed to prevent unnecessary and undue degradation of the public lands where such stipulations are reasonable and properly reflect considerations of the public interest. However, where the language of the stipulations does not accurately reflect the intent of the parties BLM should consider language modifications to answer legitimate concerns of the operator and incorporate the assurances given by BLM.

Draco Mines, Inc., 75 IBLA 278 (Aug. 26, 1983)

The standard of review in the case of right-of-way applications for domestic water pipelines is whether the decision demonstrates a reasoned analysis of the factors involved, with due regard for the public interest. The burden is upon the appellant to establish reversible error in the decision appealed from.

Georgene E. Rieck, William L. Rieck, 76 IBLA 45 (Sept. 19, 1983)

The language of sec. 601(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1781(f) (1982), was intended by Congress to have application to patents issued to mining claims perfected after passage of the Act. A patent to a mining claim which had been perfected prior to passage of the Act should, therefore, not contain the restrictive language contemplated by sec. 601(f).

California Portland Cement Corp., 83 IBLA 11 (Sept. 18, 1984)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

ACQUISITIONS

Lands acquired by donation under sec. 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1715 (1976), become "public lands" upon acceptance of title.

Lands acquired pursuant to sec. 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1715 (1976), are not open to mineral location until a notice of availability has been duly published.

Junior L. Dennis, 61 IBLA 8 (Dec. 29, 1981)

ASSESSMENT WORK

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 31 of the calendar year following the calendar year in which the claim was recorded in the BLM office, the claim is properly deemed conclusively to have been abandoned.

Willene Minnier, 45 IBLA 1 (Jan. 8, 1980)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), if an unpatented mining claim located before Oct. 21, 1976, is not supported annually on or before Dec. 31 of the calendar year following the calendar year he recorded the claim in the BLM office by either an affidavit of assessment work or notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement that there was no intention to abandon and that the failure to file the required statements with BLM was an oversight.

Jerry Cupper, 45 IBLA 215 (Jan. 30, 1980)

Under 43 CFR 3833.2-1(b) (1978), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, shall, prior to Dec. 31 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.

Robert W. Hansen, Federal Bentonite Co., 46 IBLA 93 (Feb. 28, 1980)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file with the appropriate office of the Bureau of Land Management an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the calendar year following the date of location or the claim will be conclusively deemed to have been abandoned.

Betty and Clarence L. Guffey, 47 IBLA 175 (May 7, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid.

G. H. Monk, 47 IBLA 213 (May 13, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

ASSESSMENT WORK--Continued

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 2, 1979, and the service fee therefor is not paid to BLM until Oct. 29, 1979, the recordation date of the notice is Oct. 29, 1979.

Charles P. Seal, 47 IBLA 229 (May 13, 1980)

Where the owner of an unpatented mining claim located before Oct. 21, 1976, files a copy of the original notice of location in the calendar year 1978, he is required by 43 CFR 3833.2-1(a) to file proof of assessment work for the assessment year ending on Aug. 31, 1979, on or before Oct. 22, 1979, failing which his claim is properly declared abandoned and void.

A mining claimant's failure to file timely evidence of annual assessment work is not excused by alleged tardiness of the State recorder's office in recording this information and returning a record copy to claimant, as a claimant is permitted under 43 CFR 3833.2-2(a) to satisfy the Federal filing requirements by submitting a duplicate of the assessment notice, even though it has not yet been filed for record with the State.

Harry J. Phillips, 47 IBLA 252 (May 13, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the service fee therefor is not paid to BLM until Nov. 13, 1979, the recordation date of the notice is Nov. 13, 1979.

Loyal Doe Griggs, 47 IBLA 293 (May 15, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 11, 1979, and the service fee therefor is not paid to BLM until Nov. 20, 1979, the recordation date of the notice is Nov. 20, 1979.

Frank Frabich, 47 IBLA 332 (May 21, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the filing fee therefor is not paid to BLM until Mar. 10, 1980, the recordation date of the notice is Mar. 10, 1980.

Wilbur Martin, 47 IBLA 370 (May 21, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

ASSESSMENT WORK--Continued

The owner of an unpatented mining claim located after Oct. 21, 1976, must file with the appropriate office of the Bureau of Land Management an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the calendar year following the date of location or the claim will be deemed conclusively to have been abandoned.

Where an appellant asserts on appeal that proof of labor was mailed timely to the Bureau of Land Management, but there exists no record of their receipt, the documents cannot be considered as filed.

Gary L. Barton, J. Marinelli, R. Nixon, 47 IBLA 386 (May 21, 1980)

Where the owner of an unpatented mining claim located prior to, but recorded with BLM after Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Alice E. Deetz, 48 IBLA 59 (May 29, 1980)

Under 43 CFR 3833.2-1(a), the owner of a mining claim located on Federal lands on or before Oct. 21, 1976, must file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. Filing is accomplished when a document is delivered to and received by the proper office. Failure to so file constitutes abandonment of the claim and renders the claim void.

Johnnie Finnegan, Don E. Gordon, Carl Holder, 48 IBLA 79 (May 29, 1980)

Where the owner of an unpatented mining claim, located by a predecessor in 1977, fails to file an affidavit of assessment work as required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(c), on or before Dec. 30 of the calendar year following the calendar year in which the claim was located, the claim is properly deemed to have been abandoned.

White Star Foundation, Inc., 48 IBLA 96 (May 29, 1980)

Where the owners of unpatented mining claims located before Oct. 21, 1976, fail to file copies of the original notices of location with the proper BLM office on or before Oct. 22, 1979, their claims are properly held to be abandoned and void.

Jean C. Lepper et al., 48 IBLA 103 (May 29, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of annual assessment work or notice of intention to hold on or before Oct. 22, 1979, his claim is deemed conclusively to be abandoned and to be null and void.

Kenneth E. Parker, 48 IBLA 129 (May 30, 1980)

Century XXI Mining, Inc., 49 IBLA 166 (July 30, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

ASSESSMENT WORK--Continued

Under 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, shall, on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.

Ronald Foraker, 48 IBLA 132 (May 30, 1980)

Anna Schalkevicz, 48 IBLA 134 (May 30, 1980)

Zoos Associates, 50 IBLA 164 (Sept. 30, 1980)

A claimant who has located a mining claim in April 1975 and thereafter records his notice of location simultaneously with his filing of evidence of assessment work in May 1978 has satisfied the requirements of 43 CFR 3833.2-1(a) by filing evidence of assessment work on or before Dec. 30, 1979.

Robert W. Perkin, 48 IBLA 209 (June 16, 1980)

Under 43 CFR 3833.2-1(a), the owner of a mining claim located on Federal lands on or before Oct. 21, 1976, must file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. Failure to so file constitutes abandonment of the claim.

A. J. Grady, 48 IBLA 218 (June 16, 1980)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed conclusively to have been abandoned.

Margaret J. Wilson, 49 IBLA 228 (Aug. 12, 1980)

James V. Brady, 51 IBLA 361 (Dec. 29, 1980)

Pursuant to 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of the recording with BLM of the copy of the notice or certificate of location, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Milburn Downey, Eugene A. Cunningham, 50 IBLA 212 (Sept. 30, 1980)

Where the owners of an unpatented mining claim located prior to Oct. 21, 1976, fail to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, having filed a copy of the notice of location with BLM during calendar year 1978, the claim is properly deemed to be abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

Where appellants assert on appeal that evidence of assessment work was timely mailed to BLM, but there

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

ASSESSMENT WORK--Continued

exists no record of its receipt the documents cannot be considered as filed.

Donald D. Vessey et al., 50 IBLA 277 (Oct. 6, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file on or before Oct. 22, 1979, an affidavit of annual assessment work or notice of intention to hold, the claim must be deemed abandoned and void.

Pearl Kelly, 51 IBLA 185 (Dec. 2, 1980)

Lloyd M. Buttgereit, 52 IBLA 363 (Feb. 19, 1981)

Under 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, must on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim, or the claim must be presumed abandoned and void.

Santa Monica Hospital Medical Center Foundation, 51 IBLA 194 (Dec. 5, 1980)

Glen Gould, 52 IBLA 305 (Feb. 10, 1981)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Kerry and Ingrid Douglas, 53 IBLA 18 (Feb. 26, 1981)

Thomas Williams, 56 IBLA 55 (July 10, 1981)

Judy B. Genger, 59 IBLA 199 (Oct. 27, 1981)

All Minerals Corp., 60 IBLA 85 (Nov. 19, 1981)

West Fork Mining Co., 60 IBLA 370 (Dec. 22, 1981)

Samantha Bowman, 61 IBLA 20 (Dec. 29, 1981)

Herman Pilty, 61 IBLA 113 (Jan. 6, 1982)

Pursuant to 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of the recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4. The fact that the Post Office may have assured the claimant that the documents would reach the New Mexico State Office by Dec. 30, 1980, will not excuse late filing.

Jack H. Wheatley, 55 IBLA 145 (June 8, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

ASSESSMENT WORK--Continued

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Feldslite Corporation of America, 56 IBLA 78 (July 15, 1981) 88 I.D. 643

Mrs. Otis Tenford, 56 IBLA 367 (Aug. 3, 1981)

Dave R. Bowman, 57 IBLA 23 (Aug. 6, 1981)

Bruce J. Reiss, 57 IBLA 152 (Aug. 25, 1981)

Nelson C. Berry, 57 IBLA 268 (Aug. 31, 1981)

Keith R. O'Hara, 58 IBLA 59 (Sept. 21, 1981)

Inez Crews et al., 59 IBLA 257 (Oct. 29, 1981)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, i.e., on or after Jan. 1 and on or before Dec. 30.

James V. Joyce (On Reconsideration), 56 IBLA 327 (July 30, 1981)

Rupert Thorne, 58 IBLA 319 (Oct. 16, 1981)

Edwin Striegel, Marie A. O'Brien, 60 IBLA 232 (Dec. 4, 1981)

Where, on or before Oct. 22, 1979, a mining claimant files proof of assessment work for a claim located prior to Oct. 21, 1976, which proof had been duly filed in the local offices of the state wherein the notice of location was filed, but such assessment work was not performed in the assessment year preceding the filing, the claimant has complied with the statutory requirements and should be afforded an additional opportunity to comply with the regulatory requirements prior to a finding of abandonment.

Perry L. Johnson et al., 57 IBLA 20 (Aug. 6, 1981)

Piet Avery, 60 IBLA 159 (Nov. 24, 1981)

The failure of a holder of a tunnel site claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the tunnel site is a curable defect and the tunnel site may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Robert P. Wilson, 57 IBLA 40 (Aug. 10, 1981)

John R. Erickson, 57 IBLA 157 (Aug. 25, 1981)

Heidelberg Silver Mining Co., Inc., 58 IBLA 10 (Sept. 16, 1981)

Where the owner of unpatented mining claims located before Oct. 21, 1976, submits copies of the location notices and proof of labor to BLM in June and Aug. 1979, and submits another proof of labor to BLM in Nov. 1980, it has satisfied the current recording requirements of

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

ASSESSMENT WORK--Continued

both the Federal Land Policy and Management Act of 1976, and the regulations in 43 CFR Subpart 3833.

Silica Sand Corp., 57 IBLA 76 (Aug. 21, 1981)

Where, on or before Oct. 22, 1979, a mining claimant files proof of assessment work for a claim located prior to Oct. 21, 1976, which proof had been duly filed in the local offices of the state wherein the notice of location was filed, but such assessment work was not performed in the assessment year preceding the filing, the claimant has complied with the statutory requirements and should be afforded an additional opportunity to comply with the regulatory requirements prior to a finding of abandonment.

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, i.e., on or after Jan. 1 and on or before Dec. 30.

Jack McCarley, 58 IBLA 239 (Oct. 6, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of unpatented mining claim located before Oct. 21, 1976, shall file in the proper BLM office on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter, evidence of annual assessment work or a notice of intention to hold the mining claim or the mining claim shall be declared abandoned and void pursuant to 43 CFR 3833.4(a).

Samuel Waldenberg, 59 IBLA 390 (Nov. 10, 1981)

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency of which the owner is entitled to notice and an opportunity to rectify prior to a decision finding the claim abandoned and void.

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Harvey A. Clifton et al., 60 IBLA 29 (Nov. 16, 1981)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, files proof of annual assessment work or a notice of intention to hold the claim in calendar year 1977, the owner is required by the terms of the statute to file proof of assessment work within each calendar year (on or before Dec. 30) thereafter.

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, and recorded with BLM in 1977, fails to file an affidavit of assessment work

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

ASSESSMENT WORK--Continued

or notice of intention to hold the claim on or before Dec. 30 of the calendar year following the calendar year in which he recorded in the BLM office, i.e., on or after Jan. 1, and on or before Dec. 30, 1978, the claim is properly deemed conclusively abandoned and void.

M. L. Harold Petroleum Services, 60 IBLA 90 (Nov. 19, 1981)

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency. Where the claimant has submitted this evidence on appeal, he has cured this deficiency.

Ned V. Scott, Jr., 61 IBLA 109 (Jan. 4, 1982)

While res judicata and collateral estoppel may be appropriately applied by the Board in its decisions, those doctrines need not be employed where the effect would be to impair the correctness and consistency of the Board's decisions and prevent the effectuation of statutory and regulatory policy. Where the Board has overruled part of an earlier Board decision that had reversed a BLM decision for invalidating appellants' mining claims upon an improper basis, res judicata will not protect appellants' claims from a subsequent BLM decision of invalidity grounded on a correct statement of appellants' violation of the recording laws.

Hollie McLaughlin, General Electric Co., 61 IBLA 347 (Feb. 11, 1982)

Proof of labor or notice of intention to hold a mining claim must be filed with BLM each calendar year, on or after Jan. 1 and on or before Dec. 30. The requisite filing of either of those documents for calendar year 1980 was not accomplished by appellant's filing a labor affidavit in Oct. 1979 for the 1980 assessment year, and the BLM decision declaring the affected mining claims abandoned and void must be affirmed. The failure to file timely those documents is not curable after the filing deadline.

Erickson Placers, Inc., 63 IBLA 60 (Mar. 30, 1982)

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

ASSESSMENT WORK--Continued

at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency of which the owner is entitled to notice and an opportunity to rectify prior to a decision finding the claim abandoned and void.

Henry Seibel, Clara Seibel, 63 IBLA 77 (Mar. 30, 1982)

Jack L. Kettler, 68 IBLA 301 (Nov. 19, 1982)

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, i.e., on or after Jan. 1 and on or before Dec. 30. Failure to file within the calendar year properly results in a mining claim being declared abandoned and void.

Oregon Portland Cement Co., 66 IBLA 204 (Aug. 13, 1982)

Where the requirement of filing proof of assessment work or a notice of intention to hold the claim applies, such filing must be made within each calendar year, i.e., on or after Jan. 2, and on or before Dec. 30.

C. G. Rhinehart, 76 IBLA 228 (Oct. 17, 1983)

Where a decision of the Board affirming a determination that certain mining claims were abandoned and void is reversed on appeal and the case is remanded to the Board, the decision of the Court constitutes the law of the case and the Board will vacate its prior decision and reinstate the mining claims.

Oregon Portland Cement Co. (On Judicial Remand), 84 IBLA 186 (Dec. 21, 1984)

CALIFORNIA DESERT CONSERVATION AREA

Sec. 603(a) of the Federal Land Policy and Management Act of 1976 directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness. BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Where the record evidences BLM's first-hand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to great deference.

National Outdoor Coalition, 59 IBLA 291 (Oct. 30, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

CALIFORNIA DESERT CONSERVATION AREA--Continued

The language of sec. 601(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1781(f) (1982), was intended by Congress to have application to patents issued to mining claims perfected after passage of the Act. A patent to a mining claim which had been perfected prior to passage of the Act should, therefore, not contain the restrictive language contemplated by sec. 601(f).

Effect must be given, if possible, to every word, clause, and sentence in a statute. Therefore, the application of sec. 601(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1781(f) (1982), to mineral patent must be made in a manner which recognizes valid existing rights of a mineral claimant at the time of passage of the Act.

California Portland Cement Corp., 83 IBLA 11 (Sept. 18, 1984)

CONVEYANCES

Where evidence is persuasive that certain land was included in a homestead patent as the consequence of an error in description, and other land was settled, improved and occupied for several decades thereafter, an application to reform the patent will be allowed where the concerned administrative agencies do not object, the Government's interests are not unduly prejudiced, no third party's rights are affected, and substantial equities of the applicant will thereby be preserved.

Mantle Ranch Corp., 47 IBLA 17 (Apr. 11, 1980) 87 I.D. 143

The Federal Land Policy and Management Act of 1976 did not repeal the Act of July 6, 1960. Therefore, the provisions of the former do not provide authority to grant a disclaimer where doing so is contrary to the provisions of the latter. Further, the Federal Land Policy and Management Act of 1976 requires consultation with any affected agency prior to issuing a disclaimer. Where the Forest Service, which controls the surface of the affected lands within a national forest, expresses strong opposition to issuing a disclaimer, BLM's refusal to exercise the discretionary authority to do so is proper.

Soda Flat Co., Inc., 75 IBLA 388 (Sept. 2, 1983)

CORRECTION OF CONVEYANCE DOCUMENTS

Under sec. 316 of the Federal Land Policy and Management Act of 1976, the Secretary of the Interior has discretionary authority to correct an error in a conveyance document when the error is clearly established and equitable considerations dictate that relief be granted. BLM's rejection of an application to amend a homestead patent to change the legal description of the land patented will be affirmed where the record does not support a finding that the entryman erred in describing the lands he had entered.

Ben N. Williams, 57 IBLA 8 (Aug. 5, 1981)

Under sec. 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1976), the Secretary of the Interior has discretionary authority to correct an error in a conveyance document when the error is clearly established and equitable considerations dictate that relief be granted. Where a company establishes that it acquired a right-of-way pursuant to the Act of July 26, 1866, prior to the repeal of the right-of-way provisions of that Act by the Federal Land Policy and Management Act of 1976, a subsequent interim

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

CORRECTION OF CONVEYANCE DOCUMENTS--Continued

conveyance to a Native corporation is subject to that right-of-way, and where the conveyance does not reflect that fact, the Secretary may act to correct that error.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

Under sec. 316 of the Federal Land Policy and Management Act of 1976, the Secretary of the Interior has discretionary authority to correct an error in a conveyance document when the error is clearly established and equitable considerations dictate that relief be granted. BLM's rejection of an application to amend a homestead patent to include additional acreage will be affirmed where the record does not support a finding that the original patentees had entered those lands, nor was there ever any intent to enter such lands as part of the original homestead entry.

Elmer L. Love, 80 IBLA 101 (Apr. 3, 1984)

Sec. 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1982), provides that the Secretary may make corrections of errors in any document of conveyance previously issued by the Federal Government to dispose of public lands. "Error" is defined in 43 CFR 1865.0-5(b) as "the inclusion of erroneous * * * reservations * * * in their entirety or in part, in a patent or document of conveyance as a result of factual error. This term is limited to mistakes of fact and not of law."

Applications for correction of patents are properly denied where the applicant is seeking to have coal rights transferred to it which were reserved in patents pursuant to the Act of Mar. 3, 1909, 30 U.S.C. § 81 (1982), or the Act of June 22, 1910, 30 U.S.C. §§ 83-85 (1982). Such reservations were not a product of mistake or error. The Department of the Interior was required by those Acts to include the reservations.

Walter & Margaret Bales Mineral Trust, 84 IBLA 29 (Nov. 27, 1984)

Under sec. 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1982), the Secretary has authority to correct error in a conveyance document disposing of public land. Where the party seeking reformation is not the holder of the patent, the provision may not be applied without consent and surrender of the patent document by the patentee.

Rosander Mining Co., 84 IBLA 60 (Nov. 30, 1984)

DISCLAIMERS OF INTEREST

While the Bureau of Land Management may suspend action on applications for recordable disclaimers of interest filed pursuant to sec. 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1745 (1976), where no implementing regulations have been issued and where there is no contrary policy directive, an application may be properly rejected where the statutory criteria have not been met.

Edward C. Miller, 56 IBLA 388 (Aug. 3, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

DISCLAIMERS OF INTEREST--Continued

The Federal Land Policy and Management Act of 1976 did not repeal the Act of July 6, 1960. Therefore, the provisions of the former do not provide authority to grant a disclaimer where doing so is contrary to the provisions of the latter. Further, the Federal Land Policy and Management Act of 1976 requires consultation with any affected agency prior to issuing a disclaimer. Where the Forest Service, which controls the surface of the affected lands within a national forest, expresses strong opposition to issuing a disclaimer, BLM's refusal to exercise the discretionary authority to do so is proper.

Soda Flat Co., Inc., 75 IBLA 388 (Sept. 2, 1983)

EXCHANGES

State exchange applications pending on Oct. 21, 1976, may be processed under sec. 8(c) of the Taylor Grazing Act, 43 U.S.C. § 315g(c) (1970), only if the state had complied with all the requirements necessary to vest rights to the exchange in the state; all other applications must be processed under sec. 206 of the Federal Land Policy and Management Act of 1976.

A protest against approval of a state exchange application is properly dismissed where the exchange is shown to be in the public interest under sec. 206 of the Federal Land Policy and Management Act of 1976, and it is immaterial that the protestants may be permittees or licensees of the selected lands whose grazing privileges would have been lost upon completion of the exchange, in that neither a licensee nor a permittee has a vested right in the land covered by the license or permit and such land is available for selection by a state.

Bryner Wood, 52 IBLA 156 (Jan. 21, 1981) 88 I.D. 232

State exchange applications pending on Oct. 21, 1976, may be processed under sec. 8(c) of the Taylor Grazing Act, 43 U.S.C. § 315g(c) (1970), only if the state had complied with all the requirements necessary to vest rights to the exchange in the state; all other applications must be processed under sec. 206 of the Federal Land Policy and Management Act of 1976.

A state exchange application being processed under sec. 206 of the Federal Land Policy and Management Act of 1976 does not segregate the selected public lands from the operation of the mineral leasing laws. 43 CFR 2201.1(b).

Dale E. Armstrong, 53 IBLA 153 (Mar. 12, 1981)

An exchange application being processed under sec. 206 of the Federal Land Policy and Management Act of 1976 does not segregate the selected public lands from the operation of the mineral leasing laws. 43 CFR 2201.1(b).

Lane Lagrich, 63 IBLA 192 (Apr. 8, 1982)

A protest against approval of a proposed land exchange, pursuant to sec. 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716 (1976), is properly dismissed where the protestant has not established that BLM did not adequately consider the public interest or that the lands exchanged are not of equal value.

F. F. Montoya, 70 IBLA 93 (Jan. 11, 1983)

Seven Star Ranch, Inc., 78 IBLA 356 (Jan. 30, 1984)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

EXCHANGES--Continued

A decision rejecting an oil and gas lease offer will be affirmed where the lands described have been reconveyed to the United States in a land exchange to be administered by the Bureau of Land Management but the lands have not been opened to mineral leasing by an order noted on the public land records.

Ion Holcstine, 73 IBLA 320 (June 7, 1983)

An application for an exchange of land pursuant to sec. 206 of FLPMA requires first a determination that the public interest will be well served by the exchange and, second, that the total value of the Federal land does not exceed the value of the offered land by more than 25 percent. Where, during the pendency of an appeal from the rejection of a proposal to exchange oil shale lands, certain economic events occur which both diminish the advantage of the exchange to the public interest and increase the disparity in the relative values of the offered and selected lands, the decision will be affirmed without an evidentiary hearing on the previous evaluations of the two properties.

Superior Oil Co. (Appellant), Cleveland-Cliffs Iron Co., & Sohio Shale Oil Co. (Intervenors), 78 IBLA 68 (Dec. 16, 1983)

While there is no Departmental policy absolutely forbidding multiparty exchanges under sec. 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716 (1976), no such exchange can be approved unless the land ultimately acquired by the United States benefits a Federal natural resource management program.

The fact that land sought in a private exchange is within a known geothermal resource area and is actually under lease is normally sufficient to support a finding that the land sought by the private party is more valuable for public purposes than the land which is being exchanged.

Harry M. Bailey, 79 IBLA 362 (Mar. 23, 1984)

Where a national conservation organization challenges a Bureau of Land Management determination to proceed with a private exchange, that organization satisfies the requirements of 43 CFR 4.410 by establishing that it is a "party to a case" and that it is adversely affected because its membership uses the public land in question.

Denial of a protest of a determination to proceed with a private exchange will be vacated and the case remanded where the record fails to reflect an evaluation of the environmental impacts sufficient to support an informed judgment.

Where the record shows that missing information is material to an agency decision on a private land exchange, it must be gathered and included in an environmental assessment. Only where the costs of obtaining the information are exorbitant or the means of obtaining it are beyond the state of the art must the agency weigh the need for the action against the risk and severity of possible adverse impacts of proceeding in the face of uncertainty. And only in the case of a determination to proceed in the face of uncertainty must a worst case analysis be conducted in accordance with 40 CFR 1502.22.

National Wildlife Federation, 82 IBLA 303 (Sept. 5, 1984)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

GRAZING LEASES AND PERMITS

Where two preference right applicants file conflicting applications for a grazing lease, sec. 402(c) of the Federal Land Policy and Management Act, 43 U.S.C. § 1752(c) (1976), mandates issuance of the new lease to the holder of the expiring lease provided that the holder of the expiring lease maintains his or her preference right qualifications and is otherwise in conformance with the applicable rules and regulations. However, where 43 U.S.C. § 1752(c) (1976) is not applicable, allocation of grazing privileges pursuant to 43 CFR 4110.5 is proper.

Bureau of Land Management v. Alfredo E. Maez, 67 IBLA 89 (Sept. 13, 1982)

A decision by BLM reducing authorized livestock grazing use pursuant to 43 CFR 4110.3-2(b) in order to facilitate achieving multiple-use management objectives, viz., allocating available forage to a competing antelope herd in the interest of promoting hunting and future transplanting, will not be disturbed absent substantial evidence showing that the decision is improper.

Charles Blackburn et al., 80 IBLA 42 (Mar. 28, 1984)

HEARINGS

Mining claimants who have not complied with the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976 have no due process right to an evidentiary hearing before the Department of the Interior to show that their actual intent not to abandon rebuts that section's conclusive presumption of abandonment, since the Department is duty-bound to enforce the conclusiveness of the statute's presumption whenever noncompliance has occurred, and any such hearing would be valueless.

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

INVENTORY AND IDENTIFICATION

Sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), mandates review by the Secretary only of those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a), 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in sec. 2(c) of the Wilderness Act, 43 U.S.C. § 1131(c) (1976).

Even if a 720-acre nonisland area of public land were considered as exhibiting the wilderness characteristics of size, i.e., of sufficient size as to make practicable its preservation and use in an unimpaired condition, sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), would not require review by the Secretary because such a parcel contains less than 5,000 acres.

Where the Bureau of Land Management's final initial inventory decision states that certain public land is eliminated from wilderness review in that it obviously lacks wilderness characteristics because it is too small to make practicable its preservation and use in an unimpaired condition, that decision will be affirmed in the absence of sufficient reasons to change the result.

Save the Glades Committee, 58 IBLA 215 (Apr. 23, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

INVENTORY AND IDENTIFICATION--Continued

While the Board of Land Appeals will give "considerable deference" to Bureau of Land Management designations of Wilderness Study Areas if thorough investigation underlies the Bureau's decision, where an appellant can specifically and convincingly show that there is sufficient reason to change the Bureau's decision, the Board must resolve the issue in favor of appellant. Such is the case where appellant has convinced the Board that the designated Wilderness Study Area is not "wilderness," as that term is described in 16 U.S.C. § 1131(c) (1976), by submitting detailed maps and photographs showing the adverse impact of appellant's open-pit mining operation on the area.

Union Oil Co., 56 IBLA 206 (July 22, 1981)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Union Oil Co. (On Reconsideration), 58 IBLA 166 (Sept. 28, 1981)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

The nonimpairment mandate of sec. 603(c), 43 U.S.C. § 1782(c) (1976), is therefore not applicable to those areas of less than 5,000 acres. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Tri-County Cattlemen's Ass'n, Idaho Cattlemen's Ass'n, 60 IBLA 305 (Dec. 18, 1981)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Where, in assessing the wilderness characteristics of a unit during the intensive inventory, the Bureau of Land Management determines only that the unit in conjunction with adjacent Forest Service land possesses a certain wilderness characteristic, the method of assessment is improper. The Bureau is required to

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

INVENTORY AND IDENTIFICATION--Continued

assess whether the unit itself has the requisite characteristic.

Don Coops et al., 61 IBLA 300 (Feb. 3, 1982)

Where, in assessing the wilderness characteristics of a unit during the intensive inventory, the Bureau of Land Management determines that a unit possesses a certain wilderness characteristic only in conjunction with contiguous lands administered by agencies other than BLM, the method of assessment is improper. BLM is required to assess whether the unit itself has the requisite characteristic.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

State of Nevada et al., 62 IBLA 153 (Mar. 5, 1982)

Sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), mandates review by the Secretary only of those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a), 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in sec. 2(c) of the Wilderness Act, 43 U.S.C. § 1131(c) (1976).

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

Inyo County Board of Supervisors, 63 IBLA 321 (Apr. 27, 1982)

The Wilderness Society et al., 66 IBLA 287 (Aug. 19, 1982)

Square Butte Grazing Ass'n, 67 IBLA 25 (Sept. 7, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

INVENTORY AND IDENTIFICATION--Continued

be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Amerco, Inc., et al., 64 IBLA 50 (May 6, 1982)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

Where the wilderness inventory discloses an area to be affected primarily by the forces of nature with the imprint of man's work substantially unnoticeable, the presence of minor intrusions which are substantially unnoticeable will not preclude designation as a wilderness study area.

A decision to draw the boundary of a wilderness study area along the edge of an imprint of man will be affirmed in the absence of a showing that the adjacent imprint so impinges upon lands within the wilderness study area as to deprive them of wilderness characteristics.

Owyhee Cattlemen's Ass'n, Idaho Board of Land Com'rs, Idaho Cattlemen's Ass'n, 71 IBLA 4 (Feb. 10, 1983)

The proper scope of the wilderness inventory conducted under secs. 201 and 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1711, 1782 (1976), involves a determination of whether the land inventoried is possessed of the wilderness characteristics defined by Congress so as to require designation as a wilderness study area. The question of the suitability of a tract of land within a wilderness study area for designation as wilderness, as contrasted with devotion of the land to other purposes, is properly considered during the subsequent study phase of the wilderness review process.

James Stewart Co., 71 IBLA 100 (Feb. 24, 1983)

An appellant requesting this Board to reverse a Bureau of Land Management decision including lands in a wilderness study area must show that the decision was based either on a clear error of law or a demonstrable error of fact, or the decision will be affirmed.

Jack Bros., Inc., 73 IBLA 192 (May 26, 1983)

BLM may properly eliminate areas of the public lands of less than 5,000 acres from further consideration as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

In deciding whether to designate an inventory unit as a wilderness study area under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), BLM may not compare a unit

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

INVENTORY AND IDENTIFICATION--Continued

with other units but may compare it with other areas in a particular region, on the basis of topographic, vegetative, and other features.

In deciding whether to designate an inventory unit as a wilderness study area under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), BLM may properly consider the configuration of the unit in assessing opportunities for solitude or primitive, unconfined recreation.

Sierra Club - Rocky Mountain Chapter et al., 75 IBLA 220 (Aug. 23, 1983)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Edward H. Hove, Fred Huff, Gerald A. Strauss, 76 IBLA 27 (Sept. 8, 1983)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

In assessing the wilderness characteristics of a unit during intensive inventory, BLM must consider whether the unit itself possesses those characteristics regardless of the character of adjacent areas that are not public lands.

Michael Huddleston et al., 76 IBLA 116 (Sept. 21, 1983)

LAND USE PLANNING

Where appellant disagrees with BLM's decision to designate an area for limited use by off-road vehicles and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

John Schandelmeier, 56 IBLA 284 (July 28, 1981)

Where appellant disagrees with BLM's decision to designate an area as permanently closed for use by off-road vehicles and seeks to have its judgment substituted for that of the decisionmaker, the appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Magic Valley Trail Machine Ass'n, Inc., 57 IBLA 284 (Aug. 31, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

LAND USE PLANNING--Continued

BLM classifications of land as suitable for disposition by public sale are not subject to appeal to the Board of Land Appeals. Likewise, BLM's dismissal of a protest against a resource management plan is not appealable to the Board. In each instance, other provisions for agency review have been made by regulations.

Oregon Natural Resources Council, 78 IBLA 124 (Dec. 27, 1983)

LEASES

Where BLM purportedly has appraised the property on which appellant allegedly has an occupancy lease issued pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732 (1976), and appellant submits evidence which raises a question as to whether the correct property was appraised, supported by a statement from an independent real estate appraiser, and presents other data which challenges the validity of the appraisal, the State Office decision will be vacated and the case remanded to BLM for consideration of whether a new appraisal is warranted.

James T. Brown, 46 IBLA 265 (Mar. 27, 1980)

Where the current fair rental value of a small tract lease has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error.

Hyatt Lake Homeowners Ass'n, 48 IBLA 159 (June 9, 1980)

Where a lessee of a small tract lease contends the rental set by the Bureau of Land Management is too high, the burden is upon her to prove by positive and substantial evidence that the appraisal is in error.

Lucille S. Hoerbing, 57 IBLA 74 (Aug. 20, 1981)

Where a noncompetitive oil and gas lease is canceled because a rental deficiency is not timely cured, the Department may return the rental pursuant to sec. 304(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1734(c) (1976), in appropriate circumstances where the lessee has derived no benefit from possession of the lease and there are no other factors militating against repayment.

Arden B. Grover, John B. Schumacher, 73 IBLA 308 (June 7, 1983)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas upon a determination, supported by facts of record, that leasing would not be in the public interest because it is incompatible with the character of the land which is being considered for designation as an "outstanding natural area," under 43 CFR 2071.1(b)(1), or an area of critical environmental concern, under sec. 103(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1702(a) (1976).

Lawrence E. Kent, 75 IBLA 186 (Aug. 22, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

OMITTED LANDS

Pursuant to the provisions of sec. 211 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1721 (1976), a sale of omitted lands to an individual is only authorized where the lands have been occupied and developed for a 5-year period prior to Jan. 1, 1975, and where the objectives served by conveyance outweigh all public objectives which would be served by retention of the land in Federal ownership.

August & Mary Sobotka, 79 IBLA 340 (Mar. 22, 1984)

PERMITS

The effect of a timely filed notice of appeal is to suspend the authority of the deciding official to exercise jurisdiction relating to the subject of the appeal. It does not have the effect, however, of suspending the authority of BLM to act on matters which, while related to the subject of the appeal, are nevertheless functionally independent therefrom.

Failure to pay the annual rental for a special land use permit constitutes sufficient ground for termination of the use. 43 CFR 2920.4(a).

East Canyon Irrigation Co., 47 IBLA 155 (May 6, 1980)

The issuance of special use permits is discretionary, and BLM may properly reject a permit application for an organized off-road motorcycle race where the proposed use would adversely affect critical deer winter range and would be inconsistent with the objectives, responsibilities, or programs for the management of the public lands involved.

Cascade Motorcycle Club, 56 IBLA 134 (July 20, 1981)

The provisions of sec. 504(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(a) (1976), do not authorize the issuance of temporary use permits absent an existing right-of-way, or for use as a communications site right-of-way.

Dwight L. Zundel, 62 IBLA 81 (Feb. 25, 1982)

An applicant for a special recreation use permit for river rafting will be considered as seeking a "commercial use" of the river, within the meaning of 43 CFR 8372.0-5(a), where the applicant or the applicant's employee makes a salary from or for services rendered to customers or participants in the permitted activity.

Wilderness/Challenge, Inc., 64 IBLA 44 (May 6, 1982)

The issuance of special use permits is discretionary, and BLM may accept or reject a permit application depending upon its consistency with the objectives, responsibilities, or programs for the management of the public lands involved. Where a duly authorized officer has exercised this responsibility, his actions will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

National Public Lands Task Force, Nevada Outdoor Recreation Ass'n., Inc., 70 IBLA 214 (Jan. 24, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

PERMITS--Continued

Use fees for special recreation use permits for competitive use in areas other than developed recreational sites are calculated pursuant to 43 CFR 8372.4(b)(2). This section provides for a use fee of 5 percent of the gross receipts (with certain minimums). However, there is no definition of the term "gross receipts" in the pertinent regulations or enabling legislation. Therefore, if a permittee appeals from a determination of the use fee owing under a special recreation use permit, the permittee must ordinarily demonstrate that: (1) The fee calculation contained mathematical errors or errors with respect to the amount, in fact, received; (2) the fee calculation was made using a formula which differed from that specifically agreed upon or contained in the permit; or (3) the fee calculation was not the same as had been previously applied to the permit and the permittee had no reason to believe that the formula would not be the same.

Score International, 78 IBLA 142 (Dec. 29, 1983)

Where sufficient doubt is raised about the method of an appraisal of fair market rental value for a residential occupancy permit, the case may be remanded for the Bureau of Land Management to conduct a further appraisal or adjust the appraised value.

Clinton Imeson, 83 IBLA 72 (Sept. 28, 1984)

The exercise of Secretarial discretion involved in the issuance of special use permits includes the authority to set permit conditions and establish penalties for violation of permit conditions. A temporary suspension of a permit imposed by the authorized officer for violations of permit conditions is found to be proper where it is shown the permit holder failed to make required reports and failed to mark boats to identify the permit holder as required by the permit conditions.

Osprey River Trips, Inc., 83 IBLA 98 (Oct. 1, 1984)

Collection of user fee pursuant to 43 CFR 8372.4 is proper where the commercial user was obligated to pay a fee for river rafting trips conducted in a special area under duly promulgated Departmental regulations even though Bureau of Land Management officials have not collected a user fee from noncommercial users of the same area.

Rogue River Outfitters Ass'n, 83 IBLA 151 (Oct. 10, 1984)

PLAN OF OPERATIONS

BLM may properly condition the approval of a plan of operations for open pit mining on the acceptance of stipulations designed to prevent unnecessary and undue degradation of the public lands where such stipulations are reasonable and properly reflect considerations of the public interest. However, where the language of the stipulations does not accurately reflect the intent of the parties BLM should consider language modifications to answer legitimate concerns of the operator and incorporate the assurances given by BLM.

Draco Mines, Inc., 75 IBLA 278 (Aug. 26, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

PLAN OF OPERATIONS--Continued

Significant alteration and enlargement of an existing access road constructed within a wilderness study area requires approval of a plan of operations.

William E. Godwin, 82 IBLA 105 (July 24, 1984)

PUBLIC PARTICIPATION

The public is properly included in formulation of resource and land management plans under the directive of the Federal Land Policy and Management Act of 1976, but such public participation is not mandatory for the discretionary issuance of a special use permit which accords with the prevailing management plan for the public lands involved.

National Public Lands Task Force, Nevada Outdoor Recreation Ass'n., Inc., 70 IBLA 214 (Jan. 24, 1983)

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), if an unpatented mining claim located before Oct. 21, 1976, is not supported annually on or before Dec. 31 of the calendar year following the calendar year he recorded the claim in the BLM office by either an affidavit of assessment work or notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement that there was no intention to abandon and that the failure to file the required statements with BLM was an oversight.

Jerry Cupper, 45 IBLA 215 (Jan. 30, 1980)

Where regulations implementing sec. 314 of the Federal Land Policy and Management Act of 1976 require reference to the Bureau of Land Management serial number under which a mining claim is recorded for future recordings, a claimant fails to include the number when he files a notice of assessment work, and he is specifically informed of this and other requirements, but fails to furnish the number, the filing is unacceptable, and failure to comply with the filing requirements constitutes abandonment of the claim, as provided by the Act.

David V. Udy, 45 IBLA 389 (Feb. 13, 1980)

The owner of an unpatented mining claim located prior to Oct. 21, 1976, has until Oct. 22, 1979, to record the location. Recordation is effected by filing a copy of the location notice or certificate with the proper BLM office.

Failure to comply with the regulations governing recordation of assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned.

M. L. Smith, 46 IBLA 62 (Feb. 22, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to BLM for recordation on Oct. 18, 1979, and the filing fee therefor is not paid to BLM until Nov. 7, 1979, the recordation date of the notice of location is Nov. 7, 1979. In the circumstances, under 43 CFR 3833.1-2 appellant's filing was not completed until Nov. 7, 1979, which is after the cutoff date of Oct. 22, 1979, for mining claims located prior to Oct. 21, 1976, and the mining claim must be deemed abandoned and void.

Nevada Pacific Co., Inc., 46 IBLA 208 (Mar. 24, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim was submitted to BLM for recordation on Oct. 22, 1979, the deadline date, and the filing fee therefore is not paid to BLM until after the deadline for filing had passed, the mining claim must be deemed abandoned and void.

L. Leon Jennings, Mansfield L. Jennings, Gilbert R. Jennings, 47 IBLA 47 (Apr. 14, 1980)

R. L. Durrant, Rod Holville, R. E. Kard, 47 IBLA 208 (May 13, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid.

The owner of an unpatented mining claim on Federal land located prior to Oct. 21, 1976, had to file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recordation, whichever date is earlier, evidence of annual assessment work performed during the preceding assessment year, or a notice of intention to hold the mining claim.

Failure to comply with the regulations governing recordation of notice of location or assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned and is void.

G. W. Monk, 47 IBLA 213 (May 13, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 2, 1979, and the service fee therefor is not paid to BLM until Oct. 29, 1979, the recordation date of the notice is Oct. 29, 1979.

Charles P. Seal, 47 IBLA 229 (May 13, 1980)

Where the owner of an unpatented mining claim located before Oct. 21, 1976, files a copy of the original notice of location in the calendar year 1978, he is required by 43 CFR 3833.2-1(a) to file proof of assessment work for the assessment year ending on Aug. 31, 1979, on or before Oct. 22, 1979, failing which his claim is properly declared abandoned and void.

A mining claimant's failure to file timely evidence of annual assessment work is not excused by

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

alleged tardiness of the State recorder's office in recording this information and returning a record copy to claimant, as a claimant is permitted under 43 CFR 3833.2-2(a) to satisfy the Federal filing requirements by submitting a duplicate of the assessment notice, even though it has not yet been filed for record with the State.

Harry J. Phillips, 47 IBLA 252 (May 13, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where certificates of location of mining claims are submitted to BLM for recordation on Oct. 18, 1979, and the filing fee therefor is not paid to BLM until Feb. 25, 1980, the recordation date of the notices of location is Feb. 25, 1980. In the circumstances, under 43 CFR 3833.1-2 appellant's filing was not completed until Feb. 25, 1980, which is after the cutoff date of Oct. 22, 1979, for mining claims located prior to Oct. 21, 1976, and the mining claims must be deemed abandoned and void.

Cecil V. Clifford, Jr., 47 IBLA 262 (May 13, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the service fee therefor is not paid to BLM until Nov. 13, 1979, the recordation date of the notice is Nov. 13, 1979.

Loyal Dee Griggs, 47 IBLA 293 (May 15, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of mining claims, were submitted to BLM for recordation and the filing fees therefor were not paid to BLM until after the deadline (90 days after the date of location) had passed, the mining claims must be deemed abandoned and void.

Virginia Edwards, 47 IBLA 301 (May 19, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 11, 1979, and the service fee therefor is not paid to BLM until Nov. 20, 1979, the recordation date of the notice is Nov. 20, 1979.

Frank Frenich, 47 IBLA 332 (May 21, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

The owner of an unpatented mining claim located prior to Oct. 21, 1976, must record the location on or before Oct. 22, 1979. Recordation is effected by filing a copy of the location notice or certificate with the proper BLM Office.

The owner of an unpatented mining claim located prior to Oct. 21, 1976, and recorded with BLM in the calendar year 1977, must file affidavit of assessment work or notice of intention to hold the claim on or before Dec. 30 of the calendar year following the calendar year in which the claim was recorded with BLM and failure to comply with the regulations governing recordation of such instruments must result in a conclusive finding that the claim has been abandoned.

Where mining claimants attempt to record their claims on Oct. 28, 1977, which were located prior to Oct. 21, 1976, but do not submit the mandatory service fee, as required by 43 CFR 3833.1-2(d), until May 3, 1978, recordation of the claims is effective as of May 3, 1978, and the claimants are not required to file evidence of annual assessment work until Oct. 22, 1979.

W. Verne Kight, Eva M. Kight, 47 IBLA 351 (May 21, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the filing fee therefor is not paid to BLM until Mar. 10, 1980, the recordation date of the notice is Mar. 10, 1980.

Wilbur Martin, 47 IBLA 370 (May 21, 1980)

The owner of an unpatented mining claim located prior to Oct. 21, 1976, had until Oct. 22, 1979, to record the location and file a copy of the recorded affidavit of assessment work or notice of intention to hold. Recordation is effected by filing a copy of the location notice or certificate with the proper BLM office.

Failure to comply with the regulations governing recordation of assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned and is void.

Bernard A. Schmid, 48 IBLA 48 (May 29, 1980)

Where the owner of an unpatented mining claim located prior to, but recorded with BLM after Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Department of the Interior, as agency of executive branch of Government, is not a proper forum to decide whether or not the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Alice E. Poore, 48 IBLA 59 (May 29, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Where the owner of an unpatented mining claim, located by a predecessor in 1977, fails to file an affidavit of assessment work as required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(c), on or before Dec. 30 of the calendar year following the calendar year in which the claim was located, the claim is properly deemed to have been abandoned.

White Star Foundation, Inc., 48 IBLA 96 (May 29, 1980)

Where the owners of unpatented mining claims located before Oct. 21, 1976, fail to file copies of the original notices of location with the proper BLM office on or before Oct. 22, 1979, their claims are properly held to be abandoned and void.

Joan C. Lepper et al., 48 IBLA 103 (May 29, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of annual assessment work or notice of intention to hold on or before Oct. 22, 1979, his claim is deemed conclusively to be abandoned and to be null and void.

Kenneth K. Parker, 48 IBLA 129 (May 30, 1980)

Century XII Mining, Inc., 49 IBLA 166 (July 30, 1980)

A claimant who has located a mining claim in April 1975 and thereafter records his notice of location simultaneously with his filing of evidence of assessment work in May 1978 has satisfied the requirements of 43 CFR 3833.2-1(a) by filing evidence of assessment work on or before Dec. 30, 1979.

Robert W. Perkin, 48 IBLA 209 (June 16, 1980)

The owner of an unpatented mining claim located on Federal lands on or before Oct. 21, 1976, shall file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. A mining claimant who chooses the Postal Service as his means of delivery must accept the responsibility and bear the consequences of loss or untimely delivery of his filings.

Edward P. Murphy, 48 IBLA 211 (June 16, 1980)

Under 43 CFR 3833.2-1(a), the owner of an unpatented mining claim must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of each calendar year following the year of recordation of the claim with BLM, or the claim will be conclusively deemed to have been abandoned under 43 CFR 3833.4(a).

Victor DeLange, 48 IBLA 222 (June 16, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where a mining claim is located on Aug. 20, 1970, and recorded with BLM on Nov. 14, 1978, the evidence of assessment work must be filed with BLM on or before Oct. 22, 1979. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

A. W. Josue, 48 IBLA 225 (June 16, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Laura Mae Horgar, 48 IBLA 253 (June 26, 1980)

Don Chris A. Coyne, 52 IBLA 1 (Jan. 5, 1981)

The owner of an unpatented mining claim on Federal land located prior to Oct. 21, 1976, had to file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recordation, whichever date is earlier, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Failure to comply with the regulations governing recordation of notices of location or the filing of evidence of assessment work or a notice of intention to hold mining claim must result in a conclusive finding that the mining claim has been abandoned and is void.

Dollie L. Gleab, 48 IBLA 404 (July 11, 1980)

Max Weiss, 49 IBLA 332 (Aug. 25, 1980)

Mark G. Jones, 49 IBLA 378 (Sept. 5, 1980)

The owner of an unpatented mining claim located on Federal lands excluding lands within a unit of the National Park System, but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, after Oct. 21, 1976, shall, on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Where the claimant does not do so, the claims are deemed abandoned and properly declared void.

Don and Mary L. Clark, 49 IBLA 11 (July 15, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

The owner of mining claims located prior to Oct. 21, 1976, must file evidence of annual assessment work performed on the claims during the preceding assessment year, or, where appropriate, notices of intention to hold the claims, no later than on or before Oct. 22, 1979, or the claims are properly declared abandoned and void.

"Preceding assessment year." The "preceding assessment year" is the assessment year most recently completed. Thus, the requirement that evidence of annual assessment work completed during the "preceding assessment year" be filed on or before Oct. 22, 1979, concerns the assessment year ending at noon on Sept. 1, 1979.

A mining claimant may file a notice of intention to hold its mining claims in lieu of evidence of annual assessment work performed thereon only where the obligation to perform the annual assessment work has been suspended or deferred or has not yet accrued. Where the record indicates no such circumstances and shows to the contrary that the claimant was required to and did perform this work in the preceding assessment year, filing notices of intention will not suffice.

A notice of intention to hold a group of mining claims must meet the requirements set out at 43 CFR 3833.2-3(a), and must include, inter alia, a clear statement of the reason why the annual assessment work was not performed. This requirement is impossible of satisfaction where the claimant in fact did the assessment work.

A failure to file evidence of annual assessment work for the preceding assessment year is not excused by 43 CFR 3833.4(b), which provides that a filing which complies with FLPMA may not be deemed invalid because of its failure to meet the requirements of other laws.

Alaskamin Co., 49 IBLA 43 (July 21, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management Office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

The filing of the notice of location of a mining claim does not meet the requirement for filing a notice of intention to hold the mining claim.

Don Sampson, Perry Adkison, Ward I. Jones, 50 IBLA 84 (Sept. 17, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed evidence of assessment work performed during the preceding assessment year or a notice of intention to hold the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

John J. Schnabel, 50 IBLA 201 (Sept. 30, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

The owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, must, on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Where the claimant does not do so the claims are deemed abandoned and properly declared void.

Hilburn Downey, Eugene A. Cunningham, 50 IBLA 212 (Sept. 30, 1980)

Where the owner of unpatented mining claims located before Oct. 21, 1976, files copies of the notices of location of these claims prior to the Oct. 22, 1979, deadline for so doing, but fails to file evidence of annual assessment work during the preceding assessment year on or before this deadline, the claims are properly declared abandoned and void.

Stanley Bishop, 50 IBLA 371 (Oct. 21, 1980)

Joseph V. Dodge, d.b.a. Rocky Mountain Mineral Co., 50 IBLA 394 (Oct. 24, 1980)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, was required to file with BLM evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file constitutes conclusive abandonment of the claim and renders it void.

Peter and Minda Hannon, 51 IBLA 17 (Oct. 28, 1980)

Where the owner of an unpatented mining claim located after Oct. 21, 1976, in the calendar year 1978, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 30, 1979, the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

Michael Jon McFarland, 51 IBLA 173 (Nov. 26, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file on or before Oct. 22, 1979, an affidavit of annual assessment work or notice of intention to hold, the claim must be deemed abandoned and void.

Pearl Kelly, 51 IBLA 105 (Dec. 2, 1980)

Lloyd M. Buttgereit, 52 IBLA 363 (Feb. 19, 1981)

Bart I. Gilmore, 55 IBLA 128 (June 3, 1981)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed conclusively to have been abandoned.

James V. Brady, 51 IBLA 361 (Dec. 29, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), if unpatented mining claims located after Oct. 21, 1976, are not supported annually by either an affidavit of assessment work or a notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement that there was no intent to abandon and he did not fully understand the regulations.

Dale E. Hankins, 52 IBLA 9 (Jan. 5, 1981)

Where the owner of an unpatented mining claim files a copy of the notice of location of this claim with BLM in 1978, he is required to file a copy of the proof of annual labor performed on the claim during the assessment year ending on Sept. 1, 1979, on or before Oct. 22, 1979, failing which his claim is properly declared abandoned and void.

Michael Haugen, 52 IBLA 129 (Jan. 16, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file constitutes conclusive abandonment of the claim and renders it void.

Where a mining claimant submits evidence on appeal which supports a conclusion that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring a mining claim abandoned and void for failure to timely file the required documentation will be set aside.

L. E. Garrison, 52 IBLA 131 (Jan. 16, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, or prior to Dec. 31 of each year following the calendar year in which the claim was recorded with BLM. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Lowell M. Paige, 52 IBLA 137 (Jan. 16, 1981)

The Federal regulations at 43 CFR 3833.4(a) do not conflict with 43 CFR 3833.4(b) which pertains to the filing of defective or untimely instruments under laws other than the Federal Land Policy and Management Act of 1976.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Alex Pinkham, Mary Anne Pinkham, 52 IBLA 149 (Jan. 16, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continu

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE INTENTION TO HOLD MINING CLAIM--Continued

The owner of unpatented mining claims located prior to Oct. 21, 1976, must file a copy of proof of annual assessment work performed during the preceding assessment year on or before Oct. 22, 1979, or the claims are properly declared abandoned and void under 43 CFR 3833.4.

Lloyd Cochran, 52 IBLA 231 (Feb. 3, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1 the owner of an unpatented mining claim located on Federal lands on or before Oct. 21, 1976, must file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. The requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

Johannes Soyland, 52 IBLA 233 (Feb. 3, 1981)

St. Francis Mining Co., 53 IBLA 133 (Mar. 5, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on Federal lands on or before Oct. 21, 1976, must file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

Dan Creek Placer Mines, 52 IBLA 243 (Feb. 6, 1981)

Lowell L. Patton, 52 IBLA 299 (Feb. 10, 1981)

Verla Rhoads, Pepe Morgan, 52 IBLA 393 (Feb. 24, 1981)

Hugh A. Johnson, 54 IBLA 144 (Apr. 17, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1976, or on or before Dec. 30 of the calendar year following the calendar year of recording the notice of location, whichever date is sooner, evidence of annual assessment work or a notice of intention to hold the claim.

Pearl C. Barnett, 52 IBLA 273 (Feb. 6, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR Part 3833, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice of location and evidence of assessment work with BLM on or before Oct. 22, 1979. This requirement was mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

L. L. Patton, John E. Hooks, 52 IBLA 313 (Feb. 10, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, the owner of an unpatented mining claim located after Oct. 21, 1976, must file in the proper Bureau of Land Management office evidence of annual assessment work or a notice of intention to hold the claim on or before Dec. 30 of each calendar year following the calendar year in which the claim was located. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

Dean Saylor, 52 IBLA 366 (Feb. 19, 1981)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Kerry and Ingrid Douglas, 53 IBLA 18 (Feb. 26, 1981)

Thomas Williams, 56 IBLA 55 (July 10, 1981)

Judy H. Genger, 59 IBLA 199 (Oct. 27, 1981)

West Fork Mining Co., 60 IBLA 370 (Dec. 22, 1981)

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

Where the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file evidence of assessment work or notice of intention to hold the claim on or before Dec. 30, 1979, having filed such evidence with BLM during calendar year 1978, the claim is properly deemed to be abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

James C. Prebelich, 53 IBLA 34 (Feb. 26, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on Federal lands on or before Oct. 21, 1976, and recorded with the Bureau of Land Management in 1979, must file in the proper Bureau of Land Management office evidence of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

Palayka Mines, Inc., 53 IBLA 89 (Mar. 2, 1981)

Where the owner of an unpatented mining claim located after Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim prior to Dec. 31 of the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

Robert F. Wilkinson, 53 IBLA 106 (Mar. 4, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file conclusively constitutes abandonment of the claim and renders it void.

Janice Fay Ondreako, I. D. Monaghan, 53 IBLA 128 (Mar. 5, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Lynn Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369

Faber Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

James D. Ross, Maria J. Ross, 72 IBLA 395 (May 5, 1983)

Where the owner of an unpatented mining claim located after Oct. 21, 1976, in the calendar year 1978, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 30, 1979, the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

A notice of intention to hold a mining claim is required to be an exact copy of a document which was filed in the office of the state where the notice of location was filed. Sec. 314(a)(1) and (2), Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a)(1) and (2) (1976); 43 CFR 3833.2-3 (a)(1). Where it is clear from the text of appellants' purported notice of intention to hold that this document was not filed in the local offices of the State of Nevada, it is without legal significance.

Pacific Coast Mines, Inc., 53 IBLA 200 (Mar. 17, 1981)

Where the owners of unpatented mining claims located prior to Oct. 21, 1976, file notices of recordation for such claims with the Bureau of Land Management on Oct. 22, 1979, but fail to file evidence of annual assessment work until Dec. 28, 1979, pursuant to sec. 314(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a), the failure to file

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

timely the evidence of annual assessment work constitutes conclusive abandonment of the claims and renders the claims void.

John Platt, Jr., et al., 53 IBLA 313 (Mar. 25, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

Randal Angeloni, Douglas Blixt, 54 IBLA 56 (Apr. 9, 1981)

Andrew Kapanis, 56 IBLA 332 (July 30, 1981)

Dia Art Foundation, 56 IBLA 357 (Aug. 3, 1981)

Robert H. Soehner, 56 IBLA 370 (Aug. 3, 1981)

David Truesdell et al., 57 IBLA 60 (Aug. 17, 1981)

Bonnie L. Chafe, 57 IBLA 384 (Sept. 10, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1978, must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of the following calendar year, 1979, or the claims will be conclusively deemed to have been abandoned.

Jess E. Minius, Jr., 54 IBLA 134 (Apr. 17, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1 and 3833.4, where the owner of unpatented mining claims located prior to Oct. 21, 1976, fails to file with the proper Bureau of Land Management office on or before Oct. 22, 1979, an affidavit of annual assessment work or notice of intention to hold, the claim must be deemed abandoned and void, and the claimant's mistaken belief that he had effectively complied with the regulations cannot excuse noncompliance.

Emery Crowley et al., 54 IBLA 229 (Apr. 27, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of annual assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to file conclusively constitutes abandonment of the claim and renders it void.

William R. Hand, 54 IBLA 303 (Apr. 29, 1981)

Robert Keough, 54 IBLA 337 (May 5, 1981)

William R. Barbat, 56 IBLA 26 (July 8, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Where a preponderance of the evidence supports a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring a mining claim abandoned and void for failure to file timely the required documentation will be vacated.

Bernard J. Braker, 54 IBLA 332 (May 5, 1981)

Bruce L. Baker, Robert C. Baker, 55 IBLA 55 (May 29, 1981)

S. F. Cook, 60 IBLA 176 (Nov. 5, 1982)

Donna Bernhardt, 73 IBLA 207 (May 27, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Richard E. Forsgren, 54 IBLA 362 (May 18, 1981)

Margaret E. Peterson, 55 IBLA 136 (June 4, 1981)

Vernon Bradley, 57 IBLA 351 (Sept. 8, 1981)

James E. Tibbals, Janet D. Tibbals, 58 IBLA 42 (Sept. 17, 1981)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

The filing of evidence of assessment work, required by 43 CFR 3833.2-1(a), for any assessment year may be submitted at any time after the work is performed during the assessment year through Dec. 30 following the end of the assessment year.

Thus, filing on Oct. 5, 1979, for the 1980 assessment year which began on Sept. 1, 1979, satisfies the requirement of filing on or before Dec. 30, 1980.

General Electric Co., Nellie McLaughlin, 55 IBLA 185 (June 16, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply conclusively constitutes an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Where a mining claimant believes that assessment work would be a prohibited or useless act, the claimant should file a notice of intention to hold pursuant to 43 CFR 3833.2-3.

Robert E. Pennell, Clair E. Colburn, d.b.a. Colfensch Mining Ass'n, 56 IBLA 43 (July 8, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was recorded with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

Robert B. Belcher, 56 IBLA 165 (July 20, 1981)

Dennis A. Lane, 56 IBLA 171 (July 20, 1981)

Jacqueline A. Riddlemoser, 56 IBLA 173 (July 20, 1981)

John E. Davies, 56 IBLA 175 (July 20, 1981)

Edward McNally, Merrill Porter, 56 IBLA 177 (July 20, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was recorded with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

Mi-Ore Mining Co., 56 IBLA 179 (July 20, 1981)

Department of the Interior, as agency of executive branch of Government, is not a proper forum to decide whether or not the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

William O. Bahny, 56 IBLA 190 (July 20, 1981)

Shirley Thompson, Duane E. Thompson, 57 IBLA 154 (Aug. 25, 1981)

Petro-Lewis Corp., Partnership Properties Co., 57 IBLA 300 (Aug. 31, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim by Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

is not filed because it became lost in the mail, the loss must be borne by the claimant.

William T. Post, 56 IBLA 234 (July 22, 1981)

Where a preponderance of the evidence does not support a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring a mining claim abandoned and void for failure to file timely the required documentation will be affirmed.

Harwell Mining Co., Wilford F. Montgomery, 56 IBLA 236 (July 22, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed because of intervening inclement weather, loss must be borne by claimant.

Valiant Resources, Inc., 56 IBLA 278 (July 28, 1981)

Deficiencies under the regulations in the content of an affidavit of assessment work or notice of intention to hold filed with the Bureau of Land Management with respect to an unpatented mining claim may be considered curable and do not result in a conclusive presumption of abandonment of the claim where the filing meets the requirements of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either notice of intention to hold the claim or evidence of assessment work with the local recording office where the notice of location is recorded and a copy thereof with the Bureau of Land Management prior to Dec. 31 of the year following the calendar year in which the claim was located under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Ted Dilday, 56 IBLA 337 (July 30, 1981) 88 I.D. 682

Ronald Willden, 60 IBLA 173 (Nov. 24, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Regina McMahon, 56 IBLA 372 (Aug. 3, 1981)

Bruce E. Berringer, 60 IBLA 258 (Dec. 4, 1981)

Raymond L. Finviddie, 64 IBLA 334 (June 10, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Don Moon, 68 IBLA 211 (Nov. 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year following the year of recording with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the loss must be borne by the claimant.

Jack Terwilliger, 56 IBLA 383 (Aug. 3, 1981)

Where a mining claimant files timely an affidavit of assessment work with the Bureau of Land Management as required by sec. 314 of the Federal Land Policy and Management Act of 1976, which is not the affidavit of assessment required to be filed under 43 CFR 3833.2-1, it is a curable defect, and a mining claimant is entitled to notice and a reasonable opportunity to submit the precise instrument. Failure to do so will result in the Bureau of Land Management declaring the claim abandoned and void.

Barry J. Pike, 57 IBLA 15 (Aug. 6, 1981)

Where, on or before Oct. 22, 1979, a mining claimant files proof of assessment work for a claim located prior to Oct. 21, 1976, which proof had been duly filed in the local offices of the state wherein the notice of location was filed, but such assessment work was not performed in the assessment year preceding the filing, the claimant has complied with the statutory requirements and should be afforded an additional opportunity to comply with the regulatory requirements prior to a finding of abandonment.

Perry L. Johnson et al., 57 IBLA 20 (Aug. 6, 1981)

Jack McCarley, 58 IBLA 239 (Oct. 6, 1981)

Piot Avery, 60 IBLA 159 (Nov. 24, 1981)

The mailing of a notice of intention to hold a mining claim before the due date is not sufficient to comply with the requirements of the statute unless the notice is actually received by the proper BLM office before such date.

William J. Kroetch, 57 IBLA 29 (Aug. 6, 1981)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

D. E. Bailey, 57 IBLA 120 (Aug. 25, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year following the calendar year in which the claim was recorded with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

John R. Erickson, 57 IBLA 157 (Aug. 25, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the first proof of labor was filed with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

Magdalene Pickering Franklin, 57 IBLA 244 (Aug. 27, 1981)

Where, on or before Oct. 21, 1979, a mining claimant files proof of assessment work performed for the preceding assessment year for a claim located on or before Oct. 21, 1976, which proof had been duly filed in the local offices of the state wherein the notice of location was filed, the claimant has complied with both the statutory and regulatory requirements for filing assessment work.

Ervin D. Hull, Paul Eichholz, 57 IBLA 278 (Aug. 31, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located in the calendar year 1978, must have filed with the Bureau of Land Management (BLM), affidavit of assessment work or notice of intention to hold the mining claims on or before Dec. 30, 1979, or the claim is conclusively deemed abandoned and, thus void.

Evidence of assessment work must be delivered to and received by the proper Bureau of Land Management office by the due date in order to be timely filed. Depositing a document in the mails does not constitute filing.

Bart Cannon, 57 IBLA 281 (Aug. 31, 1981)

Where the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file evidence of assessment work or notice of intention to hold the claim on or before Dec. 30, 1980, having filed such evidence with BLM during calendar year 1979, the claim is properly deemed to be abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

L. M. Penn, 57 IBLA 339 (Sept. 1, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file in the proper BLM office a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which such notice or evidence was first filed with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the loss must be borne by the claimant.

Philip Cranor, 57 IBLA 386 (Sept. 10, 1981)

Where the owner of an unpatented mining claim located after Oct. 21, 1976, in calendar year 1977, fails to file with BLM an affidavit of assessment work or a proper notice of intention to hold the claim on or before Dec. 30, 1978, the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

John T. Motes, Nerig Motes, 58 IBLA 62 (Sept. 21, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the official record of a notice of intention to hold or evidence of performance of annual assessment work on the claim, as recorded in the office where the location notice of the claim is recorded, prior to Dec. 31 of each calendar year following the year in which the claim was located. There is no provision for waiver of this mandatory requirement or of the statutory consequences of the claim being deemed conclusively to be abandoned for failure to comply.

Polar Resources Co., 58 IBLA 70 (Sept. 22, 1981)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location and either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report provided by sec. 28-1 of Title 30, relating thereto, all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

A detailed map prepared by the mining claimant's geologist, showing the geologist's labor performed on the claims during the assessment year in question, cannot be considered as meeting the requirements of sec. 314 of FLPMA with respect to notice of intention to hold a mining claim, where it was not filed for recordation with the local recording office where the notice of location is prescribed by state law to be recorded.

The language in sec. 314 of FLPMA, 43 U.S.C. § 1744(c) (1976), relating to defective and untimely filings does not protect a claimant from the statutory conclusive presumption of abandonment where he has not met the recordation requirements of FLPMA. It is only

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

defectiveness or untimeliness of filings under other Federal laws that shall not impair the validity of a mining claim which is otherwise valid under FLPMA.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

Pursuant to sec. 314 of FLPMA and 43 CFR 3833.2-1(b), the owner of unpatented mining claims situated within any unit of the National Park System must file in the proper office of BLM a notice of intention to hold the claims on or before Dec. 30 of each year following the year in which the claims were recorded with the National Park Service as required by the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), and 36 CFR 9.5. Where a permit to do assessment work has been issued by NPS, the owner of the claims may file evidence of assessment work in lieu of the notice of intention to hold the claims. Failure to file either a notice of intention to hold the unpatented mining claims or evidence of assessment work with the proper BLM office within the time period prescribed conclusively constitutes abandonment of the claims.

Uranus, Inc., 58 IBLA 139 (Sept. 25, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

United States Energy Corp. et al., 58 IBLA 159 (Sept. 28, 1981)

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

Rupert Thorne, 58 IBLA 319 (Oct. 16, 1981)

Conoco, Inc., 58 IBLA 390 (Oct. 21, 1981) 88 I.D. 918

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the evidence is actually received by the proper BLM office before such date.

Ben Baxter, 58 IBLA 163 (Sept. 28, 1981)

Louis E. Sharp, 59 IBLA 223 (Oct. 28, 1981)

Marvin C. Stuck, 60 IBLA 197 (Nov. 27, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Kay E. Krebs, 62 IBLA 84 (Feb. 25, 1982)

Robert S. Yerri, 62 IBLA 291 (Mar. 16, 1982)

Carl W. St. Claire, 63 IBLA 125 (Apr. 5, 1982)

Lloyd J. Osborn, 64 IBLA 21 (May 6, 1982)

Vester Barker, 64 IBLA 86 (May 12, 1982)

Herbert A. Horton, 64 IBLA 89 (May 12, 1982)

The filing of the notice of location of a mining claim does not meet the requirement for filing a notice of intention to hold the mining claim.

Albert L. Fillerup, 58 IBLA 194 (Sept. 29, 1981)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

The mailing of a notice of intention to hold a mining claim before the due date is not sufficient to comply with the requirements of the statute unless the notice is actually received by the proper BLM office before such date.

Ralph A. Plumb, 58 IBLA 258 (Oct. 6, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply conclusively constitutes an abandonment of the claim by the owner and renders the claim void.

Mrs. Walter E. Bolles, 58 IBLA 257 (Oct. 6, 1981)

A notice of intention to hold a mining claim is required to be an exact copy of a document which was filed in the office of the state where the notice of location was filed. Sec. 314(a)(1) and (2), Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(1) and (2) (1976); 43 CFR 3833.2-3(a)(1).

Heirs of Raymond D. Carson et al., 58 IBLA 265 (Oct. 7, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Richard W. Thoe, 58 IBLA 291 (Oct. 13, 1981)

Makrid E. Mukala, 64 IBLA 313 (June 10, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Robert J. Maby et al., 67 IBLA 370 (Oct. 8, 1982)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1978, is required to file evidence of annual assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to file conclusively constitutes abandonment of the claim and renders it void.

Bernard E. Packard et al., 58 IBLA 308 (Oct. 16, 1981)

A notice of intention to hold mining claims must set forth the information required by 43 CFR 3833.2-3 and be recorded both in the county where the claims are situated and in the proper BLM office to satisfy the recordation requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Dennis Forsberg, 58 IBLA 346 (Oct. 19, 1981)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Wayne Cook, 58 IBLA 350 (Oct. 19, 1981)

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Enterprise Signs, Inc., 58 IBLA 372 (Oct. 20, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement.

AOS Co., 59 IBLA 112 (Oct. 26, 1981)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

The mailing of an affidavit of assessment work concerning a mining claim before the due date is not sufficient to comply with the requirements of the statute unless the notice is actually received by the proper Bureau of Land Management office before such date.

John Silva, 59 IBLA 167 (Oct. 26, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of unpatented mining claims located on or before Oct. 21, 1976, must file affidavit of assessment work or a notice of intention to hold the claims on or before Oct. 22, 1979, or the claims will be conclusively deemed to have been abandoned.

Edward Kelley, 59 IBLA 250 (Oct. 29, 1981)

Henry Chavez, 62 IBLA 312 (Mar. 19, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed because it was delayed in the mail, the consequences must be borne by the claimant.

Inez Crews et al., 59 IBLA 257 (Oct. 29, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of unpatented mining claim located before Oct. 21, 1976, shall file in the proper BLM office on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter, evidence of annual assessment work or a notice of intention to hold the mining claim or the mining claim shall be declared abandoned and void pursuant to 43 CFR 3833.4(a).

Samuel Waldenberg, 59 IBLA 390 (Nov. 10, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Elizabeth Francis, 60 IBLA 6 (Nov. 12, 1981)

William Cooper, 60 IBLA 50 (Nov. 17, 1981)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

Lawrence Paul, 63 IBLA 275 (Apr. 19, 1982)

Carlyle A. Brough, 68 IBLA 318 (Nov. 19, 1982)

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency of which the owner is entitled to notice and an opportunity to rectify prior to a decision finding the claim abandoned and void.

Harvey A. Clifton et al., 60 IBLA 29 (Nov. 16, 1981)

Henry Seibel, Clara Seibel, 63 IBLA 77 (Mar. 30, 1982)

Jack L. Kettler, 68 IBLA 301 (Nov. 19, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), the owner of unpatented mining claims located before Oct. 21, 1976, shall file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording whichever date is sooner evidence of annual assessment work performed or a notice of intention to hold the mining claim or the mining claims shall be declared abandoned and void pursuant to 43 CFR 3833.4(a).

Buck A. Rogers, 60 IBLA 59 (Nov. 18, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

The timely filing of a notice of location of a mining claim with BLM does not satisfy the additional requirement that either evidence of assessment or a notice of intention to hold a mining claim be filed timely. 43 U.S.C. § 1744(a)(1) and (2) (1976); 43 CFR 3833.2-3.

All Minerals Corp., 60 IBLA 85 (Nov. 19, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2 and 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim and a copy of the current proof of labor as recorded in the office where the notice of location is recorded, with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply conclusively constitutes an abandonment of the claim by the owner.

Robert G. Milton, 60 IBLA 104 (Nov. 20, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed evidence of assessment work performed or a notice of intention to hold the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

Jungwanda J. Papaeliou, Mildred Lucille Gulick, 60 IBLA 128 (Nov. 24, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), in the proper Bureau of Land Management office within the time periods prescribed thereiu conclusively constitutes abandonment of the mining claim by the owner.

Where, on or before Oct. 22, 1979, a mining claimant files proof of assessment work for a claim located prior to Oct. 21, 1976, which proof had been duly filed in the local offices of the state wherein the notice of location was filed, but such assessment work was not performed in the assessment year preceding the filing, the claimant has complied with the statutory requirements and should be afforded an additional opportunity to comply with the regulatory requirements prior to a finding of abandonment.

Karen R. Tony et al., 60 IBLA 167 (Nov. 24, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1977, but which is not accompanied by evidence of assessment work or a notice of intent to hold the claim, is required to file evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file constitutes conclusive abandonment of the claim and renders it void.

F & F Mining Co., Inc., 60 IBLA 178 (Nov. 25, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

George Vincent McMahon, 60 IBLA 187 (Nov. 27, 1981)

Edwin Striegel, Doris A. O'Brien, 60 IBLA 232 (Dec. 4, 1981)

Rod Schaaf, 61 IBLA 323 (Feb. 8, 1982)

Denver M. Tallman, 61 IBLA 326 (Feb. 8, 1982)

Don Wright, 61 IBLA 356 (Feb. 16, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

R. L. Divr Dirnick, Floyd Tipond, 64 IBLA 297 (June 8, 1982)

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

Charles E. Hull et al., 65 IBLA 61 (June 23, 1982)

Edwin P. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

Manuel E. Hernandez, 65 IBLA 281 (July 12, 1982)

Helena Silver Mines, Inc., 65 IBLA 287 (July 13, 1982)

Viola Peck Whitney, 65 IBLA 361 (July 20, 1982)

Victor Haggard, 66 IBLA 31 (July 23, 1982)

David G. Still, 66 IBLA 35 (July 23, 1982)

William S. Gaechter et al., 66 IBLA 230 (Aug. 16, 1982)

Githa T. Mayo, 73 IBLA 277 (June 7, 1983)

Shirley Pomerinke, 74 IBLA 210 (July 18, 1983)

Gordon J. Blake et al., 75 IBLA 1 (Aug. 2, 1983)

Milford H. Frithle, 75 IBLA 174 (Aug. 19, 1983)

Three Rivers Mining Co., 75 IBLA 176 (Aug. 19, 1983)

John D. Powers, 75 IBLA 266 (Aug. 26, 1983)

Henry Allen, Harold Dilm, 76 IBLA 14 (Sept. 6, 1983)

Lydia Darlene Shears, 76 IBLA 148 (Sept. 26, 1983)

Grace E. Crocker, 76 IBLA 231 (Oct. 17, 1983)

Hiko Bell Mining & Oil Co., 76 IBLA 254 (Oct. 17, 1983)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Major G. Atkins, 60 IBLA 284 (Dec. 17, 1981)

Floren Klopfenstein, 62 IBLA 238 (Mar. 11, 1982)

Gregory M. Harrington, 64 IBLA 331 (June 10, 1982)

The mailing of a notice of location prior to the due date is not sufficient to comply with the requirements of the statute unless the notice is actually received by the proper BLM office before such date.

Prudential Mining & Exploration, Inc., 60 IBLA 363 (Dec. 22, 1981)

When mail is properly addressed and deposited in the United States mails, with postage thereon duly prepaid, there is a rebuttable presumption that it was received by the addressee in the ordinary course of mail.

Delivery by post office of a document to a BLM state office by placement of such mail in the post office box where the state office customarily receives its mail, during the hours in which the state office is open to the public for the filing of documents, constitutes delivery to and receipt by the state office of the document.

Where the envelope containing a mining claimant's evidence of annual assessment work required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), addressed to the Oregon State Office, Bureau of Land Management, at its post office box address in Portland, Oregon, was postmarked in Seattle, Washington, on Dec. 29, 1980, and it is established that whereas in the ordinary course of mail the letter would have been delivered to the state office at its regular post office box prior to 4:15 p.m. on the following day, the last hour for filing such evidence, but that any mail placed in the post office box after 1 p.m. nevertheless would not have been picked up by the state office until a day later, the evidence of assessment work is presumed to have been filed on Dec. 30, even though the date and time stamp of the state office indicates that it was not received until 7:30 a.m. on Dec. 31.

Washington Chronicle Co., 60 IBLA 378 (Dec. 23, 1981)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

The mailing of an affidavit of assessment work concerning a mining claim before the due date is not sufficient to comply with the requirements of the statute unless the evidence of assessment work is actually received by the proper Bureau of Land Management office before such date.

Samantha Bowman, 61 IBLA 20 (Dec. 29, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

The owner of an unpatented mining claim must file in each calendar year, on or before Dec. 30, either an affidavit of assessment work performed on the claim or a notice of intention to hold the mining claim. Failure to so file results in a conclusive statutory presumption of abandonment of the claim by the owner.

Northern Stone Supply, 61 IBLA 36 (Dec. 29, 1981)

There is a rebuttable presumption that administrative officers properly discharge their duties and do not lose or misfile documents timely filed. Where, however, the BLM computer print-out indicates that evidence of assessment work was received for one of appellant's four mining claims, and where appellant submits a copy of proof of labor for all four claims which had been recorded in the proper county recording office and then submitted to BLM, and where BLM had no record of having issued any adverse decision for the fourth claim but appellant submitted a copy of the decision he had received, the cumulative evidence rebuts the presumption of regularity.

Robert T. Reynolds, 61 IBLA 52 (Dec. 31, 1981)

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claim with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency. Where the claimant has submitted this evidence on appeal, he has cured this deficiency.

Ned T. Scott, Jr., 61 IBLA 109 (Jan. 4, 1982)

Filing is accomplished only when a document is delivered to and received by the proper BLM office during business hours and depositing a document in the mails does not constitute filing. Mail received in the post office box designated by BLM as its address of record prior to BLM's close of business on a given day is properly considered as received by BLM on that date and failure of BLM to pick up the mail cannot alter this result. However, where the evidence establishes that a document was not placed in the BLM post office box until after the deadline, the filing is not timely.

Golden Monarch Mining Corp. et al., 61 IBLA 120 (Jan. 15, 1982)

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McGarvey, 61 IBLA 163 (Jan. 25, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on Federal land prior to Oct. 21, 1976, must file with the proper office of BLM within 3 years after Oct. 21, 1976, a notice of intention to hold or evidence of performance of annual assessment work on the claim, and a similar filing must be made before Dec. 31 of every year thereafter. Otherwise, the claim is conclusively deemed abandoned and void. There is no provision for waiver of this requirement.

Ronald R. Atkins, 61 IBLA 364 (Feb. 16, 1982)

Sec. 314(a) of FLPMA requires the owner of an unpatented mining claim located prior to Oct. 21, 1976, to file with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter, an affidavit of assessment work performed thereon, or a notice of intention to hold the claim, or a detailed report provided by sec. 28-1 of Title 30, relating thereto. Sec. 314(c) states that the failure to comply with subsec. (a) invokes a conclusive presumption of the claim's abandonment, and 43 CFR 3833.4(a) declares that the claim "shall be void."

David and Boirdon Dorneus, 61 IBLA 367 (Feb. 17, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

Lor Yokum, 62 IBLA 27 (Feb. 24, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the recorded notice of location within 90 days after the date of location, and a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year of the location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Douglas Lee Jones, 62 IBLA 107 (Mar. 2, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location and either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report relating thereto, as provided by 30 U.S.C. § 28-1 (1976), all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Arwin P. Kaszlyk, 62 IBLA 224 (Mar. 10, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of a notice of intention to hold mining claims only with BLM does not constitute compliance

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

either with the recordation requirements of the Act or those in 43 CFR 3833.2-3.

Eugene Fox, 62 IBLA 232 (Mar. 11, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed with the proper office of BLM on or before Oct. 22, 1979, for claims located prior to Oct. 21, 1976, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

B. Gail Tibbetts, 62 IBLA 252 (Mar. 15, 1982)

The Federal Land Policy and Management Act of 1976 requires that for each mining claim located prior to Oct. 21, 1976, the initial filing of evidence of assessment work or notice of intention to hold the claim must be made with both the BLM and the local office of the state where the notices of location were filed within 3 years of the enactment of FLPMA.

Martin Blanco et al., 62 IBLA 260 (Mar. 15, 1982)

There is a rebuttable presumption that BLM acts regularly with respect to allegedly filed mining claim documents. That presumption can be overcome only by a showing of substantial evidence tending to disprove the regularity of BLM's action in the particular instance in question; upon such a showing, the Board decides the case without further reference to the presumption and by preponderance of the evidence. Mailing a document is not evidence that BLM ever received it, and does not satisfy the recording requirement nor rebut the presumption of regularity.

In Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), it was held that "supplemental" mining claim information required only by the regulations, not FLPMA, is subject to cure. Failure to file a proof of labor timely or properly is not curable after the recordation deadline, because such filing is not "supplemental," being required by FLPMA itself.

Robert L. Race et al., 63 IBLA 1 (Mar. 25, 1982)

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Elmer P. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Olive M. Stirland, 65 IBLA 363 (July 20, 1982)

Where the claimants inadvertently omit the name of a mining claim from their affidavit of annual assessment work, which was otherwise properly recorded both in the county and with BLM, the omitted claim must be deemed conclusively to be abandoned under the provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Frances J. Barger, 63 IBLA 67 (Mar. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice o. location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary.

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, i.e., on or after Jan. 1, and on or before Dec. 30. The date of filing with the Bureau of Land Management is the critical date, and the assessment year recited in the proof is secondary.

John T. Conner, 63 IBLA 129 (Apr. 5, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1976, and a proof of labor or notice of intention to hold prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of the claim is recorded and in the proper office of the

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Elgie I. Stewart, Walter G. Stewart, 63 IBLA 153 (Apr. 6, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located prior to Oct. 21, 1976, must file evidence of assessment work or a notice of intention to hold the claim in the proper office of the Bureau of Land Management on or before Oct. 22, 1979. Failure to comply with this recordation requirement is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Paul J. Lambrix, 63 IBLA 170 (Apr. 8, 1982)

Cruz M. Chaves, 67 IBLA 270 (Sept. 27, 1982)

The mailing of a notice of location after the due date is not sufficient to comply with the requirements of the statute.

Donald C. Strong, 63 IBLA 195 (Apr. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim and evidence of assessment work or a notice of intention to hold the claim within 3 years after Oct. 21, 1976, in the proper office of the Bureau of Land Management. There also must be filed with the Bureau of Land Management, on or before Dec. 30 of each calendar year thereafter, a current proof of labor or notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, nor any grace period to accommodate late filings. Where evidence of assessment work is not filed because of delay in mail delivery, the consequences must be borne by the claimant.

T. Richard Ikard, 63 IBLA 200 (Apr. 8, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, in the proper office of the Bureau of Land Management within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Yako Mining, 63 IBLA 206 (Apr. 9, 1982)

E. Del & Associates, 65 IBLA 170 (June 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

was delayed in the mail, the statutory consequence must be borne by the claimant.

Charles A. Rehney III, 63 IBLA 231 (Apr. 16, 1982)

R. L. Pate, Sr., 63 IBLA 233 (Apr. 19, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Francis Skaw et al., 63 IBLA 235 (Apr. 19, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim, and evidence of assessment work or a notice of intention to hold the claim, within 3 years after Oct. 21, 1976, in the proper office of the Bureau of Land Management; and on or before Dec. 30 of each calendar year thereafter, there also must be filed with BLM current proof of labor or notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, nor any grace period to accommodate late filings. Where evidence of assessment work is not filed because of loss in mail delivery, the consequences must be borne by the claimant.

Robert J. Yerchota, 64 IBLA 23 (May 6, 1982)

Where a mining claimant submits a copy of his annual proof of labor to the BLM District Office in Moab, Utah, on Dec. 30, 1981, he has not complied with 43 CFR 3833.2-1, even though the instrument was submitted to the District Office within the statutory period for such filing, because the proof of labor has not been filed in the "proper BLM office," which is the BLM Utah State Office in Salt Lake City, as expressly provided by 43 CFR 1821.2-1(d), and 43 CFR 3833.0-5(g). Where the required instrument is not received by and date stamped by the proper BLM office during the statutory time period, it is untimely and the mining claim is properly declared abandoned and void under 43 CFR 3833.4(a).

John E. Keogh, 64 IBLA 101 (May 17, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management prior to Dec. 31 of each calendar year is mandatory, not discretionary. Filing of evidence

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

Vienna Silver Mines Co., Inc., 67 IBLA 130 (Sept. 16, 1982)

Melvin Bradshaw, 68 IBLA 390 (Nov. 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because of a snowstorm, the consequence must be borne by the claimant.

George Whitehead, 64 IBLA 111 (May 17, 1982)

A notice of intention to hold which does not comply with the form requirements of 43 CFR 3833.2-3 to the extent that the regulatory requirements regarding content go beyond the requirements of the statute, will not automatically result in a claim being declared abandoned and void. However, where the notice does not include a copy of a notice of intention to hold filed in the local recording office, as required by the statute, a claim is properly declared abandoned and void.

Great West Land & Mining Corp., 64 IBLA 114 (May 19, 1982)

Where the evidence shows that the owner of unpatented mining claims located after Oct. 21, 1976, in calendar year 1979, did file with BLM by Dec. 30, 1980, a copy of the notice of intention to hold the claims which notice was filed also in the local offices of the state wherein the notices of location were filed, the mining claimant has complied with the statutory requirements of the Federal Land Policy and Management Act of 1976.

AZL Resources, Inc., 64 IBLA 126 (May 20, 1982)

It is error for the Bureau of Land Management to declare unpatented mining claims abandoned and void for failure to submit an affidavit of assessment work after having sent the claimant a notice that the affidavit has been received.

Vern W. Simmons, Jr., 64 IBLA 139 (May 20, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2, the owner of an unpatented mining claim must file for record before Dec. 31 of each calendar year, in the office of local jurisdiction where the location notice of the claim is recorded, evidence of assessment work performed on the claim or a notice of intention to hold the claim, and must also file in the proper Bureau of Land Management office a copy of the instrument filed in the local jurisdiction. Failure to make both filings of the same instrument is deemed to be an abandonment of the claim.

Elkins Real Estate, 64 IBLA 141 (May 24, 1982)

Donald Klein, Rozelle Klein, 66 IBLA 212 (Aug. 16, 1982)

Where a mining claimant submits a copy of a notice of intent to hold a mining claim to the BLM district office in Moab, Utah, on Dec. 30, 1981, he has not complied with 43 CFR 3833.2-1. Even though the instrument was submitted to the district office within the statutory period for such filings, the notice of intent has not been filed in the "proper BLM office," which is the BLM Utah State Office in Salt Lake City, as expressly provided in 43 CFR 1821.2-1(d) and 43 CFR 3833.0-5(g). Where the required instrument is not received and date stamped by the proper BLM office during the statutory time period, the mining claim is properly deemed to be abandoned.

H. Bowen, Jr., 64 IBLA 268 (June 2, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Evidence of assessment work must be delivered to and received by the proper Bureau of Land Management office by the due date in order to be timely filed. Depositing a document in the mails does not constitute filing.

Cora Lee Jensen-Gore, 64 IBLA 271 (June 2, 1982)

Where mining claims are located in 1977, the owners were required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file a notice of intention to hold the claims or evidence of assessment work performed during 1978, both in the county where the location notices were of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments is conclusively deemed to constitute an abandonment of the claims.

Robert Gilmore, 64 IBLA 295 (June 7, 1982)

Harvey A. Wolcott et al., 65 IBLA 369 (July 20, 1982)

Elaine Marianne McLevie, 67 IBLA 220 (Sept. 23, 1982)

Where the requirement of filing proof of assessment work or a notice of intention to hold a mining claim applies, a filing must be made within each calendar year, _id est_, on or after Jan. 1, and on or before Dec. 30, in both the county recording office and the proper office of the Bureau of Land Management.

Pittsburgh Pacific Co., 64 IBLA 300 (June 8, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Where the owner of an unpatented mining claim fails to file a copy of the proof of labor recorded in the office where the location notice is of record in the proper office of the Bureau of Land Management, prior to Dec. 31 of the year of recording the instrument with the county recorder, the claim is properly deemed abandoned and void pursuant to 43 U.S.C. § 1744 (1976).

David McGinnis, 64 IBLA 302 (June 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, and recorded with BLM on or before Oct. 22, 1979, must file a notice of intention to hold or evidence of annual assessment work on the claim prior to Dec. 31 of each year thereafter. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it became lost in the mail, the loss must be borne by the claimant.

Edna L. Patterson, 64 IBLA 316 (June 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for whatever reason, the claim is conclusively presumed to be abandoned.

Richard C. Davis, 65 IBLA 1 (June 17, 1982)

Steve Konanke, 66 IBLA 46 (July 27, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the recorded notice of location within 90 days after the date of location, and a notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year of the location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void. Thus, a mining claim located in Dec. 1979 for which neither a notice of intention to hold or evidence of assessment work was recorded before Dec. 31, 1980, both in the county where the location notice is recorded and in the proper BLM office, is properly declared abandoned and void.

Kenneth L. Wilbur, 65 IBLA 4 (June 17, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

C. Douglas Lee, 65 IBLA 41 (June 22, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Herald Mining Co., 65 IBLA 172 (June 29, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1 in the proper BLM office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner. The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Roger Stanley, 65 IBLA 69 (June 23, 1982)

Gladys M. Cramer, 65 IBLA 120 (June 25, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file both in the office where the location is of record and in the proper office of BLM a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work or a notice of intent to hold the claim is not filed in both places, for whatever reason, the claim is conclusively presumed to be abandoned.

M. A. Shepherd, Viola M. Shepherd, 65 IBLA 72 (June 23, 1982)

J. Barry Van Hooser, 65 IBLA 175 (June 29, 1982)

Gregory A. Vootsch, Sr., 69 IBLA 124 (Dec. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of assessment work performed on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because of delay in mail delivery, the statutory consequence of abandonment must be borne by the claimant.

Canyonlands Uranium, Inc., 65 IBLA 82 (June 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located on or before Oct. 21, 1976, must file evidence of performance of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Where certain instruments are required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to be filed with the proper office of BLM prior to Dec. 31 of any year, and where the BLM office is not open on Dec. 30, the filing of the instruments on Jan. 2, the next date the BLM office is open, is deemed timely compliance with the filing requirements of FLPMA.

Buttes Resources Co., 65 IBLA 178 (June 29, 1982)

Where a preponderance of the evidence does not support a finding that all documents necessary to effectuate a filing under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), were timely filed, a decision declaring mining claims abandoned and void for failure to file timely the required documentation will be affirmed.

James Heldman, 65 IBLA 180 (June 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Dec. 30 of the calendar year following the year in which the claim was located, and prior to Dec. 31 of every year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

Fawn Rupp, 65 IBLA 277 (July 12, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where the evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Elmer Transtrum, 65 IBLA 285 (July 13, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of the BLM is mandatory, not discretionary.

Where the claimant inadvertently omits the name of several mining claims from his affidavit of annual assessment work, which otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Peter Lacney, 65 IBLA 291 (July 13, 1982)

Where a mining claim was located in Sept. 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work performed during 1978, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either notice of intention to hold the claim or evidence of assessment work with the local recording office where the notice of location is recorded, and a copy thereof with the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Herschel Knapp, 65 IBLA 314 (July 14, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

J & B Mining Co., Inc., 65 IBLA 335 (July 15, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file evidence of performance of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, not discretionary. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it was delayed in the mail, the statutory consequence must be borne by the claimant.

Robert A. Sandstedt, Priley Stenveld, 65 IBLA 367 (July 20, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land must file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each calendar year, both in the office where the location notice is recorded and in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed because of loss or delay by the Postal Service, the consequences must be borne by the claimant.

James T. Hackworth, 66 IBLA 132 (Aug. 10, 1982)

Carolyn C. Crawford, W. Max Chenault, 68 IBLA 19 (Oct. 19, 1982)

Don Tow, 68 IBLA 213 (Nov. 10, 1982)

Where a mining claim was located in Nov. 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work performed during 1981, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work in both the local recording office where the notice of location is recorded, and in the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Evelyn L. Parent, George V. Hall, 66 IBLA 147 (Aug. 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of assessment work performed on the claim on or before Dec. 30 of each calendar year. The evidence of assessment work or the notice of intention to hold the claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Geoffrey L. Barnes, 66 IBLA 165 (Aug. 11, 1982)

A. L. Stutzenroth, 67 IBLA 6 (Sept. 1, 1982)

Orville M. Williams, Helen C. Williams, 69 IBLA 270 (Dec. 21, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

The mailing of a proof of labor to the Bureau of Land Management prior to the due date is not sufficient to comply with the requirements of the statute unless the proof is actually received by the proper BLM office on or before such date.

Vernon J. Hall, 66 IBLA 171 (Aug. 12, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim to file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each year both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments in both places within the prescribed time period is conclusively deemed to constitute an abandonment of the claim.

Carl Eichenhofer, 66 IBLA 226 (Aug. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Wade McNeil, Flora McNeil, 66 IBLA 228 (Aug. 16, 1982)

Lawrence Nordstrom, 67 IBLA 398 (Oct. 12, 1982)

James J. McFarlane, 68 IBLA 20 (Oct. 21, 1982)

Robert F. Thompson, 68 IBLA 120 (Oct. 26, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Dec. 30 of each calendar year. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

Alan T. Trego, James L. Barnes, 66 IBLA 334 (Aug. 26, 1982)

James A. Huff, Elizabeth H. Young, 69 IBLA 31 (Nov. 26, 1982)

James A. Huff, Elizabeth H. Young, 69 IBLA 368 (Jan. 3, 1983)

Eugene W. Walck, Jr., 72 IBLA 30 (Apr. 5, 1983)

Grace P. Crocker, 73 IBLA 78 (May 17, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, and recorded with BLM on or before Oct. 22, 1979, must file a notice of intention to hold the claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the annual statement is filed. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it becomes lost in the mail, the loss must be borne by the claimant.

James R. Brayman, 67 IBLA 138 (Sept. 16, 1982)

The recordation requirement of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), that evidence of assessment work or notice of intention to hold mining claims be filed where the notice of location of the claim is recorded and in the proper office of BLM is mandatory, not discretionary. Filing of evidence of assessment work only in the county does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

The mailing of a proof of labor to the Bureau of Land Management prior to the due date is not sufficient to comply with the requirements of the statute unless the proof is actually received by the proper BLM office on or before such date.

Maureen Carr, 67 IBLA 162 (Sept. 21, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for whatever reason, the claim is conclusively presumed to be abandoned.

Keith E. Ferrell, 67 IBLA 181 (Sept. 21, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976 and 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim to file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. Failure to file the required instrument within the prescribed time period is conclusively deemed to constitute an abandonment of the claim.

Robert Brennan, 67 IBLA 218 (Sept. 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in both the county recorder's office and the proper Bureau of Land Management office. Failure to file the required instruments in both places within the prescribed time period is

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

conclusively deemed to constitute an abandonment of the claim.

John Andrew Batok, 67 IBLA 272 (Sept. 28, 1982)

Where a mining claim was located in Oct. 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work performed during 1978, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work with the local recording office where the notice of location is recorded, and a copy thereof in the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Roger Ferguson, Sybil B. Ferguson, 67 IBLA 284 (Sept. 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a copy of the notice of location and a notice of intention to hold the claim or evidence of assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of every year thereafter he must file an affidavit of assessment work or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the statutory consequences must be borne by the claimant.

Carl H. Quandt, 67 IBLA 355 (Oct. 6, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location and either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report relating thereto, as provided by 30 U.S.C. § 28-1 (1976), all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

Blanche W. Peterson, 67 IBLA 388 (Oct. 8, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land must file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each calendar year, both in the office where the location notice is recorded and in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed the consequences must be borne by the claimant.

Jack L. Wooley, 68 IBLA 13 (Oct. 18, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim must file a notice of intention to hold or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the loss must be borne by the claimant.

Magma Power Co. et al., 68 IBLA 201 (Nov. 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land must file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each calendar year, both in the office where the location notice is recorded and in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed because of loss or delay by the Postal Service, the consequences must be borne by the claimant.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

John Gosion, 68 IBLA 206 (Nov. 10, 1982)

Where a mining claimant submits a copy of his annual proof of labor to the BLM district office in Susanville, California, on Dec. 31, 1981, he has not complied with 43 CFR 3833.2-1. The instrument was submitted to the district office after the statutory period for such filings had expired. Further, the district office was not the "proper BLM office" in which to file such a document. The proper office is the BLM California State Office in Sacramento, California, as expressly provided in 43 CFR 1821.2-1(d), and 43 CFR 3833.0-5(g). Where the required instrument is not received and date stamped by the proper BLM office during the statutory time period, the mining claim is properly deemed to be abandoned.

John Lovelady, 68 IBLA 285 (Nov. 16, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of assessment work on the claim by Oct. 22, 1979, and prior to Dec. 31 of each calendar year following. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely, the consequences must be borne by the claimant.

Loyd R. Colay, 68 IBLA 260 (Nov. 16, 1982)

Russell P. Journigan, 69 IBLA 52 (Nov. 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, a notice of intention to hold or evidence of performance of assessment work on the claim prior to Dec. 31 of the calendar year following the year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the consequence must be borne by the claimant.

Arden P. Griffith et al., 68 IBLA 295 (Nov. 19, 1982)

Where a mining claim was located in Dec. 1979, and evidence of assessment work or a proper notice of intention to hold the claim was not filed both in the office where the claim is recorded and in the proper office of BLM on or before Dec. 30, 1980, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

B. Bigby Young, 68 IBLA 397 (Nov. 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

Where a claimant inadvertently omits the name of several mining claims from his affidavit of annual assessment work or notice of intention to hold the claims, which otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Richard E. Noyes, 69 IBLA 48 (Nov. 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of assessment work performed on the claim, and prior to Dec. 31 of each calendar year thereafter a copy of the evidence of assessment work performed for that year or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the consequence must be borne by the claimant.

Phil E. Parks, 69 IBLA 48 (Nov. 29, 1982)

Dudley L. Davis, 69 IBLA 127 (Dec. 8, 1982)

Lang Number 5, Inc., 70 IBLA 14 (Jan. 6, 1983)

Robert Paoluccio, II, et al., 70 IBLA 118 (Jan. 13, 1983)

Zada Anderson et al., 70 IBLA 122 (Jan. 13, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of performance of assessment work on the claim on or before Oct. 22, 1979, and thereafter prior to Dec. 31 of each calendar year, must file with BLM a copy of the evidence of assessment work performed for that year or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where the evidence of assessment work is not timely filed, for any reason, the consequence must be borne by the claimant.

Susan S. Simmons, 69 IBLA 84 (Nov. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Asbestos Mines, Inc., 69 IBLA 100 (Nov. 30, 1982)

Donald O. Shrider, 70 IBLA 36 (Jan. 7, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976 that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Brent E. Young, 69 IBLA 131 (Dec. 8, 1982)

Minerco, Inc., 69 IBLA 379 (Jan. 4, 1983)

Myron S. Kenyon, 73 IBLA 10 (May 5, 1983)

Las Vegas Portland Cement, Inc., 75 IBLA 104 (Aug. 11, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file, with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter, a copy of the evidence of assessment work or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for whatever reason, the statutory consequence must be borne by the claimant as set forth in 43 U.S.C. § 1744(c) (1976).

Coates-Lehnsen, 69 IBLA 137 (Dec. 9, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976 that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

and in the proper office of BLM is mandatory, not discretionary.

Where the claimant inadvertently omits the names of several mining claims from his affidavit of annual assessment work, which otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Klondex Gold & Silver Mining Co., 69 IBLA 247 (Dec. 20, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of the recorded notice of location and a notice of intention to hold the mining claim or evidence of assessment work performed on the claim. There is no provision for waiver of this mandatory requirement, and where the copy of the location notice or evidence of assessment work is not timely filed, the claim is properly declared abandoned.

Midas International, Inc., 69 IBLA 251 (Dec. 21, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of assessment work performed on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely, for any reason, the statutory consequence must be borne by the claimant.

Elton P. Maggard, 69 IBLA 273 (Dec. 21, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of the notice of location and a notice of intention to hold the claim or evidence of assessment work performed on the claim. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for any reason, the consequence must be borne by the claimant.

Charles W. Shannon, Ruth Kunkel, 69 IBLA 300 (Dec. 23, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims located prior to Oct. 21, 1976, be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management on or before Oct. 22, 1979, is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)

Dee Wright, 69 IBLA 309 (Dec. 23, 1982)

Gervin Blake Riding, 70 IBLA 59 (Jan. 10, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of performance of assessment work on the claim on or before Oct. 22, 1979, and thereafter prior to Dec. 31 of each calendar year, must file with BLM a copy of the evidence of assessment work performed for that year or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where the evidence of assessment work is not timely filed, for any reason, the consequence must be borne by the claimant.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Estate of Woodie Nichols, 69 IBLA 382 (Jan. 4, 1983)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims located prior to Oct. 21, 1976, be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management on or before Oct. 22, 1979, is mandatory, not discretionary. Filing of evidence only in the state recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Erma Jellen, Suzanne E. Marco, 70 IBLA 29 (Jan. 6, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold the claim, evidence of assessment work performed on the claim, or a detailed report provided by 30 U.S.C. § 28-1 (1976), prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work, notice of intention to hold the mining claim, or a detailed report provided by 30 U.S.C. § 28-1 (1976), be filed both in the office where the notice of location is

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

B. B. Beitler, Alfred Babineau, Hiel Crum, 70 IBLA 42 (Jan. 10, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year. This requirement is mandatory, and failure to comply is conclusively deemed to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the location notice is recorded and in the proper office of BLM is mandatory, not discretionary.

Where the claimant inadvertently neglects to file with the Bureau of Land Management his affidavit of annual assessment work, which otherwise was properly recorded in the county, the claim must be deemed conclusively to be abandoned under provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

George Egenhoff, 70 IBLA 49 (Jan. 10, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Dec. 30 of each calendar year following the year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

William C. Wiederer et al., 70 IBLA 55 (Jan. 10, 1983)

Where a proof of labor for unpatented mining claims was tendered to the proper office of the Bureau of Land Management prior to Oct. 22, 1979, for mining claims located before Oct. 21, 1976, the requirement of the Federal Land Policy and Management Act of 1976 was satisfied, even though the notices of location for the mining claims had not yet been filed for record with BLM.

Jay Edwin Collier, 70 IBLA 283 (Jan. 26, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed, for whatever reason, the consequence must be borne by the claimant.

Joseph L. Bush, Betty Bush, 71 IBLA 324 (Mar. 23, 1983)

A. E. Florez, 73 IBLA 142 (May 23, 1983)

When a mining claim owner files a proof of labor for assessment work performed in 1977 or 1979 with the proper office of the Bureau of Land Management in 1980, he has not complied with the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and the claims are properly declared abandoned and void.

Nicholas J. Murphy, 71 IBLA 368 (Mar. 28, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land before Oct. 21, 1976, must file a copy of the location notice and evidence of assessment work with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, and evidence of assessment work performed or a notice of intention to hold the claim on or before Dec. 30 of every year hereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976 that evidence of assessment work or a notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Mineral Investigation & Development Co., 71 IBLA 398 (Mar. 31, 1983)

The mailing of a proof of labor to the Bureau of Land Management prior to the due date is not sufficient to comply with the requirements of the statute unless the proof is actually received by the proper BLM office on or before such date.

Robert J. King, L. E. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of assessment work performed on the claim, and prior to Dec. 31 of each calendar year thereafter a copy of the evidence of assessment work performed for that year or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where there is no evidence that assessment work was performed, the consequence must be borne by the claimant.

White Rose Corp., 72 IBLA 80 (Apr. 13, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file both in the office where the location is of record and in the proper office of BLM a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work or notice of intent to hold the claim is not filed in both places, for whatever reason, the claim is conclusively presumed to be abandoned.

Eleanor A. Bolger, 72 IBLA 232 (Apr. 26, 1983)

Jacqueline Balen, 73 IBLA 383 (June 15, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Addison Girard Clark, 72 IBLA 321 (Apr. 28, 1983)

Dean W. Frazier, 73 IBLA 13 (May 5, 1983)

Joe T. Andersen, Art Hubash, Estate of Don T. Andersen, 75 IBLA 71 (Aug. 10, 1983)

John Dillingham, Mabel Dillingham, 75 IBLA 146 (Aug. 17, 1983)

Walter E. Nelson, Thomas C. Nelson, 75 IBLA 269 (Aug. 26, 1983)

H. B. Monroe, 75 IBLA 325 (Aug. 30, 1983)

Henry A. Hall, Barbara Hall, 75 IBLA 339 (Aug. 30, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Where a mining claim was located in Sept. 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work performed during 1981, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Jack Devault, Dorothy Devault, 72 IBLA 324 (Apr. 28, 1983)

Raymond J. Garcia, 75 IBLA 346 (Aug. 31, 1983)

William L. Hapley, 76 IBLA 93 (Sept. 21, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year following the year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment is not filed timely because it was lost in the mail, the consequences must be borne by the claimant.

David L. Galin, 72 IBLA 327 (Apr. 28, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Inez McDorman, Andrew Pilger, 72 IBLA 383 (May 5, 1983)

George R. Haycock, 73 IBLA 104 (May 23, 1983)

Humboo Mining Co., 73 IBLA 270 (June 7, 1983)

Harold L. Long, 73 IBLA 280 (June 7, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Ray McKee, Cheryl McKee, 73 IBLA 311 (June 7, 1983)

Wayne H. Hunt, 73 IBLA 315 (June 7, 1983)

Paul F. Smith et al., 73 IBLA 336 (June 8, 1983)

Hugh Sprague, 73 IBLA 386 (June 15, 1983)

Bruce Naylor, Bill Barney, Darrell Taylor, 74 IBLA 201 (July 18, 1983)

Leonard E. Snider, Sr., 74 IBLA 213 (July 18, 1983)

Hughes Minerals, Inc., 74 IBLA 217 (July 18, 1983)

Frank Benson, 74 IBLA 367 (July 28, 1983)

Parke Potter, 74 IBLA 397 (Aug. 2, 1983)

Devon E. Hurst, 75 IBLA 149 (Aug. 18, 1983)

Dale Rossi, Judy Rossi, 75 IBLA 262 (Aug. 26, 1983)

Charles Mayo, Marie G. Mayo, 76 IBLA 107 (Sept. 21, 1983)

Betty E. Baxter, 76 IBLA 188 (Oct. 6, 1983)

Adolf Dieckmann (Trust), 76 IBLA 357 (Oct. 24, 1983)

Where a mining claim was located in Dec. 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work performed during 1981, both in the county where the location notice is of record and in the proper office of the BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Cletius G. Rogers, 73 IBLA 1 (May 5, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was lost in the mail, the consequence must be borne by the claimant.

Gary E. Hertle, 73 IBLA 4 (May 5, 1983)

Robert B. Hicks, 73 IBLA 145 (May 23, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976 that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

Where the claimant inadvertently omits the names of several claims from his affidavit of annual assessment work which otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Wilbur B. Parsons, 73 IBLA 6 (May 5, 1983)

The Federal Land Policy and Management Act of 1976 requires that for each mining claim located prior to Oct. 21, 1976, the required filing of evidence of assessment work or notice of intention to hold the claim must be made with both the BLM and local office of the state where the notices of location were filed.

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, had to file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of a notice of intention to hold the mining claim or evidence of assessment work performed on the claim. There is no provision for waiver of this mandatory requirement, and where the copy of the notice of intention to hold or evidence of assessment work was not timely filed, the claim is properly declared abandoned.

Arthur B. Fields, Sr., 73 IBLA 52 (May 12, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or to afford claimants any relief from the statutory consequences.

Charles E. Dean, 73 IBLA 108 (May 23, 1983)

Where a mining claim was located in Dec. 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work, both in the county where the location notice is of record and in the proper office of BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to an unpatented mining claim located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Homestake Mining Co., 73 IBLA 117 (May 23, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Don Lovelady, 73 IBLA 190 (May 26, 1983)

Where a mining claim was located in Nov. 1979, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1980, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claim or evidence of the performance of assessment work on the claim, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

Herbert Clark, 73 IBLA 195 (May 26, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of the BLM is mandatory, not discretionary.

Where the claimant inadvertently omits the name of a mining claim from the affidavit of annual assessment work, which otherwise was properly recorded both in the county and with BLM, the omitted claim must be deemed conclusively to be abandoned under provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

William J. Booth, 73 IBLA 274 (June 7, 1983)

Norma E. Cashbell, 73 IBLA 390 (June 15, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Rex Mining Co., 73 IBLA 284 (June 7, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of mining claims located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of assessment work on the claims prior to Dec. 31 of each year following the calendar year in which the claims were located. Pursuant to 43 CFR 3833.0-5(m), a proof of labor or notice of intention to hold will be deemed as timely filed if it is mailed in an envelope bearing a clearly dated postmark affixed by the United States Postal Service prior to Dec. 31,

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

the period prescribed by law, and is delivered to the proper BLM office by Jan. 19 immediately following.

J. Bradley Smith, 73 IBLA 398 (June 15, 1983)

J. L. Shinn, 74 IBLA 226 (July 18, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the location notice and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976, or those in 43 CFR 3833.2.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive the requirements of the Act, or to afford claimant any relief from the statutory consequences.

Dan Walker, 74 IBLA 153 (July 12, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim by Oct. 22, 1979, and prior to Dec. 31 of each year after the calendar year in which the claim was recorded with BLM. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Harold H. Block, 74 IBLA 156 (July 12, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file in the local office where the location notice is recorded and in the proper office of the Bureau of Land Management a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

a claimant intended not to abandon his claim may not be considered in such cases.

Page Investment Co., 74 IBLA 163 (July 12, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. The filing must be made both in the county where the location notice is recorded and in the proper office of BLM. Where evidence is introduced showing that the notice of intention to hold was recorded timely in the county and with BLM, a BLM decision declaring the unpatented mining claim abandoned and void will be vacated.

Richard Holland, 74 IBLA 167 (July 12, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of mining claims located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of assessment work on the claims with BLM by Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. Pursuant to 43 CFR 3833.0-5(m), a proof of labor or notice of intention to hold will be deemed as timely filed if it is mailed in an envelope bearing a clearly dated postmark affixed by the United States Postal Service prior to Dec. 31, the period prescribed by law, and is delivered to the proper BLM office by Jan. 19 immediately following.

Arthur A. Tooze, 74 IBLA 221 (July 18, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim by Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Lee Saulsberry, 74 IBLA 223 (July 18, 1983)

Floyd R. Hakins, Jr., 75 IBLA 80 (Aug. 10, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file with the Bureau of Land Management within 90 days after location of the claim a copy of the location notice and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of BLM. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976, or those in 43 CFR 3833.2.

The conclusive presumption of abandonment which attends the failure of a claimant to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive the requirements of the Act, or to afford claimant any relief from the statutory consequences.

David R. Mathews, 74 IBLA 320 (July 28, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file in the local office where the location notice is recorded and in the proper office of the Bureau of Land Management a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year in which the claim was located. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Mackay Bar Corp., 75 IBLA 57 (Aug. 5, 1983)

Moonwalker, Inc., 76 IBLA 53 (Sept. 19, 1983)

Where a mining claim was located in Dec. 1978, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1979, a notice of intention to hold the claim or evidence of the performance of assessment work, both in the county where the location notice is of record and in the proper office of BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to an unpatented mining claim located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded and in the proper office of BLM prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Robert E. Bauer, 75 IBLA 62 (Aug. 5, 1983)

L. C. Carter et al., 76 IBLA 90 (Sept. 21, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land must file a notice of intention to hold the mining claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely,

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

because it was lost in the mail, the consequence must be borne by the claimant.

Delbert A. Bagge, 75 IBLA 74 (Aug. 10, 1983)

Rachel G. Conover, 75 IBLA 323 (Aug. 30, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Paul T. Ryan, Melvin T. Lunt, 75 IBLA 76 (Aug. 10, 1983)

Where a mining claim was located in Sept. 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work, both in the county where the location is of record and in the proper office of BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the mining claim.

With respect to an unpatented mining claim located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining laws has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Gustin Corp., B. B. Casperson, 75 IBLA 100 (Aug. 11, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary.

Shamrock Mining Inc., 75 IBLA 110 (Aug. 11, 1983)

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FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of assessment work on the claim before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Estate of Stanley Styles, 75 IBLA 272 (Aug. 26, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on Federal lands must file a notice of intention to hold this claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the location notice for the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976, or those in 43 CFR 3833.2-1.

Edmund G. Rich, 75 IBLA 275 (Aug. 26, 1983)

Edward H. Beck, 76 IBLA 80 (Sept. 21, 1983)

Michael J. Rouse, 76 IBLA 183 (Oct. 3, 1983)

C. G. Rhinehart, 76 IBLA 228 (Oct. 17, 1983)

J. Neil Smith, 77 IBLA 239 (Nov. 29, 1983)

Where mining claims were located in May 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claims or evidence of assessment work performed on the claims during 1981, both in the county where the location notices are of record and in the proper office of BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claims.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Fredrick A. Rogers, 75 IBLA 332 (Aug. 30, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Where a mining claim was located in Dec. 1978, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1979, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claim or evidence of the performance of assessment work on the claim, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

Homer Owens, 75 IBLA 335 (Aug. 30, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each calendar year. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Cliff Sasselli, 76 IBLA 8 (Sept. 6, 1983)

Farrell P. Clontz, 76 IBLA 180 (Oct. 3, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Elliott Glasser, 76 IBLA 11 (Sept. 6, 1983)

Where a mining claim was located in Nov. 1979, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1980, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claim or evidence of performance of assessment work on the claim, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining laws has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper BLM office, prior to

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

James Capp, 76 IBLA 96 (Sept. 21, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Robert W. Hughes, 76 IBLA 99 (Sept. 21, 1983)

Crownite Corp., American Pumice Products, Inc., 76 IBLA 236 (Oct. 17, 1983)

Where a mining claim was located in Mar. 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work, both in the county where the location is of record and in the proper office of BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the mining claim.

With respect to an unpatented mining claim located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining laws has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

W. J. Glass, 76 IBLA 215 (Oct. 17, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file in the local office where the location notice is recorded and in the proper office of the Bureau of Land Management a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year in which the claim was located. Thus, where claims were located in July 1981, notice of intention to hold or a proof of labor had to be filed with BLM prior to Dec. 31, 1982. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

John V. Balding, 76 IBLA 218 (Oct. 17, 1983)

Where a mining claim was located in Apr. 1981, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1982, a notice of intention to hold the claim or evidence of assessment work performed on the claim during 1982, both in the county where the location notice is of record and in the proper office of BLM. Failure to file the required instrument within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

John Milner, 76 IBLA 221 (Oct. 17, 1983)

Where a mining claim was located in Feb. 1979, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1980, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claim or evidence of the performance of assessment work on the claim, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

Ralph Kubinski, 76 IBLA 224 (Oct. 17, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented millsite located after Oct. 21, 1976, must file a copy of the location notice with the Bureau of Land Management within 90 days after location. There is no statutory requirement that subsequent yearly notices of intention to hold the millsite be filed with BLM. The regulations, 43 CFR 3833.2-1(d), require that a notice of intention to hold the millsite claim be filed with BLM on or before Dec. 30 of the year following recordation of the millsite with BLM.

Eleanor A. Hill, 76 IBLA 234 (Oct. 17, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 21, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Where mining claims were located in Sept. and Oct. 1979, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1980, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claims or evidence of performance of assessment work on the claims, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim. For mining claims located in Aug. 1981, the requirement for first recordation of a notice of intention to hold the claim or proof of assessment work performed with the Bureau of Land Management became effective in 1982.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining laws has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper office of Bureau of Land Management, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Edmund J. Covan, 76 IBLA 257 (Oct. 17, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file with BLM a notice of intention to hold the claim or evidence of performance of assessment work on the claim by Oct. 22, 1979. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Henry G. Zacher, 77 IBLA 1 (Oct. 31, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. The owner of a mining claim located after Oct. 21, 1976, must file a copy of the notice of location with BLM within 90 days after the date of location, and must file either a notice of

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF AFFIDAVIT OF ASSESSMENT WORK OR NOTICE OF INTENTION TO HOLD MINING CLAIM--Continued

intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of the calendar year after the claim was located and prior to Dec. 31 of each year thereafter. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Homestake Mining Co., 77 IBLA 235 (Nov. 29, 1983)

Where the evidence submitted by an appellant preponderates, a decision declaring unpatented mining claims abandoned and void for failure to comply with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), will be vacated.

Frank J. Tarantino, 77 IBLA 328 (Dec. 5, 1983)

RECORDATION OF MINING CLAIMS AND ABANDONMENT

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of Location." The date of location of a mining claim is determined in accordance with the law of the State where the claim is situated. Under Washington law, it is the date specified on the notice of location filed with the local recorder's office.

The date of location of a mining claim may not be changed by altering this date on the copy of the notice of location filed with BLM so that it reflects a date different than that in the original notice.

P & S Mining Co., 45 IBLA 115 (Jan. 23, 1980)

Where a mining claimant submits a copy of a notice of location in the BLM's Riverside, California, District Office, for a claim located after Oct. 21, 1976, he has not complied with 43 CFR 3833.1-2(b), even though the material was submitted in the District Office before the expiration of the 90-day deadline, as the notice has not been filed in the "proper BLM office," which is the BLM California State Office in Sacramento, as expressly provided by 43 CFR 3833.0-5(g) and 1821.2-1(d). Where the District Office forwards the information to the State Office but it does not arrive until after the 90-day deadline has passed, owing to its extremely late submission to the District Office, it is untimely, and the claim is properly declared abandoned and void under 43 CFR 3833.4(a).

C. F. Linn, 45 IBLA 156 (Jan. 23, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), if an unpatented mining claim located before Oct. 21, 1976, is not supported annually on or before Dec. 31 of the calendar year following the calendar year he recorded the claim in the BLM office by either an affidavit of assessment work or notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement that there was no intention to abandon and that the failure to file the required statements with BLM was an oversight.

Jerry Cupper, 45 IBLA 215 (Jan. 30, 1980)

If a mining claim is not timely recorded in accordance with the recordation provisions in the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), it is conclusively deemed abandoned and is void as a matter of law. A claimant who has no interest in maintaining a mining claim should not record it with the Bureau of Land Management.

Where a mining claimant timely tendered payment to cover service fees for recording 70 mining claim notices of location, but also included four additional mining claim notices which she did not intend to maintain but filed merely for informational purposes, and on appeal she clarifies her intent concerning the four claims and unclear markings on maps which were to show that the four claims were "canceled," the payment and filing will be deemed to have been timely made as to the 70 claims if payment is subsequently made pursuant to a notice given.

Ann M. Warnke, 45 IBLA 305 (Feb. 6, 1980)

"Copy of the Official Record of the Notice or Certificate of Location." Under the revised definition of the term at 43 CFR 3833.0-5(i) (1979), a duplicate of a notice of location which has been filed with the local recorder is a "copy of the official record of the notice or certificate of location," even though it is not stamped by the local recorder and does not include a reference to the local record, and is therefore acceptable under 43 CFR 3833.1-2(b) if tendered within 90 days of the date of location.

James E. Strong, 45 IBLA 386 (Feb. 13, 1980)

Where regulations implementing sec. 314 of the Federal Land Policy and Management Act of 1976 require reference to the Bureau of Land Management serial number under which a mining claim is recorded for future recordings, a claimant fails to include the number when he files a notice of assessment work, and he is specifically informed of this and other requirements, but fails to furnish the number, the filing is unacceptable, and failure to comply with the filing requirements constitutes abandonment of the claim, as provided by the Act.

David Y. Ody, 45 IBLA 389 (Feb. 13, 1980)

The owner of an unpatented mining claim located prior to Oct. 21, 1976, has until Oct. 22, 1979, to record the location. Recordation is effected by filing a copy of the location notice or certificate with the proper BLM office.

Failure to comply with the regulations governing recordation of assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned.

N. L. Smith, 46 IBLA 62 (Feb. 22, 1980)

Under 43 U.S.C. § 1744(b) (1976) the owner of an unpatented mining claim located before Oct. 21, 1976, must file with BLM, a copy of the notice of location before Oct. 22, 1979, or the claim will be conclusively deemed to have been abandoned under 43 U.S.C. § 1744(c). Mining claimants are not relieved of the requirement to timely file their documents where such documents may have been lost in the mail.

Where an unpatented mining claim is located after Oct. 21, 1976, a claimant has 90 days from the date of the new location to file with BLM a copy of the notice of location and if he does so file, BLM should proceed with recordation of the new claim.

Everett Young, 46 IBLA 74 (Feb. 22, 1980)

Where a mining claimant attempts to file notices of location for six claims pursuant to 43 CFR 3833.1-2 and tenders payment for filing costs in an amount sufficient to cover only four of such claims, BLM shall require the claimant to select four claims to which the money tendered shall be applied. The remaining two claims are properly declared abandoned and void in accordance with 43 CFR 3833.4.

Robert L. Steele, 46 IBLA 80 (Feb. 22, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to BLM for recordation on Oct. 18, 1979, and the filing fee therefor is not paid to BLM until Nov. 7, 1979, the recordation date of the notice of location is Nov. 7, 1979. In the circumstances, under 43 CFR 3833.1-2 appellant's filing was not completed until Nov. 7, 1979, which is after the cutoff date of Oct. 22, 1979, for mining claims located prior to Oct. 21, 1976, and the mining claim must be deemed abandoned and void.

Nevada Pacific Co., Inc., 46 IBLA 208 (Mar. 24, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where, under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file a notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, the mining claim is properly declared abandoned and void.

John Walter Chaney, 46 IBLA 229 (Mar. 27, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

constitute an abandonment of the claim by the owner and renders the claim void.

Beryl Rhoden, 46 IBLA 287 (Mar. 31, 1980)

The owner of an unpatented mining claim located before Oct. 21, 1976, has until Oct. 22, 1979, in which to record his/her notice of location with BLM. However, if he/she elects to record in 1977, he/she must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1978, and each year thereafter, or the claim will be conclusively deemed to have been abandoned.

Josephine M. Buchen, 46 IBLA 298 (Mar. 31, 1980)

Lo Lo M. Cosby, 46 IBLA 363 (Apr. 8, 1980)

Clarence W. and Anna F. Owens, 47 IBLA 149 (May 6, 1980)

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a $5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

The failure to file such instruments as are required by secs. 3833.1 and 3833.2 within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it properly is declared abandoned and void.

Phyllis Wood et al., 46 IBLA 309 (Apr. 4, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), unless the required copy of the official record of location is filed in the proper BLM office within 90 days from the date of location, a mining claim, located after Oct. 21, 1976, is properly deemed abandoned and void.

A question as to the date of location of a mining claim is to be resolved according to state law, pursuant to 43 CFR 3833.0-5(h).

R. J. Holmes, 46 IBLA 316 (Apr. 4, 1980)

Under 43 CFR 3833.1-2 the owner of an unpatented mining claim, millsite, or tunnel site located on or before Oct. 21, 1976, must file (file shall mean being received and date stamped by the proper BLM office) an official copy of the notice of location with the proper BLM office on or before Oct. 22, 1979, or the claim will be conclusively deemed to have been abandoned under 43 CFR 3833.4. Mining claimants are not relieved of the requirement to file timely their documents when they mail them, as the documents cannot be considered as filed until they are received by the proper office of the Bureau of Land Management.

Carl Oberg, 46 IBLA 319 (Apr. 4, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Glen J. McCrorey and Deloris McCrorey, 46 IBLA 355 (Apr. 8, 1980)

43 CFR 3833.1-2(a) states that the owner of an unpatented mining claim, millsite, or tunnel site on Federal lands on or before Oct. 21, 1976, shall file (file shall mean being received and date stamped by the proper BLM office) on or before Oct. 22, 1979, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. The depositing of a copy of the document in the mail does not constitute a "filing" within the context of the regulation.

Wayne Van Dyke, 46 IBLA 358 (Apr. 8, 1980)

Earl A. Tenley, 47 IBLA 200 (May 7, 1980)

Darleen Porter, 48 IBLA 55 (May 29, 1980)

Where the owner of an unpatented mining claim located after Oct. 21, 1976, in the calendar year 1977, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 31 of the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

Northwest Mining & Mercantile, Inc., 46 IBLA 360 (Apr. 8, 1980)

Geopet Exploration, Inc., 47 IBLA 135 (Apr. 30, 1980)

Robert B. Eisenman, 50 IBLA 145 (Sept. 26, 1980)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1, the owner of an unpatented mining claim located in calendar year 1977, must file an affidavit of assessment work or a notice of intention to hold the mining claim on or before Dec. 30 of the following calendar year, 1978, or the claims will be conclusively deemed to have been abandoned and will be declared void.

Vernon M. and Barbara S. Johnson, 47 IBLA 43 (Apr. 11, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim was submitted to BLM for recordation on Oct. 22, 1979, the deadline date, and the filing fee therefore is not paid to BLM until after the deadline for filing had passed, the mining claim must be deemed abandoned and void.

L. Leon Jennings, Mansfield L. Jennings, Gilbert F. Jennings, 47 IBLA 47 (Apr. 14, 1980)

R. L. Durrant, Wod Mulville, R. E. Kern, 47 IBLA 208 (May 13, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

George Tools, 47 IBLA 89 (Apr. 21, 1980)

Arthur W. Schmidt, 47 IBLA 143 (May 6, 1980)

The owner of an unpatented mining claim, located after Oct. 21, 1976, must file within 90 days after the date of location, in the proper BLM office, a copy of the certificate of location of the claim.

The failure to file the instruments required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, constitutes an abandonment of the mining claim, and the claim is properly deemed to be void.

Eric Murray, 47 IBLA 112 (Apr. 28, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official notice of location or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, failing which the claim is properly deemed abandoned and void.

Sheldon Bergen, 47 IBLA 118 (Apr. 28, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Timely transmittal of the documents to the wrong BLM Office does not meet the requirements where the documents are not filed in the proper office timely.

John S. Benson, 47 IBLA 129 (Apr. 29, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A document received by BLM on Oct. 24, 1979, is not timely filed.

Dwight F. Kennedy, 47 IBLA 132 (Apr. 29, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Filing in a BLM District Office rather than the designated BLM State Office is not sufficient.

John Sloan, 47 IBLA 146 (May 6, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Fred A. Dunbar, 47 IBLA 152 (May 6, 1980)

Edward G. Taylor, 47 IBLA 286 (May 15, 1980)

Lela B. Osborn, 49 IBLA 146 (July 30, 1980)

George J. Burnett, 50 IBLA 124 (Sept. 24, 1980)

Lorraine Mohr, 50 IBLA 147 (Sept. 26, 1980)

County of Imperial, 51 IBLA 250 (Dec. 15, 1980)

Stephen Greist, 51 IBLA 287 (Dec. 17, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Documents filed in the proper BLM office after that date cannot be accepted even if they were erroneously transmitted to the Montana Department of Natural Resources before that date and were on file with the county office.

Jeanne G. Owens, 47 IBLA 172 (May 7, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

R. L. Rogers, 47 IBLA 196 (May 7, 1980)

Edvin Forsberg, 47 IBLA 235 (May 13, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of recording with BLM, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Documents received in the Bureau of Land Management's Burns, Oregon, District Office on Oct. 22, 1979, are not timely filed in the proper BLM office, where pursuant to 43 CFR 1821.2-1(d), the proper office with jurisdiction over the area in which the claim is located is the Oregon State Office in Portland, and the documents are not received in the State Office until after Oct. 22, 1979.

Floyd Zaiger, 47 IBLA 204 (May 7, 1980)

The owner of an unpatented mining claim on Federal lands located prior to Oct. 21, 1976, had until Oct. 22, 1979, to record the location in the proper BLM office. Recordation is effected by filing a copy of the official record of the location notice or certificate with the proper BLM office and payment of a service charge of $5 per claim.

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid.

Failure to comply with the regulations governing recordation of notice of location or assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned and is void.

G. H. Monk, 47 IBLA 213 (May 13, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Appellant's attempt to mail the documents on Saturday, Oct. 20, 1979, will not excuse late filing even though he was told by the Post Office that the documents would be in Phoenix by Monday, Oct. 22, 1979.

Ray F. Coffee, 47 IBLA 217 (May 13, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

3833.4. The requirements are not met where documents are not received by the proper BLM office until Oct. 25, 1979, even though the claimant had the envelope date stamped by a different BLM office on Oct. 22, 1979, before mailing it to the proper office.

Santa Fe Nuclear, Inc., 47 IBLA 220 (May 13, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 2, 1979, and the service fee therefor is not paid to BLM until Oct. 29, 1979, the recordation date of the notice is Oct. 29, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A notice relating to an unpatented mining claim located before Oct. 21, 1976, which is filed with BLM on Oct. 29, 1979, is not timely filed.

Charles P. Seel, 47 IBLA 229 (May 13, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned and is void. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, accompanied by the proper fee.

Carl A. Borgstrom, 47 IBLA 232 (May 13, 1980)

The statute and regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claims have been abandoned and are void.

Andrew W. Berg, 47 IBLA 238 (May 13, 1980)

Where the owner of an unpatented mining claim located before Oct. 21, 1976, files a copy of the original notice of location in the calendar year 1978, he is required by 43 CFR 3833.2-1(a) to file proof of assessment work for the assessment year ending on Aug. 31, 1979, on or before Oct. 22, 1979, failing which his claim is properly declared abandoned and void.

A mining claimant's failure to file timely evidence of annual assessment work is not excused by alleged tardiness of the State recorder's office in recording this information and returning a record copy to claimant, as a claimant is permitted under 43 CFR 3833.2-2(a) to satisfy the Federal filing requirements by submitting a duplicate of the assessment notice, even though it has not yet been filed for record with the State.

Harry J. Phillips, 47 IBLA 252 (May 13, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where certificates of location of mining claims are submitted to BLM for recordation on Oct. 18, 1979, and the filing fee therefor is not paid to BLM until Feb. 25, 1980, the recordation date of the notices of location is Feb. 25, 1980. In the circumstances, under 43 CFR 3833.1-2 appellant's filing was not completed until Feb. 25, 1980, which is after the cutoff date of Oct. 22, 1979, for mining claims located prior to Oct. 21, 1976, and the mining claims must be deemed abandoned and void.

Cecil T. Clifford, Jr., 47 IBLA 262 (May 13, 1980)

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements.

Alva F. Rockwell and Alva A. Rockwell, 47 IBLA 272 (May 13, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Where a mining claim is located on July 4, 1976, and recorded with BLM on Jan. 23, 1978, the evidence of assessment work must be filed with BLM on or before Oct. 22, 1979. Evidence of assessment work received on Dec. 3, 1979, is not filed timely and the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

Jim Adams, 47 IBLA 281 (May 15, 1980)

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a $5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Where a mining claimant submits a copy of a notice of location to the BLM District Office at Burley, Idaho, for a claim located prior to Oct. 21, 1976, he has not complied with 43 CFR 3833.1-2(a), even though the material was submitted to the District Office before the expiration of the statutory deadline of Oct. 22, 1979, as the location notice has not been filed in the "proper BLM office," which is the BLM Idaho State Office, in Boise, as expressly provided by 43 CFR 3833.0-5(g) and 1821.2-1(d), and the mining

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

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claim is properly declared abandoned and void under 43 CFR 3833.4(a).

Roy Trevarrow, 47 IBLA 289 (May 15, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the service fee therefor is not paid to BLM until Nov. 13, 1979, the recordation date of the notice is Nov. 13, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A notice relating to an unpatented mining claim located before Oct. 21, 1976, which is filed with BLM on Nov. 13, 1979, is not timely filed.

Loyal Dee Griggs, 47 IBLA 293 (May 15, 1980)

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a $5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Beth Mallory, 47 IBLA 296 (May 19, 1980)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. As this is a mandatory requirement there is no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where, for a claim located after Oct. 21, 1976, the filing fee is not paid within 90 days after the date of location, the claim must be deemed abandoned and void.

David Mendonhall, 47 IBLA 298 (May 19, 1980)

Fleck Mining and Investment Co., 49 IBLA 187 (Aug. 6, 1980)

Gary Hansbrough, 50 IBLA 206 (Sept. 30, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

stated fee, or until it is paid. Therefore, where notices of location of mining claims, were submitted to BLM for recordation and the filing fees therefor were not paid to BLM until after the deadline (90 days after the date of location) had passed, the mining claims must be deemed abandoned and void.

Virginia Edwards, 47 IBLA 301 (May 19, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a placer mining claim must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

Allen J. Maxwell, Mary A. Janusz, 47 IBLA 306 (May 19, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

Jean L. Greene, 47 IBLA 309 (May 19, 1980)

Andy Syndbad, 48 IBLA 87 (May 29, 1980)

A. J. Grady, 48 IBLA 218 (June 16, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned and is void. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979.

Willies and Marie Blanchard, 47 IBLA 312 (May 19, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 11, 1979, and the service fee therefor is not paid to BLM until Nov. 20, 1979, the recordation date of the notice is Nov. 20, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

43 CFR 3833.4. A notice relating to an unpatented mining claim located before Oct. 21, 1976, which is filed with BLM on Nov. 20, 1979, is not timely filed.

Frank Franich, 47 IBLA 332 (May 21, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. A certificate of location received after Oct. 22, 1979, at the wrong BLM office is not timely filed and the mining claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

James H. Hardie, 47 IBLA 345 (May 21, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim, located after Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office within 90 days after the date of location of such claim, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

The "proper BLM office" is defined in 43 CFR 3833.0-5(g) as the BLM office which has jurisdiction over the area in which the claim is located, as specified in 43 CFR 1821.2-1(d). Where this latter regulation designates the Oregon State Office as the proper office, filing in a local Oregon office is not sufficient.

Tina Anderson, 47 IBLA 348 (May 21, 1980)

The owner of an unpatented mining claim located prior to Oct. 21, 1976, must record the location on or before Oct. 22, 1979. Recordation is effected by filing a copy of the location notice or certificate with the proper BLM Office.

The owner of an unpatented mining claim located prior to Oct. 21, 1976, and recorded with BLM in the calendar year 1977, must file affidavit of assessment work or notice of intention to hold the claim on or before Dec. 30 of the calendar year following the calendar year in which the claim was recorded with BLM and failure to comply with the regulations governing recordation of such instruments must result in a conclusive finding that the claim has been abandoned.

Where mining claimants attempt to record their claims on Oct. 28, 1977, which were located prior to Oct. 21, 1976, but do not submit the mandatory service fee, as required by 43 CFR 3833.1-2(d), until May 3, 1978, recordation of the claims is effective as of May 3, 1978, and the claimants are not required to file evidence of annual assessment work until Oct. 22, 1979.

W. Verne Kight, Eve M. Kight, 47 IBLA 351 (May 21, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the location of the mining claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Anna M. Vance, 47 IBLA 357 (May 21, 1980)

Elsie Codd, 51 IBLA 43 (Oct. 30, 1980)

Ed Wardrobe, 51 IBLA 45 (Oct. 30, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact the Post Office returned mail enclosing the documents to the claimant because the envelope did not conform to postal requirements affords no basis for relief where the documents subsequently were received by BLM after Oct. 22, 1979, as the statute gives no authority for waiving the late filing.

Tom Phelps, 47 IBLA 360 (May 21, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the filing fee therefor is not paid to BLM until Mar. 10, 1980, the recordation date of the notice is Mar. 10, 1980.

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, and it properly is declared abandoned and void.

Wilbur Martin, 47 IBLA 370 (May 21, 1980)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1977, must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of the following calendar year, 1978, or the claims will be conclusively deemed to have been abandoned.

Where a claimant is not required to do any assessment work under the general mining laws, but is required nevertheless to file under 43 CFR 3833.2-1(c), he must file a notice of intention to hold the claims in lieu of an affidavit of assessment work performed.

William J. Walker, Lewis Sandberg, 47 IBLA 389 (May 22, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

The Federal Land Policy and Management Act of 1976 does not provide the Bureau of Land Management or the Interior Board of Land Appeals with discretion to waive the effects of failure to comply with the recordation requirements.

Sylvan S. Hewitt, Dennis Wallace, 47 IBLA 393 (May 22, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Where a copy of the notice or certificate of location is on file at the BLM Phoenix District Office in relation to trespass action and the $5 filing fee is not received in the BLM Arizona State Office until after the deadline, the certificate of location is not timely filed and the mining claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Mitsuko Flick, 48 IBLA 1 (May 27, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that the Post Office assured the claimant that the documents would reach the Oregon State Office by Oct. 22, 1979, will not excuse the late filing.

Norman E. Brooks, 48 IBLA 16 (May 27, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location and related material for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. File means being received and date stamped by the proper BLM office. Failure to so file is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

Robert Willing et al., 48 IBLA 39 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode or placer mining claim must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner. A question as

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

to the date of location is to be resolved according to state law, pursuant to 43 CFR 3833.0-5(b).

Larry Labunsa, Jay Coates, 48 IBLA 43 (May 29, 1980)

The owner of an unpatented mining claim located prior to Oct. 21, 1976, had until Oct. 22, 1979, to record the location and file a copy of t e recorded affidavit of assessment work or notice of ntention to hold. Recordation is effected by filing a copy of the location notice or certificate with the proper BLM office.

Failure to comply with the regulations governing recordation of assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned and is void.

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a $5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Bernard A. Schmid, 48 IBLA 48 (May 29, 1980)

Where the owner of an unpatented mining claim located prior to, but recorded with BLM after Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Alice E. Deetz, 48 IBLA 59 (May 29, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Pursuant to 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Ross W. Mathews, 48 IBLA 71 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Filing is accomplished when a document is delivered to and received by the proper office. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Johnnie Finnegan, Don E. Gordon, Carl Holder, 48 IBLA 79 (May 29, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office prior to Oct. 22, 1979. A copy of the location certificate, which is not an exact replica or machine copy of the recorded certificate, but which contains the same language and is filed timely will be accepted as complying with the laws and regulations.

Wilma Hartley, 48 IBLA 83 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode or placer mining claim must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute and abandonment of the claim by the owner.

Paul B. Rhodes, 48 IBLA 90 (May 29, 1980)

Where a claimant timely files notices of location for recordation of his mining claims and submits a sketch map and narrative description of the location of the claims sufficient to locate the claimed lands on the ground, and identifies the claims by section, township, range, meridian, and state, he has met the requirements of sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2(c)(5) and (6).

Robert H. Lawson, 48 IBLA 93 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

John Hudspeth, Floraine Hudspeth, 48 IBLA 99 (May 29, 1980)

Edward W. Kramer, 51 IBLA 294 (Dec. 17, 1980)

Where the owners of unpatented mining claims located before Oct. 21, 1976, fail to file copies of the original notices of location with the proper BLM office on or before Oct. 22, 1979, their claims are properly held to be abandoned and void.

Jean C. Lepper et al., 48 IBLA 103 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2 and 3833.2-1, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location and a copy of the recorded affidavit of assessment work or notice of intention to hold the claim, with the proper Bureau of Land Management Office

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

on or before Oct. 22, 1979, or the claim must be deemed abandoned and void.

Helen E. Wallace, 48 IBLA 127 (May 30, 1980)

The owner of a mining claim located on or before Oct. 21, 1976, had until Oct. 22, 1979, to record a copy of the location notice with Bureau of Land Management and pay the required service fee, and where the fee was not paid 43 CFR 3833.1-2(d) requires that the notice of location be returned as unacceptable.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to timely file an instrument required by 43 CFR 3833.1-2 constitutes an abandonment of the mining claim, and it is deemed to be void.

George H. Flewelling, 48 IBLA 141 (May 30, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A document required to be filed on or before Oct. 22, 1979, and received by BLM on Jan. 8, 1980, is not timely filed.

James F. Cooper, 48 IBLA 175 (June 9, 1980)

The statute and regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where, under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file a notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, the mining claim is properly declared abandoned and void.

Robert Alameda et al., 48 IBLA 178 (June 9, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of recording with BLM, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), gives no authority to the Department of the Interior to accept for mining claim recordation documents submitted after the statutory time requirements as if they were timely

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

filed in order to avoid the consequences of the statute.

John F. Sherwood, 48 IBLA 180 (June 9, 1980)

George L. Harrison, 49 IBLA 157 (July 30, 1980)

Under 43 CFR 3833.2-1(a) and 3833.4(a), the owner of an unpatented mining claim located before Oct. 21, 1976, notice of which is recorded with BLM in the calendar year 1977, must file an affidavit of assessment work or a notice of intention to hold the claim on or before Dec. 30 of the following calendar year, 1978, or the claim will be conclusively deemed to have been abandoned.

Betty Horton, 48 IBLA 184 (June 9, 1980)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, within 90 days after the date of location of such claim, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner. The "date of location" is determined by reference to the law of the state in which the claim is situated.

C. A. Gussman, 48 IBLA 193 (June 9, 1980)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner or owners of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to file will conclusively be deemed an abandonment of the claim and it shall be void.

Lowell Becker, Billie Peterson, 48 IBLA 203 (June 16, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. Under 43 CFR 3833.1-2 there is no express requirement that a machine reproduction be provided. Accordingly, a handwritten duplicate of a notice of location is acceptable under the regulations.

B. C. Miles, 48 IBLA 214 (June 16, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Joe Rapic, 48 IBLA 255 (June 26, 1980)

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b) and 3833.4, the owner of an unpatented mining claim located after Oct. 21, 1976, shall file within 90 days after the date of location in the proper BLM office a copy of the official record of the notice or certificate of location, or the claim must be deemed abandoned and void.

James White, 48 IBLA 346 (July 3, 1980)

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, or the claim is deemed abandoned and void.

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Armando Malaica, 48 IBLA 351 (July 11, 1980)

Failure to comply with the regulations governing recordation of notices of location or the filing of evidence of assessment work or a notice of intention to hold mining claim must result in a conclusive finding that the mining claim has been abandoned and is void.

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements.

Dollie L. Glaab, 48 IBLA 404 (July 11, 1980)

Land which has been patented without a reservation of minerals to the United States is not available for the location of mining claims, and mining claims located on such land after it is so patented are null and void ab initio, and an attempted recordation of such mining claims is properly refused by the Bureau of Land Management.

Jonathan Carr, 49 IBLA 17 (July 15, 1980)

Under 43 U.S.C. § 1744 (1976) if the owner of a mining claim located on or before Oct. 21, 1976, does not file a copy of the recorded notice or certificate of location by Oct. 22, 1979, the claim must be deemed abandoned and void.

Frank Otegui, 49 IBLA 40 (July 21, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Don B. Bird et al., 49 IBLA 94 (July 22, 1980)

Herb Ballou, 49 IBLA 225 (Aug. 12, 1980)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file a copy of the certificate or notice of location of the claim with BLM within 90 days of the date of location of the claim, failing which BLM properly rejects the untimely tendered document and declares the claim abandoned and void.

Copies of mining claim certificates or notices of location which are required to be filed within 90 days of the date of location of a claim are not timely filed where they are placed in the mail prior to the deadline but are not received or date stamped by BLM until after the deadline.

Where a mining claimant merely asserts that because of a 9-day difference between the posting of an envelope and the date received stamp of BLM, BLM may have mishandled notices of location submitted in attempted compliance with the requirements of 43 CFR 3833.1-2(b), allegedly causing them to be date stamped by BLM as untimely, and there is nothing else in the record to support this conjecture he has not met the burden of rebutting the presumption that BLM officials have properly discharged their duties in receiving and promptly date stamping all such notices tendered to them.

Henry D. Friedman, 49 IBLA 97 (July 28, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner.

Ross Weaver, 49 IBLA 111 (July 28, 1980)

George W. Cole, 49 IBLA 128 (July 28, 1980)

Cripple Creek Exploration Corp., 49 IBLA 190 (Aug. 6, 1980)

Alfred Letcher, 49 IBLA 193 (Aug. 6, 1980)

Cleo May Fresh, Marjorie P. Deterts, 50 IBLA 363 (Oct. 16, 1980)

Robert E. Donahue, 50 IBLA 374 (Oct. 21, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The statute and regulations governing recordation of mining claims are mandatory and where a mining claimant contends that he mailed his notices of

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

location along with other documents which were received by the Bureau of Land Management 1 day after the filing date, the claims are properly declared abandoned and void.

G. E. Marguardson, 49 IBLA 114 (July 28, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Filing in the Utah State Office rather than the Wyoming State Office is not sufficient.

Interstate Brick, 49 IBLA 125 (July 28, 1980)

Interstate Brick, 50 IBLA 107 (Sept. 17, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 19, 1979, and the filing fee therefor is not paid to BLM until Feb. 11, 1980, the date of filing for recordation of the notice is Feb. 11, 1980.

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it properly is declared abandoned and void.

Lawrence Jacob, Freeda Jacob, 49 IBLA 137 (July 28, (1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, the owner of an unpatented mining claim located before Oct. 21, 1976, had to file in the proper office of the Bureau of Land Management a copy of the official record of the notice or certificate of location and an affidavit of assessment work performed on the claim on or before Oct. 22, 1979. Where the owner of an unpatented mining claim failed to file either instrument within the prescribed time, the claim is deemed conclusively to be abandoned and void.

George Stillman, 49 IBLA 150 (July 30, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that appellant lost or misplaced the required documents and had to send away for new ones will not excuse late filing.

Gale E. Powell, 49 IBLA 173 (July 30, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, within 90 days after the date of location of such claim, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner. The "date of location" is determined by reference to the law of the State in which the claim is situated.

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a $5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Weldon Read Kennedy, Elmer Devore, 49 IBLA 180 (July 31, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a), 3833.2-1(a), 3833.4, for a mining claim located on or before Oct. 21, 1976, a copy of the notice or certificate of location and evidence of assessment work or notice of intention to hold must be filed with the Bureau of Land Management by Oct. 22, 1979, or the claim shall be deemed abandoned and void.

Canyon View Mining Co., 49 IBLA 184 (July 31, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of a claim or site are submitted to BLM for recordation on Dec. 26, 1979, and the filing fee therefor is not paid to BLM until Jan. 23, 1980, the recordation date of the notices is Jan. 23, 1980.

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it properly is declared abandoned and void.

Brewery Hill Mining Co., Inc., 49 IBLA 197 (Aug. 6, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Glen Hocking, 49 IBLA 217 (Aug. 11, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Nila Tyrrel, 49 IBLA 267 (Aug. 18, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of recording with BLM, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Mining claims located after the enactment of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, must be deemed abandoned and void if a copy of the notice of location or certificate of location is not filed with the proper Bureau of Land Management Office within 90 days after the date of location of such claims.

Darlene I. Haynes et al., 49 IBLA 243 (Aug. 18, 1980)

Mining claims located in units of the National Park System must be recorded within 1 year of the date of enactment of the Mining in the Parks Act, sec. 8 of the Act of Sept. 28, 1976, 16 U.S.C. § 1907 (1976), rather than within 3 years of the enactment of the Federal Land Policy and Management Act of 1976, Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976).

Elden A. LeRoy, Dorothy A. LeRoy, 49 IBLA 320 (Aug. 20, 1980)

For a mining claim located on or before Oct. 21, 1976, under 43 U.S.C. § 1744 (1976), 43 CFR 3833.1-2(a) and 3833.4, a copy of the recorded notice or certificate of location must be filed with the appropriate BLM state office by Oct. 22, 1979, or the claim shall be conclusively deemed to be abandoned and void.

Virgal E. Taylor, Elizabeth Hutton, 49 IBLA 329 (Aug. 25, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, 3833.2-1, and 3833.4, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location and a copy of the recorded affidavit of assessment work or notice of intention to hold the claim, with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim must be deemed abandoned and void.

John Lincoln, Jr., 49 IBLA 335 (Aug. 25, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Where a placer mining claim was located in 1975, the evidence of assessment work must be filed with BLM on or before Oct. 22, 1979. If no evidence of assessment work has been timely filed with BLM, the claim is

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a).

Vernon G. & Shirley S. Wickham, 50 IBLA 1 (Sept. 5, 1980)

The Board of Land Appeals has no authority to waive the strict requirements of the Federal Land Policy and Management Act of 1976 for recording mining claims, and where the requirements have not been met for a claim, the claim is properly declared abandoned and void.

Eloise Joyce Williamson, 50 IBLA 42 (Sept. 9, 1980)

Under 43 CFR 3833.1-2(a) and 3833.4(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the recorded notice or certificate of location with the Bureau of Land Management by Oct. 2, 1979, or the claim is deemed abandoned and void.

All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations.

Hugh A. Johnson, 50 IBLA 47 (Sept. 9, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. The owner of an unpatented mining claim, located after Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office within 90 days after the date of location of such claim. The statute and regulations governing recordation of mining claims are mandatory and where BLM has not received a notice of location, the claim is properly declared abandoned and void.

Margaret Covert, 50 IBLA 58 (Sept. 15, 1980)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file an instrument required by secs. 3833.1 and 3833.2 of this title within the time period prescribed therein shall be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it shall be void.

Tod Anderson, 50 IBLA 66 (Sept. 17, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that the documents had been deposited in the mail and postmarked by the postal

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

authorities Oct. 22, 1979, will not excuse the late filing.

Helen Holland et al., 50 IBLA 121 (Sept. 24, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim.

Clifford J. Kelch, 50 IBLA 127 (Sept. 24, 1980)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of Location." The date of location of mining claims is determined in accordance with the law of the State where the claims are situated. Under California law, the time for recordation in the county is measured from the date of the posting of the location notice on the claims.

The dates of location of mining claims as shown on the notices of location recorded in compliance with State law will be treated as controlling where, after rejection by BLM of the location notices as untimely filed, claimant alleges that the notices are untrue as the dates shown are "typographical errors."

Lee Resources Management Corp., 50 IBLA 131 (Sept. 24, 1980)

Where a person has located a mining claim on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to file timely with the proper office of the Bureau of Land Management a copy of the notice or certificate of location of a mining claim is deemed conclusively to constitute an abandonment of the mining claim by the owner.

The Department of the Interior, as agency of Executive Branch of Government, is not proper forum to decide whether or not as to mining claims the recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Abner Weed, 50 IBLA 141 (Sept. 26, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed evidence of assessment work performed during the preceding assessment year or a notice of intention to hold the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

John J. Schnabel, 50 IBLA 201 (Sept. 30, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it properly is declared abandoned and void.

Lost Pollack Mining and Exploration, Ltd., 50 IBLA 227 (Sept. 30, 1980)

Where the owner of unpatented mining claims located before Oct. 21, 1976, files copies of the notices of location of these claims prior to the Oct. 22, 1979, deadline for so doing, but fails to file evidence of annual assessment work during the preceding assessment year on or before this deadline, the claims are properly declared abandoned and void.

Stanley Bishop, 50 IBLA 371 (Oct. 21, 1980)

Joseph V. Dodge, d.b.a. Rocky Mountain Mineral Co., 50 IBLA 394 (Oct. 24, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented millsite located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. The owner of an unpatented millsite, located after Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office within 90 days after the date of location of such claim. The statute and regulations governing recordation of millsite claims are mandatory and where BLM has not received a notice of location, the claim is properly declared abandoned and void.

Wayne E. Clutts, 50 IBLA 379 (Oct. 22, 1980)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1977, must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of the following calendar year, 1978, or the claims are conclusively deemed to have been abandoned by the owner and to be void.

Henry H. Schnid, Judith A. Schnid, 50 IBLA 406 (Oct. 24, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void.

Melvin E. Viles, 51 IBLA 32 (Oct. 30, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The statutory and regulatory requirements to file a notice of location are mandatory and failure to comply with them must result in a finding that the claims are void.

J. K. Kendrick, 51 IBLA 56 (Oct. 31, 1980)

Under 43 CFR 3833.1-2(d), the owner of unpatented mining claims must tender a filing fee of $5 per claim when filing recordation information, or BLM properly rejects the filing as unacceptable. Where he submits information on or before the Oct. 22, 1979, deadline, but does not include this fee on or before this date, BLM properly regards this filing as unacceptable, so that the claims became void under 43 CFR 3833.4 when the deadline passed without an acceptable filing.

Where the owner of two mining claims files recordation information for two claims with BLM, but tenders only $5 as a filing fee, this amount is insufficient to provide the required $5 fee for both claims, and BLM properly may recognize only one claim as valid. In these circumstances, BLM properly requires the owner to select which claim to validate.

Eva Holmes et al., 51 IBLA 140 (Nov. 20, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, was required to file a copy of the official record of the notice or certificate of location, with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim must be deemed abandoned and void.

All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations.

John F. Schaelzer, 51 IBLA 188 (Dec. 2, 1980)

Pursuant to 43 CFR 3833.1-1, an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 Oct. 20, 1976), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

Gordon L. Cooper, 51 IBLA 191 (Dec. 5, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

Arley C. Burke, 51 IBLA 224 (Dec. 10, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that the Post Office may have assured the claimant that the documents would reach the Colorado State Office by Oct. 22, 1979, will not excuse the late filing.

Cleghorn and Washburn Mining Co., 51 IBLA 265 (Dec. 15, 1980)

Where a person locates mining claims on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 CFR 3833.4, the failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site by the owner.

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to BLM for recordation on Oct. 22, 1979, and the check submitted was returned by the bank as uncollectible, the mining claims located prior to Oct. 21, 1976, are deemed abandoned and void.

John J. Dunsmore et al., 51 IBLA 297 (Dec. 17, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim must file a map, narrative, or sketch depicting the location of his mining claim or site. A BLM decision dated Aug. 22, 1980, effectively advising a claimant that his claims are void because no map has been filed within 30 days of July 16, 1979, will be set aside as erroneous where the file contains a map of the claims which is BLM date stamped Aug. 3, 1979.

George Phil Martinez, 51 IBLA 330 (Dec. 29, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a claimant files for recordation on Oct. 19, 1979, but

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

the filing fee is not paid to BLM until after the deadline for filing, Oct. 22, 1979, the mining claim must be deemed abandoned and void.

Robert W. Miller, Marjorie Zipper Miller, 51 IBLA 364 (Dec. 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the mining claim void.

Nelert, Inc., 52 IBLA 5 (Jan. 5, 1981)

Thomas P. Byron, Anna B. Philo, 52 IBLA 49 (Jan. 6, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), if unpatented mining claims located after Oct. 21, 1976, are not supported annually by either an affidavit of assessment work or a notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement that there was no intent to abandon and he did not fully understand the regulations.

Dale E. Hopkins, 52 IBLA 9 (Jan. 5, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. It also includes an exact reproduction, duplicate, or other acceptable evidence, except microfilm, of an amended instrument which may change or alter the description of the claim.

William E. Talbott et al., 52 IBLA 12 (Jan. 5, 1981)

Where a person locates a mining claim on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to file such instruments as required by subsections (a) and (b) of that section shall be deemed conclusively to constitute an abandonment of the mining claim, or mill or tunnel site by the owner.

The Department of Interior, as agency of Executive Branch of Government, is not the proper forum to decide

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

whether or not the recordation provisions of the Federal Land Policy and Management Act of 1976 relating to mining claims are constitutional.

Marvin E. Brown, Inge E. Brown, 52 IBLA 44 (Jan. 6, 1981)

A copy of a recorded notice or certificate of location of a mining claim will not be accepted by BLM for recordation if it is not accompanied by the service fee required under 43 CFR 3833.1-2(d).

The failure to file an instrument required by 43 CFR 3833.1-2(a), (b), and 3833.2-1 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim and it is properly declared abandoned and void.

Susan Nativo, 52 IBLA 134 (Jan. 16, 1981)

Where a mining claimant attempts to file notices of location for 24 claims pursuant to 43 CFR 3833.1-2 and tenders payment for filing costs in an amount sufficient to cover only 23 of those claims, BLM shall require the claimant to select 23 claims to which the money tendered shall be applied. The remaining one claim is properly declared abandoned and void in accordance with 43 CFR 3833.4.

Floyd R. Moody, 52 IBLA 153 (Jan. 21, 1981)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. There can be no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where the filing fee is not paid within 90 days after the date of location for a claim located after Oct. 21, 1976, the claim must be deemed abandoned and void.

Philip I. Griner, 52 IBLA 179 (Jan. 26, 1981)

Michael G. Connons, 52 IBLA 396 (Feb. 24, 1981)

Robert J. Raby et al., 67 IBLA 370 (Oct. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

Henri Gurok, 52 IBLA 200 (Jan. 26, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management office on or before Oct. 22, 1979. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

Kenneth G. Walker, 52 IBLA 214 (Jan. 30, 1981)

Pearl C. Barnett, 52 IBLA 273 (Feb. 6, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Joe Bastone, 52 IBLA 288 (Feb. 9, 1981)

Clyde W. Luke, Betty J. Luke, 53 IBLA 136 (Mar. 9, 1981)

Bruce A. DeBosier, 59 IBLA 283 (Oct. 30, 1981)

John W. Baccus, 59 IBLA 288 (Oct. 30, 1981)

James W. Gough, 65 IBLA 59 (June 23, 1982)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. Therefore, where a notice of location of a claim or site is submitted for recordation on May 14, 1980, after having been located on May 3, 1980, and the filing fee is not paid to BLM until Aug. 11, 1980, the recordation date of the notice is Aug. 11, 1980, and thus more than 90 days after the date of location.

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim.

Ben Martensen, Anne Martensen, Will Halstead, 52 IBLA 253 (Feb. 6, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located after Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office within 90 days of location of the claim. This requirement is mandatory and failure to comply constitutes conclusive abandonment of the claim by the owner. By regulation the BLM State Offices are designated the proper offices for mining claim recordation.

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.4, filing recordation documents in a Bureau of Land Management District Office, rather than the proper State Office, the day of the expiration of the 90-day statutory deadline for recordation does not constitute timely recordation. In such circumstances, the BLM State Office properly rejected the recordation upon receipt of the documents after the 90-day deadline had passed.

Jose G. Gonzalez, 52 IBLA 270 (Feb. 6, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR Part 3833, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice of location and evidence of assessment work with BLM on or before Oct. 22, 1979. This requirement was mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

L. L. Falter, John E. Weeks, 52 IBLA 313 (Feb. 10, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the mining claim void.

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Robert G. Sunder, Jeanne E. S. Sunder, 52 IBLA 375 (Feb. 19, 1981)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of location." The date of location of a mining claim is determined in accordance with the law of the state where the claim is situated. Under Arizona law, it is the date specified on the notice of location filed with the local recorder's office.

The dates of location of mining claims as shown on the notices of location recorded in compliance with State law will be treated as controlling where, after rejection by BLM of the location notices as untimely filed, claimant alleges that the notices are untrue as the dates shown are scrivener's errors.

John C. and Theresa K. Buchanan, 52 IBLA 387 (Feb. 19, 1981)

H. Mason Coggin, 54 IBLA 224 (Apr. 27, 1981)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site.

The Department revised and amended 43 CFR 3833.0-5(i) by publication in the Federal Register at 44 FR 9722 (Feb. 14, 1979). The purpose of the revision was to avoid the necessity for a claimant to delay filing with BLM until the copy filed with the local recorder became available, by providing that the claimant could file with BLM a reproduction or duplicate of the original instrument "which was or will be filed in the local jurisdiction." Thus, a claimant may not excuse the tardy filing of his mining claim location notice on the ground that the original was not promptly returned from the county recorder's office.

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

James B. Pauley, 53 IBLA 1 (Feb. 26, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

William M. Tomporowski, 53 IBLA 21 (Feb. 26, 1981)

Walter Schivo, 53 IBLA 40 (Feb. 26, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Paul B. Scott and Betty F. Scott, 53 IBLA 75 (Mar. 2, 1981)

Paula Troester Saragoza et al., 53 IBLA 247 (Mar. 19, 1981)

Mr. and Mrs. Jack White, 53 IBLA 267 (Mar. 23, 1981)

United States v. Paul M. Koenigsmark et al., 53 IBLA 377 (Mar. 31, 1981)

James Watkins, 54 IBLA 54 (Apr. 9, 1981)

Randal Angeloni, Douglas Flint, 54 IBLA 56 (Apr. 9, 1981)

John Richard Bodie, 54 IBLA 93 (Apr. 14, 1981)

Joseph Ojurovich, 54 IBLA 100 (Apr. 15, 1981)

Ernest B. Cuzzocreo, 54 IBLA 108 (Apr. 15, 1981)

Bill C. Boss, 54 IBLA 116 (Apr. 16, 1981)

Charles W. McGowan III, 54 IBLA 119 (Apr. 16, 1981)

Mascot Silver-Lead Mines, Inc., 54 IBLA 121 (Apr. 16, 1981)

Charley E. Gossett, Jr., et al., 54 IBLA 139 (Apr. 17, 1981)

James W. Quakenbush, 54 IBLA 155 (Apr. 21, 1981)

Dell Warren, 54 IBLA 159 (Apr. 21, 1981)

Lyman Mining Co., 54 IBLA 165 (Apr. 21, 1981)

Clayton V. Curtis, 54 IBLA 184 (Apr. 22, 1981)

William I. Schindler, 54 IBLA 221 (Apr. 23, 1981)

Beery Crowley et al., 54 IBLA 229 (Apr. 27, 1981)

William Adolph Yonkee et al., 54 IBLA 232 (Apr. 27, 1981)

Mrs. Randolph G. Nunis, 54 IBLA 237 (Apr. 27, 1981)

George H. Willis et al., 54 IBLA 239 (Apr. 27, 1981)

Bernard J. Braker, 54 IBLA 332 (May 5, 1981)

Philip Brandl, George Fourman, 54 IBLA 343 (May 7, 1981)

Reg Whitson, 55 IBLA 5 (May 26, 1981)

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RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Robert C. Cluzen, 55 IBLA 12 (May 26, 1981)

Sidney Hodges, John Golden, 55 IBLA 17 (May 26, 1981)

Earl Krenniller, 55 IBLA 28 (May 27, 1981)

Glenn D. Graham, Lynne L. Graham, 55 IBLA 39 (May 28, 1981)

Joe Benham, 55 IBLA 45 (May 29, 1981)

Betty L. Henry, 55 IBLA 47 (May 29, 1981)

Bruce L. Baker, Robert C. Baker, 55 IBLA 55 (May 29, 1981)

Alex Stewart, 55 IBLA 105 (June 1, 1981)

Doris McFall, Donald Duncan, Clarence Duncan, 55 IBLA 110 (June 1, 1981)

Alberto K. Roperio, 55 IBLA 140 (June 4, 1981)

James K. Pore et al., 55 IBLA 148 (June 8, 1981)

GSA Reserve Corp., 55 IBLA 162 (June 9, 1981)

Howard L. Kirley, 55 IBLA 165 (June 9, 1981)

Joseph Ojurovich, 55 IBLA 182 (June 15, 1981)

W. LeGrande Lay, 55 IBLA 193 (June 16, 1981)

Herbert S. McClung, 55 IBLA 260 (June 25, 1981)

Don E. Bates, 55 IBLA 263 (June 25, 1981)

Richard F. Dumas et al., 55 IBLA 382 (June 29, 1981)

Charles M. Love et al., 55 IBLA 384 (June 29, 1981)

Melvin and Bernice Darby, 56 IBLA 41 (July 8, 1981)

Jerald D. Ledbetter, 56 IBLA 84 (July 15, 1981)

King of the Hills Mining Co., 56 IBLA 107 (July 16, 1981)

Gary M. Greenlaw, Ronald D. Sharp, 56 IBLA 109 (July 16, 1981)

Walter D. Condon, 56 IBLA 112 (July 16, 1981)

Ken Alexander, 56 IBLA 129 (July 16, 1981)

George I. Lakich, 56 IBLA 148 (July 20, 1981)

Lyle I. Thompson, 56 IBLA 155 (July 20, 1981)

Stephen G. Rudisill, Evelyn J. Rudisill, 56 IBLA 158 (July 20, 1981)

Louise P. Shultis, 56 IBLA 163 (July 20, 1981)

Rolland Marshall, 56 IBLA 187 (July 20, 1981)

William O. Baker, 56 IBLA 190 (July 20, 1981)

Barwell Mining Co., Wilford F. Montgomery, 56 IBLA 236 (July 22, 1981)

Estate of Kenneth D. Stahl, 56 IBLA 276 (July 28, 1981)

L. D. Lamoureux, 56 IBLA 298 (July 28, 1981)

William F. Bowman, 56 IBLA 312 (July 29, 1981)

Timothy Edward Monte, 56 IBLA 315 (July 29, 1981)

Belmont Oil Corp., 56 IBLA 321 (July 29, 1981)

Caroline E. Brown, 56 IBLA 334 (July 30, 1981)

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Loren Nelson, 56 IBLA 352 (Aug. 3, 1981)
Donald E. Black, 56 IBLA 354 (Aug. 3, 1981)
Shannon E. Thornton, 56 IBLA 359 (Aug. 3, 1981)
Estate of Mary B. Ritchie, 56 IBLA 361 (Aug. 3, 1981)
Jerome F. Brown, 56 IBLA 364 (Aug. 3, 1981)
Edith Gion, 56 IBLA 375 (Aug. 3, 1981)
Lela J. Fillmore, 56 IBLA 385 (Aug. 3, 181)
Norman L. Moon, 57 IBLA 1 (Aug. 5, 1981)
Harry J. Pike, 57 IBLA 15 (Aug. 6, 1981)
Dave E. Newman, 57 IBLA 23 (Aug. 6, 1981)
Howard F. Houser, 57 IBLA 27 (Aug. 6, 1981)
William J. Kroetch, 57 IBLA 29 (Aug. 6, 1981)
M.D.C., Inc., 57 IBLA 35 (Aug. 10, 1981)
Robert P. Wilson, 57 IBLA 40 (Aug. 10, 1981)
Bill Kaser, 57 IBLA 51 (Aug. 17, 1981)
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Ray Rowe et al., 57 IBLA 136 (Aug. 25, 1981)
Shirley Thompson, Duane E. Thompson, 57 IBLA 154 (Aug. 25, 1981)
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Polar Resources Co. (On Reconsideration), 57 IBLA 237 (Aug. 27, 1981)
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Intermountain Exploration Co., 57 IBLA 271 (Aug. 31, 1981)
Intermountain Exploration Co., 57 IBLA 274 (Aug. 31, 1981)
Rodney E. Cates, 57 IBLA 276 (Aug. 31, 1981)
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Erwin Tonne, 57 IBLA 303 (Aug. 31, 1981)
George W. Trable, 57 IBLA 330 (Sept. 1, 1981)
Kathy Shaner, 57 IBLA 349 (Sept. 8, 1981)
Virgie Dovler, 57 IBLA 389 (Sept. 10, 1981)
Virginia M. Johnston, 57 IBLA 392 (Sept. 10, 1981)
Heidelberg Silver Mining Co., Inc., 58 IBLA 10 (Sept. 16, 1981)
Steven V. Miskoff, 58 IBLA 32 (Sept. 16, 1981)
Michael J. Mealue, 58 IBLA 35 (Sept. 17, 1981)
Keith B. O'Hara, 58 IBLA 59 (Sept. 21, 1981)

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John T. Titus, 58 IBLA 207 (Sept. 29, 1981)
George D. Morrill, H. Grant Noble, 58 IBLA 211 (Sept. 29, 1981)
Tom Applegarth, 58 IBLA 224 (Sept. 30, 1981)
Albert Fouche, James Olberg, 58 IBLA 230 (Oct. 6, 1981)
Michael J. Fabisiak, 58 IBLA 243 (Oct. 6, 1981)
Heirs of Raymond D. Carson et al., 58 IBLA 265 (Oct. 7, 1981)
John R. Kuhn, 58 IBLA 316 (Oct. 16, 1981)
Lee R. Newson, 58 IBLA 325 (Oct. 16, 1981)
Donald L. Hoffman, 58 IBLA 327 (Oct. 16, 1981)
Eugene M. Goetcher, 58 IBLA 337 (Oct. 19, 1981)
Dennis Forsberg, 58 IBLA 346 (Oct. 19, 1981)
Frank S. Schiff, 58 IBLA 355 (Oct. 20, 1981)
Lloyd P. Webster, 58 IBLA 363 (Oct. 20, 1981)
Judy Kelley, George Kelley, 58 IBLA 369 (Oct. 20, 1981)
Warren J. Fyten, 58 IBLA 381 (Oct. 21, 1981)
John Evanoff, 58 IBLA 403 (Oct. 21, 1981)
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Joe L. Watts, 59 IBLA 127 (Oct. 26, 1981)
Don G. Gilbertson, 59 IBLA 143 (Oct. 26, 1981)
Fletcher D. Fisher, 59 IBLA 150 (Oct. 26, 1981)
Teddy W. Morgan, 59 IBLA 153 (Oct. 26, 1981)
George E. Casler, 59 IBLA 189 (Oct. 27, 1981)
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Louis E. Sharp, 59 IBLA 223 (Oct. 28, 1981)
William R. Smith, 59 IBLA 252 (Oct. 29, 1981)
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H. J. Rodabaugh, 59 IBLA 286 (Oct. 30, 1981)
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M. L. Harold Petroleum Services, 60 IBLA 90 (Nov. 19, 1981)

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

Karen R. Tony et al., 60 IBLA 167 (Nov. 24, 1981)

Lee R. Heath, 60 IBLA 171 (Nov. 24, 1981)

Marvin G. Stuck, 60 IBLA 197 (Nov. 27, 1981)

Ronald R. Gunkert, Marion G. Gunkert, 60 IBLA 200 (Nov. 27, 1981)

Everett V. Cohoe, 60 IBLA 235 (Dec. 4, 1981)

C. F. Turley, Jr., 60 IBLA 237 (Dec. 4, 1981)

Don Cook, 60 IBLA 255 (Dec. 4, 1981)

Robert Wright, 61 IBLA 158 (Jan. 20, 1982)

Philip W. Lyttle, 61 IBLA 161 (Jan. 21, 1982)

Jayne A. McNargue, 61 IBLA 163 (Jan. 25, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

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Virginia White, 62 IBLA 215 (Mar. 10, 1982)

Robert S. Verri, 62 IBLA 291 (Mar. 16, 1982)

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Robert L. Race et al., 63 IBLA 1 (Mar. 25, 1982)

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Danner Mines, Inc., 63 IBLA 49 (Mar. 30, 1982)

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Erickson Placers, Inc., 63 IBLA 60 (Mar. 30, 1982)

Carl W. St. Claire, 63 IBLA 125 (Apr. 5, 1982)

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

Lloyd J. Osborn, 64 IBLA 21 (May 6, 1982)

Yester Harler, 64 IBLA 86 (May 12, 1982)

Herbert A. Horton, 64 IBLA 89 (May 12, 1982)

Great West Land & Mining Corp., 64 IBLA 114 (May 19, 1982)

Charles L. Roberts, 65 IBLA 67 (June 23, 1982)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

James Heldman, 65 IBLA 180 (June 29, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Joe Karren, Sr., et al., 65 IBLA 387 (July 23, 1982)

Robert J. Kips, L. E. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

Donna Bernhardt, 73 IBLA 207 (May 27, 1983)

Where the owner of an unpatented mining claim located after Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim prior to Dec. 31 of the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

Robert F. Wilkinson, 53 IBLA 106 (Mar. 4, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1978, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1979, or the claims are conclusively deemed abandoned and, thus, void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

Cleatus Sypolt, 53 IBLA 171 (Mar. 16, 1981)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Lynn Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369

Vernon Bradley, 57 IBLA 351 (Sept. 8, 1981)

Fabey Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

United States Energy Corp. et al., 58 IBLA 159 (Sept. 28, 1981)

Rupert Thorne, 58 IBLA 319 (Oct. 16, 1981)

Enterprise Mines, Inc., 58 IBLA 372 (Oct. 20, 1981)

Elizabeth Francis, 60 IBLA 6 (Nov. 12, 1981)

William Cooper, 60 IBLA 50 (Nov. 17, 1981)

All Minerals Corp., 60 IBLA 85 (Nov. 19, 1981)

George Vincent McMahon, 60 IBLA 187 (Nov. 27, 1981)

Major G. Atkins, 60 IBLA 284 (Dec. 17, 1981)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

Douglas Lee Jones, 62 IBLA 107 (Mar. 2, 1982)

Floren Klorfenstein, 62 IBLA 238 (Mar. 11, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued
RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Lawrence Paul, 63 IBLA 275 (Apr. 19, 1982)
Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)
Stanley Sims, 64 IBLA 257 (June 2, 1982)
Gregory M. Harrington, 64 IBLA 331 (June 10, 1982)
Betty Smith, 64 IBLA 395 (June 17, 1982)
Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)
Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)
Charles E. Hull et al., 65 IBLA 61 (June 23, 1982)
Howard E. Thompson, 65 IBLA 79 (June 23, 1982)
Edwin P. Keegan, Jr., 65 IBLA 114 (June 25, 1982)
Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)
Mermaid Mining Co., 65 IBLA 172 (June 29, 1982)
Fawn Rupp, 65 IBLA 277 (July 12, 1982)
Manuel R. Hernandez, 65 IBLA 281 (July 12, 1982)
Helena Silver Mines, Inc., 65 IBLA 287 (July 13, 1982)
J & B Mining Co., Inc., 65 IBLA 335 (July 15, 1982)
Olive M. Stirland, 65 IBLA 363 (July 20, 1982)
David G. Still, 66 IBLA 35 (July 23, 1982)
William R. Gaechter et al., 66 IBLA 230 (Aug. 16, 1982)
Alan T. Treon, James L. Barnes, 66 IBLA 334 (Aug. 26, 1982)
Vienna Silver Mines Co., Inc., 67 IBLA 130 (Sept. 16, 1982)
Magna Power Co. et al., 68 IBLA 201 (Nov. 10, 1982)
John Heston, 68 IBLA 206 (Nov. 10, 1982)
Arden F. Griffith et al., 68 IBLA 295 (Nov. 19, 1982)
Carlyle A. Brough, 68 IBLA 318 (Nov. 19, 1982)
Melvin Bradshaw, 68 IBLA 390 (Nov. 23, 1982)
B. Rigby Young, 68 IBLA 397 (Nov. 23, 1982)
James A. Huff, Elizabeth H. Young, 69 IBLA 31 (Nov. 26, 1982)
Phil E. Parks, 69 IBLA 48 (Nov. 29, 1982)
Susan S. Simmons, 69 IBLA 84 (Nov. 30, 1982)
Dudley L. Davis, 69 IBLA 127 (Dec. 8, 1982)
Coates-Lahusen, 69 IBLA 137 (Dec. 9, 1982)
Charles W. Shannon, Ruth Kunkel, 69 IBLA 300 (Dec. 23, 1982)
L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)
Dee Wright, 69 IBLA 309 (Dec. 23, 1982)
James A. Huff, Elizabeth H. Young, 69 IBLA 368 (Jan. 3, 1983)
Estate of Woodie Nichols, 69 IBLA 382 (Jan. 4, 1983)
Lane Number 5, Inc., 70 IBLA 14 (Jan. 6, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued
RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Rena Jellen, Suzanne E. Harco, 70 IBLA 29 (Jan. 6, 1983)
William C. Niederer et al., 70 IBLA 55 (Jan. 10, 1983)
Gervin Blake Riding, 70 IBLA 59 (Jan. 10, 1983)
Robert Paoluccio, II, et al., 70 IBLA 118 (Jan. 13, 1983)
Zada Anderson et al., 70 IBLA 122 (Jan. 13, 1983)
Eugene W. Walck, Jr., 72 IBLA 30 (Apr. 5, 1983)
White Rose Corp., 72 IBLA 80 (Apr. 13, 1983)
Addison Girard Clark, 72 IBLA 321 (Apr. 28, 1983)
Inez McDorman, Audrey Pilger, 72 IBLA 383 (May 5, 1983)
James D. Ross, Maria J. Ross, 72 IBLA 395 (May 5, 1983)
Dean W. Frazier, 73 IBLA 13 (May 5, 1983)
George P. Newcomb, 73 IBLA 104 (May 23, 1983)
Herbert Clark, 73 IBLA 195 (May 26, 1983)
Humbug Mining Co., 73 IBLA 270 (June 7, 1983)
Githa T. Mayo, 73 IBLA 277 (June 7, 1983)
Harold L. Long, 73 IBLA 280 (June 7, 1983)
Rex Mining Co., 73 IBLA 284 (June 7, 1983)
Ray McKee, Cheryl McKee, 73 IBLA 311 (June 7, 1983)
Wayne M. Hunt, 73 IBLA 315 (June 7, 1983)
Paul P. Smith et al., 73 IBLA 336 (June 8, 1983)
Hugh Sprague, 73 IBLA 386 (June 15, 1983)
Harold H. Block, 74 IBLA 156 (July 12, 1983)
Page Investment Co., 74 IBLA 163 (July 12, 1983)
Bruce Naylor, Bill Barney, Darrell Taylor, 74 IBLA 201 (July 18, 1983)
Shirley Poserinke, 74 IBLA 210 (July 18, 1983)
Leonard E. Spider, Sr., 74 IBLA 213 (July 18, 1983)
Hughes Minerals, Inc., 74 IBLA 217 (July 18, 1983)
Les Saulsberry, 74 IBLA 223 (July 18, 1983)
Frank Bengoa, 74 IBLA 367 (July 28, 1983)
Parke Potter, 74 IBLA 397 (Aug. 2, 1983)
Mackay Bar Corp., 75 IBLA 57 (Aug. 5, 1983)
Joe V. Andersen, Art Bubash, Estate of Don T. Andersen, 75 IBLA 71 (Aug. 10, 1983)
Paul T. Ryan, Melvin V. Lunt, 75 IBLA 76 (Aug. 10, 1983)
Floyd R. Bekins, Jr., 75 IBLA 80 (Aug. 10, 1983)
Shamrock Mining Inc., 75 IBLA 110 (Aug. 11, 1983)
John Dillingham, Mabel Dillingham, 75 IBLA 146 (Aug. 17, 1983)
Devon M. Hurst, 75 IBLA 149 (Aug. 18, 1983)
Three Rivers Mining Co., 75 IBLA 176 (Aug. 19, 1983)
Dale Rossi, Judy Rossi, 75 IBLA 262 (Aug. 26, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

John D. Dowers, 75 IBLA 266 (Aug. 26, 1983)

Walter E. Nelson, Thomas C. Nelson, 75 IBLA 269 (Aug. 26, 1983)

Estate of Stanley Styles, 75 IBLA 272 (Aug. 26, 1983)

Edmund G. Rich, 75 IBLA 275 (Aug. 26, 1983)

H. B. Monroe, 75 IBLA 325 (Aug. 30, 1983)

Homer Owens, 75 IBLA 335 (Aug. 30, 1983)

Henry A. Hall, Barbara Hall, 75 IBLA 339 (Aug. 30, 1983)

Cliff Sasselli, 76 IBLA 8 (Sept. 6, 1983)

Elliott Glasser, 76 IBLA 11 (Sept. 6, 1983)

Henry Allen, Harold Dilg, 76 IBLA 14 (Sept. 6, 1983)

Moonwalker, Inc., 76 IBLA 53 (Sept. 19, 1983)

Edward H. Beck, 76 IBLA 80 (Sept. 21, 1983)

James Carr, 76 IBLA 96 (Sept. 21, 1983)

Robert W. Hughes, 76 IBLA 99 (Sept. 21, 1983)

Charles Mayo, Marie G. Mayo, 76 IBLA 107 (Sept. 21, 1983)

Lydia Darlene Sheaks, 76 IBLA 148 (Sept. 26, 1983)

Farrell D. Clontz, 76 IBLA 180 (Oct. 3, 1983)

Michael J. Rouse, 76 IBLA 183 (Oct. 3, 1983)

Betty E. Baxter, 76 IBLA 188 (Oct. 6, 1983)

John V. Balding, 76 IBLA 218 (Oct. 17, 1983)

Ralph Kubinski, 76 IBLA 224 (Oct. 17, 1983)

C. G. Rhinehart, 76 IBLA 228 (Oct. 17, 1983)

Grace P. Crocker, 76 IBLA 231 (Oct. 17, 1983)

Crownite Corp., American Pumice Products, Inc., 76 IBLA 236 (Oct. 17, 1983)

Hiko Bell Mining & Oil Co., 76 IBLA 254 (Oct. 17, 1983)

Edmund J. Cowan, 76 IBLA 257 (Oct. 17, 1983)

Adolf Dieckmann (Trust), 76 IBLA 357 (Oct. 24, 1983)

Henry G. Zacher, 77 IBLA 1 (Oct. 31, 1983)

Homestake Mining Co., 77 IBLA 235 (Nov. 29, 1983)

J. Neil Smith, 77 IBLA 239 (Nov. 29, 1983)

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a $5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it properly is declared abandoned and void.

Edward J. Szynkowski, Jr., 53 IBLA 310 (Mar. 25, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

The Bureau of Land Management may require maps of mining claims meeting the requirements of 43 CFR 3833.1-2(c)(5) before accepting the recordation of the claims under 43 U.S.C. § 1744 (1976). However, where the record suggests that the claimant may have complied, the decision declaring her claims abandoned will be vacated and the case remanded.

Marion Birch, 53 IBLA 366 (Mar. 30, 1981)

Recordation of an unpatented mining claim does not render valid any claim which would not otherwise be valid under applicable law. Acceptance by BLM of recordation documents does not constitute a recognition of the validity of the claim and BLM is not estopped to declare the claim null and void where it was located on land withdrawn from mining location at the time of the location.

William C. Beiser, Richard H. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1978, must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of the following calendar year, 1979, or the claims will be conclusively deemed to have been abandoned.

Jess R. Nibiun, Jr., 54 IBLA 134 (Apr. 17, 1981)

When the owner of a lode or placer mining claim files a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim, he has complied with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2.

Lester L. Leaknes, 54 IBLA 147 (Apr. 17, 1981)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. As this is a mandatory requirement there is no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where, for a claim located after Oct. 21, 1976, the filing fee is not paid within 90 days after the date of location, the claim must be deemed abandoned and void.

It is proper for the Bureau of Land Management to refuse to accept a check postdated 30 days after receipt as satisfactory payment of service fees for recordation of mining claims.

Jesse L. Miller, 54 IBLA 187 (Apr. 22, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1977, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1978, or the claims are conclusively deemed abandoned and, thus, void.

Eugene F. Daugherty, 54 IBLA 352 (May 12, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a), the owner of an unpatented mining claim located before Oct. 21, 1976, must file on or before Oct. 22, 1979, in the proper BLM office, a copy of the notice of location or the claim will be conclusively deemed to have been abandoned and declared void.

Where an unpatented mining claim is located in Alaska near the dividing line separating the Anchorage and Fairbanks districts, indicated on the map in 43 CFR 1821.2-1, such that it is virtually impossible from the map to determine with substantial accuracy in which district the mining claim lies, the timely filing of the location notice by the owner of the claim in either the Alaska State Office or the Fairbanks District Office will be considered as satisfying the requirement of 43 CFR 3833.1-2(a) of filing in the proper BLM office.

Inspiration Development Co., 54 IBLA 390 (May 20, 1981) 88 I.D. 557

Lowell L. Patton, 55 IBLA 125 (June 3, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1979, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1980, or the claims are conclusively deemed abandoned and, thus void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

Osco, Inc., 55 IBLA 77 (June 1, 1981)

Acceptance for recordation of a timely filed certificate of location of unpatented mining claim and negotiation of the check for the required service fee creates no estoppel to subsequently declare the claim abandoned and void for failure to file timely the required evidence of assessment work or notice of intention to hold.

Margaret E. Peterson, 55 IBLA 136 (June 4, 1981)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with the proper BLM office within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

Where an unpatented mining claim is located in Alaska near the dividing line separating the Anchorage and Fairbanks districts, indicated on the map in 43 CFR 1821.2-1, such that it is virtually impossible from the map to determine with substantial accuracy in which district the mining claim lies, the timely filing of the location notice by the owner of the claim in either the Alaska State Office or the Fairbanks District Office will be considered as satisfying the requirement of 43 CFR 3833.1-2(b) of filing in the proper BLM office.

Janie S. Nelson, Terry L. Sullivan, 55 IBLA 289 (June 25, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of location." The date of location of a mining claim is determined in accordance with the law of the state where the claim is situated. Under California law, it is the date of posting location notice on the claim.

The dates of location of mining claims as shown on the notice of location recorded in compliance with State law will be treated as controlling where, after rejection by BLM of the location notices as untimely filed, claimant alleges that the notices are untrue as the dates shown are in error.

C. E. Shannon, 55 IBLA 312 (June 26, 1981)

A decision by the Bureau of Land Management that unpatented millsite claims are abandoned and void because no notice of intent to hold was filed with the recorded notice of location will be reversed. There is no requirement either in the statute or regulations for such filing.

Ronald Cole, 56 IBLA 131 (July 16, 1981)

Cyprus Mines Corp., 56 IBLA 160 (July 20, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1979, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notice of intention to hold the mining claims on or before Dec. 30, 1980, or the claims are conclusively deemed abandoned and, thus, void.

Allen Turner, 56 IBLA 280 (July 28, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM for recordation on Apr. 6, 1981, and the filing fees therefor are not paid to BLM until Apr. 27, 1981, the recordation date of the notices is Apr. 27, 1981.

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

Fred W. Croxen III, 56 IBLA 318 (July 29, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

Warren Wheeler, 56 IBLA 350 (Aug. 3, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file on or before Oct. 22, 1979, in the proper BLM office, a copy of the notice of location, or the claim will be conclusively deemed to have been abandoned and declared void.

Kenneth C. Eichner, 56 IBLA 391 (Aug. 3, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The filing with BLM prior to Oct. 21, 1976, of a copy of the notice of the location of an unpatented mining claim, pursuant to the Mining Claims Rights Restoration Act, 30 U.S.C. § 623 (1976), does not relieve the owner of the claim of the filing obligation imposed by sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and its implementing regulations.

Don E. Robinson, 57 IBLA 5 (Aug. 5, 1981)

Pursuant to 43 CFR 3833.1-1 and 36 CFR 9.5(a), an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 (Oct. 20, 1976)), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

Abram H. Kreider, 57 IBLA 68 (Aug. 18, 1981)

George D. Hooker et al., 66 IBLA 168 (Aug. 12, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site. These requirements are mandatory and failure to comply within the time period prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, millsite or tunnel site.

Under 43 CFR 3833.1-2(d), a location notice for each mining claim filed for recordation must be accompanied by the stated fee. As this is a mandatory requirement there is no recordation unless the documents are accompanied by the stated fee.

D. L. Nielsen, P. W. Tompkins, 57 IBLA 114 (Aug. 25, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(b). This requirement is mandatory and where a mining claimant fails to comply therewith the claims are properly declared abandoned and void.

Art Fields, Russel Adams, 57 IBLA 142 (Aug. 25, 1981)

Bessie L. Hayes, Freddie R. Hayes, 61 IBLA 55 (Dec. 31, 1981)

Where the case records of unpatented mining claims located prior to Oct. 21, 1976, disclose that prior to Oct. 22, 1979, both copies of notices of location and proofs of assessment work were filed with the proper office of the Bureau of Land Management, it is not proper to declare the claims abandoned and void because the evidence of assessment work was filed prior to the filing of the copies of the notices of location.

Leland W. Wiscombe, Dudley L. Davis, 57 IBLA 161 (Aug. 25, 1981)

It is gross error for the Bureau of Land Management to declare unpatented mining claims abandoned and void for failure to submit a proof of labor when the case files of the subject mining claims reflect that a proof of labor was timely submitted to BLM and BLM had acknowledged receipt thereof.

Parish Chemical Co., 57 IBLA 240 (Aug. 27, 1981)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owners of unpatented lode or placer mining claims located after Oct. 21, 1976, within 90 days after the location of such claims, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments timely is deemed conclusively to constitute an abandonment of the mining claims by the owners, and they are properly declared void.

Richard E. and Gloria M. Reed, Michael D. and Echo Aycock, 57 IBLA 266 (Aug. 28, 1981)

Phyllis J. Pirchard, 59 IBLA 247 (Oct. 29, 1981)

Herman Black, 60 IBLA 229 (Dec. 8, 1981)

Ross Murray, 62 IBLA 7 (Feb. 23, 1982)

George Nassis, 64 IBLA 137 (May 20, 1982)

Spiffer #2 Partnership, 76 IBLA 362 (Oct. 24, 1983)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located in the calendar year 1978, must have filed with the Bureau of Land Management (BLM), affidavit of assessment work or notice of intention to hold the mining claims on or before Dec. 30, 1979, or the claim is conclusively deemed abandoned and, thus void.

Bart Cannon, 57 IBLA 281 (Aug. 31, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The fact that mining claims are oil placer claims and that there is production on the claims does not prevent the conclusive abandonment and voiding of the claims for failure to comply with FLPMA's recordation requirements.

Petro-Lewis Corp., Partnership Properties Co., 57 IBLA 300 (Aug. 31, 1981)

The failure of the owner of an unpatented mining claim to furnish a date of location, not indicated in a copy of the notice of location of the claim filed with BLM, in response to a notice of deficiency requiring the submission of such date within 30 days, may be waived where BLM already had evidence of when the claim was located, the person entrusted with such matters was incapacitated during this time period, and the claimant promptly furnished the date of location upon learning of the failure to respond timely.

Park City Chief Mining Co., 57 IBLA 342 (Sept. 3, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed for recordation shall be accompanied by a one time $5 service fee. This is a mandatory requirement and without payment of the fee there can be no recordation.

Park City Chief Mining Co., 57 IBLA 346 (Sept. 3, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The Federal Land Policy and Management Act of 1976 does not provide the Bureau of Land Management or the Interior Board of Land Appeals with discretion to waive the effects of failure to comply with the recordation requirements.

Sonny Champeaux, 58 IBLA 29 (Sept. 16, 1981)

A notice of location which is in proper form and timely filed with the correct fee must be accepted and recorded by BLM notwithstanding the protest of a rival mining claimant that he has a superior and exclusive possessory right to the same ground. Such disputes are not within the jurisdiction of this Department, and can be resolved only by private litigation between the parties in courts of competent jurisdiction.

M. W. Allstead, 58 IBLA 46 (Sept. 21, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Mining claims are properly declared abandoned and void where copies of the notices of location are not filed with the proper Bureau of Land Management office within the time periods prescribed by sec. 314 of the Federal Land Policy and Management Act of 1976.

Donald Jardine, 58 IBLA 49 (Sept. 21, 1981)

Richard Thorpe, Anne Thorpe, 59 IBLA 176 (Oct. 26, 1981)

Notices of locations for various mining claims and millsites filed for recordation under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), must be rejected where the claims and millsites were previously held null and void following Departmental contest proceedings.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

J. C. Womack, 58 IBLA 85 (Sept. 22, 1981)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed with the proper office of BLM on or before Dec. 30 of each year, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

W. LeRoy Ewell, 58 IBLA 121 (Sept. 24, 1981)

Riter Ekker, Kerry B. Ekker, 58 IBLA 251 (Oct. 6, 1981)

The failure to file copies of the official record of notices of location of a mining claim within 90 days after the date of location must be deemed conclusively to constitute an abandonment of the mining claim. There is no provision for waiver of this mandatory requirement, and where delivery of the location notices is delayed by the Postal Service, the consequences of the late filing must be borne by the claimant.

Whelan's Mining and Exploration, Inc., 58 IBLA 127 (Sept. 24, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Modoc Gem and Mineral Society, 58 IBLA 142 (Sept. 25, 1981)

Daryl E. Bartholomew, 63 IBLA 198 (Apr. 8, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

Where mining claims were located in 1940 and copies of the official record of the notices of location were not filed with the proper BLM office on or before Oct. 22, 1979, the claims are properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Wayne Cook, 58 IBLA 350 (Oct. 19, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Edgar W. Cook, Marlene Cook, 58 IBLA 358 (Oct. 20, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Oil placer mining claims located pursuant to the Petroleum and Mineral Oils Act of Feb. 11, 1897, c. 216, 29 Stat. 526, and preserved by sec. 37 of the Mineral Leasing Act of 1920, 30 U.S.C. § 193 (Supp. II 1978), are subject to the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Conoco, Inc., 58 IBLA 390 (Oct. 21, 1981) 88 I.D. 918

The recordation provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), applies to claims which rely on the provision of 30 U.S.C. § 38 (1976) to prove location and posting. Where such claims have not been duly recorded, they are a nullity.

United States v. Richard P. Haskins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the mining claim void.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

John T. Spenton et al., 59 IBLA 108 (Oct. 26, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper office of BLM within 90 days after the date of location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Lee Spark, 59 IBLA 235 (Oct. 28, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), where the owner of unpatented mining claim located before Oct. 21, 1976, submits a copy of the location notice to BLM in April 1978, and proof

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

of labor to BLM in Oct. 1979, but fails to submit evidence of annual assessment work or notice of intention to hold the mining claim on or before Dec. 30, 1980, BLM properly declares the mining claim abandoned and void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

Roy B. Smalley et al., 59 IBLA 238 (Oct. 28, 1981)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim.

Vivian Sullivan Karlson, 60 IBLA 10 (Nov. 13, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located on Federal land after Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location in the proper BLM office within 90 days after the date of location.

Pursuant to 43 CFR 3833.1-2(d), payment of a $5 service fee must accompany the filing with BLM of each notice or certificate of mining location; otherwise, each unpaid filing shall be rejected.

Frank E. Evans, 60 IBLA 44 (Nov. 17, 1981)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. There can be no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where the filing fee is not paid within 90 days after the date of location for a claim located after Oct. 21, 1976, the claim must be deemed abandoned and void.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Raymond M. McCool, Harold P. Hinds, 60 IBLA 62 (Nov. 19, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Where the mining claimant files timely a notice of location in the wrong BLM state office, the claim is deemed abandoned and void even though the document was not returned in time to correct the error.

Susan Bettles, 60 IBLA 75 (Nov. 19, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2 and 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim and a copy of the current proof of labor as recorded in the office where the notice of location is recorded, with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply conclusively constitutes an abandonment of the claim by the owner.

Robert G. Milton, 60 IBLA 104 (Nov. 20, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed evidence of assessment work performed or a notice of intention to hold the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

The presumption that BLM officials properly discharge their duties in receiving and promptly date stamping official filings tendered them is not overcome by unsupported allegations of mining claimants that BLM lost or misprocessed their evidence of assessment work.

Junerwanda J. Papaelios, Mildred Lucille Gulick, 60 IBLA 128 (Nov. 24, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR Subpart 3833 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claims by the owner.

Jack and Lisa Silbaugh, William E. Pan, 60 IBLA 217 (Nov. 30, 1981)

Where a mining claim was located in September 1974 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Nicolaus P. Newby, 60 IBLA 264 (Dec. 15, 1981)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

constitutes an abandonment of the mining claim by the owner.

Prudential Mining & Exploration, Inc., 60 IBLA 363 (Dec. 22, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Carl B. Andersen, 61 IBLA 4 (Dec. 29, 1981)

Where a mining claim was located in Apr. 1970 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Al Sherman, 61 IBLA 94 (Jan. 4, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice of location of the claim. This requirement is mandatory, and failure to comply within the time period prescribed must be deemed conclusively to constitute an abandonment of the mining claim.

Glenn Cox, 61 IBLA 97 (Jan. 4, 1982)

Barry Birkholz, 61 IBLA 170 (Jan. 25, 1982)

Filing is accomplished only when a document is delivered to and received by the proper BLM office during business hours and depositing a document in the mails does not constitute filing. Mail received in the post office box designated by BLM as its address of record prior to BLM's close of business on a given day is properly considered as received by BLM on that date and failure of BLM to pick up the mail cannot alter this result. However, where the evidence establishes that a document was not placed in the BLM post office box until after the deadline, the filing is not timely.

Golden Monarch Mining Corp., et al., 61 IBLA 120 (Jan. 15, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Where a mining claimant records in the county recording office notices of location for mining claims which reflect the month and year of location but omit the day, and thereafter submits to the Bureau of Land Management for recordation copies of the notices with the day filled in, BLM should accept such filing for the purpose of recordation under sec. 314 of the Federal Land Policy and Management Act on the assumption that the claimant will refile the corrected documents with the county in order to protect its interests.

Precious Minerals Unlimited, Inc., 61 IBLA 136 (Jan. 15, 1982)

Where a mining claim was located in Oct. 1969 and evidence of the assessment work was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

William M. P. Underwood, 61 IBLA 172 (Jan. 25, 1982)

Where a mining claim was located Aug. 15, 1981, and a copy of the official record of the notice of location was not filed with the proper BLM office within 90 days thereafter, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Leonard W. Nelson, Sr., 61 IBLA 353 (Feb. 11, 1982)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, must file in the proper BLM office, within 90 days after the date of location of such claim, a copy of the official record of the notice or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner, and it is properly declared void.

Bruce C. Kempffer, 62 IBLA 32 (Feb. 24, 1982)

James B. Norman, 67 IBLA 223 (Sept. 23, 1982)

Sidney A. Webb, 69 IBLA 202 (Dec. 16, 1982)

Alfred E. Malech, 72 IBLA 223 (Apr. 26, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were timely recorded in accordance with 16 U.S.C. § 1907 (1976), may not conclusively be deemed abandoned and void if a notice of intention to hold is not filed in 1978 for record in the unit of the national park system where the location notice is recorded, as the filing requirement is not statutory, but only regulatory, so the defect is curable. Notice of such defect should be given and the claimant allowed 30 days within which to correct the defect. An unpatented mining claim located before Oct. 21, 1976, on land within a unit of the national park system and timely recorded under the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), may not be deemed abandoned and void where a copy of the recorded instrument showing evidence of assessment work is filed with the proper office of BLM on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Morrill A. Nielson et al., 62 IBLA 249 (Mar. 15, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Frances J. Darger, 63 IBLA 67 (Mar. 30, 1982)

S. F. Cook, 68 IBLA 176 (Nov. 5, 1982)

F. A. Stacy, 68 IBLA 248 (Nov. 16, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Appellant has not complied with the statutory and regulatory rules for recordation of mining claim locations where the document filed with BLM bears a location date that the document filed with the county does not. Moreover, State of Washington law, which governs determination of the location date in this case, contemplates recordation of a location notice with the county only after certain prerequisites have been accomplished on the claim to locate it. Thus, the declaration that location occurred on Nov. 11, 1981, or on Feb. 3, 1982, is incorrect when the location notice was recorded with the county Nov. 10, 1981. Where it is impossible for BLM to ascertain whether the mining claimant has timely filed, because the location date is clearly incorrect or missing, the filing is properly rejected.

Gerald B. Bannon, 63 IBLA 115 (Apr. 2, 1982)

"Date of location." Although 43 CFR 3833.0-5(h) provides that the date of location of a mining claim shall be determined by state law in the jurisdiction where the claim is located, where the location certificate, as recorded with the county recorder's office as required by state law, recites a specific date of location of the claim, that date will be used as the inception of the 90-day period allowed for recordation by 43 U.S.C. § 1744 (1976), as that is the date upon which the claimant asserts he located the claim and entered upon the public land.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM for recordation on Oct. 9, 1981, and the filing fees therefor are not paid to BLM until Oct. 20, 1981, the recordation date of the notices is Oct. 20, 1981.

Mrs. George G. Wagner et al., 63 IBLA 146 (Apr. 6, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1976, and a proof of labor or notice of intention to hold prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Elsie I. Stewart, Walter G. Stewart, 63 IBLA 153 (Apr. 6, 1982)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Donald C. Strong, 63 IBLA 195 (Apr. 8, 1982)

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with the proper office of BLM within 90 days after the date of location. 43 CFR 3833.4 states that failure to submit the required instruments within the specified time limits is conclusively considered abandonment of the the claim and it shall be void. The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

George Whitehead, 64 IBLA 111 (May 17, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 in the proper BLM office within the time period prescribed by statute constitutes an abandonment of the mining claim by the owner. Regulation 43 CFR 3833.1-2(d) requires each location notice filed for recordation to be accompanied by a service fee of $5. This is a mandatory requirement, so there is no recordation of a mining claim where the check tendered as payment of the service fee is never honored by the drawer's bank. Therefore, when the location notices are filed with BLM Oct. 22, 1979, but the service fee is not paid with a negotiable check until June 3, 1980, the recordation date of the claims is June 3, 1980. For claims located prior to Oct. 21, 1976, where the effective date of recordation of the location notices with BLM is June 3, 1980, sec. 314 of FLPMA compels the conclusive determination that the claims are abandoned.

Cajon Minerals, 64 IBLA 261 (June 2, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Recordation of an unpatented mining claim is effected by filing a copy of the official record of the location notice with the proper BLM office and paying a service charge of $5 per claim.

43 U.S.C. § 1744 (1976) requires the recordation of unpatented mining claims, and where a patented mining claim inadvertently was recorded with BLM, it is proper to cancel the recordation.

The recordation in 1981 of an amended location notice for a pre-FLPMA mining claim, where the original claim had never been recorded with BLM, cannot confer any earlier right to the claim than the date of the amended location.

Sunshine Mining Co., Silver Syndicate, Inc., 64 IBLA 399 (June 17, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), within the prescribed time period is imposed by the statute itself. A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

C. Douglas Lee, 65 IBLA 41 (June 22, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located on or before Oct. 21, 1976, must file evidence of performance of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2 and 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, failed to file a copy of the official record of the location notice with the Bureau of Land Management, on or before Oct. 22, 1979, the claim must be considered to be abandoned by the owner, and it is void.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

An amended location notice generally relates back to the date of original location. A location notice cannot be considered an amended location where the original location did not comport with the statutory requirements. A location notice, even though styled "amended," may be considered an original location where the earlier location was improperly made.

Samuel P. Bell, Sr., 65 IBLA 167 (June 29, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM on Mar. 3, 1981, and the filing fees therefor are not paid to BLM until Apr. 20, 1981, the recordation date of the notices is Apr. 20, 1981.

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

William Scott Olsen, 65 IBLA 274 (July 12, 1982)

A relocation of a mining claim is adverse to the original claim, as distinguished from an amended location which generally relates back to the original location in the absence of intervening rights. A decision declaring a claim, as relocated, abandoned and void for failure to record with BLM under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), will be reversed where an amended notice of location is timely recorded with BLM by a claimant asserting that he is the owner by chain of title of the claim, as relocated, notwithstanding the fact that the amended location notice references the original location notice.

J. B. Schaffer, 67 IBLA 64 (Sept. 9, 1982)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM Apr. 22, 1982, and the filing fee therefor is not paid to BLM until May 13, 1982, 102 days from the date of location, the recordation date of the notices is May 13, 1982.

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

Eugene J. Curless, 67 IBLA 135 (Sept. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 20, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979.

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM and the accompanying check for the filing fees is dishonored by the bank, the uncollectable check constitutes nonpayment of the filing fees.

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

Glen M. Taylor, 67 IBLA 393 (Oct. 8, 1982)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where, under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file a copy of the notice of location with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, the mining claim is properly declared abandoned and void.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

F. F. Davenport, 68 IBLA 198 (Nov. 9, 1982)

Where mining claims were located between July 1960 and August 1966, and evidence of assessment work was not filed with the proper BLM office on or before Oct. 22, 1979, the claims are properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Mildred McGee, 68 IBLA 292 (Nov. 19, 1982)

"Date of location." Under Colorado State law, as applied by 43 CFR 3833.0-5(h), the date of location of an unpatented mining claim in Colorado is the date specified in the location certificate. Where the claimant fails to file a copy of the official record of the notice of location of this claim with BLM within 90 days of this date, BLM properly rejects the filing, notwithstanding allegations that the actual date of location was different than the date specified in the location certificate.

Amigo Mining, Inc., 68 IBLA 305 (Nov. 19, 1982)

Where mining claims were located in Mar. 1967 and evidence of the assessment work was not filed with the proper BLM office on or before Oct. 22, 1979, the claims are properly declared abandoned and void pursuant to 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Douglas K. Martin, 68 IBLA 322 (Nov. 19, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

B. Rigby Young, 69 IBLA 88 (Nov. 30, 1982)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of mining claims are submitted to BLM for recordation on Oct. 9, 1979, and the service fee therefor is not paid to BLM until Dec. 10, 1979, the recordation date of the notices is Dec. 10, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper office of BLM on or before Oct. 22, 1979, or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). Location notices relating to unpatented mining claims located before Oct. 21, 1976, for which the service fees were not paid to BLM by a negotiable check until Dec. 10, 1979, are not timely filed, and the claims are properly declared abandoned and void.

Maud M. Goehring Conway, Lewis Conway, 69 IBLA 91 (Nov. 30, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper BLM office within the time periods prescribed by statute consitutes an abandonment of the mining claim by the owner. Regulation 43 CFR 3833.1-2(d) requires each location notice filed for recordation to be accompanied by a service fee of $5. This is a mandatory requirement, so there is no recordation of a mining claim where the check tendered as payment of the service fee is never honored by the drawer's bank. Therefore, when the location notices are filed with BLM May 14, 1979, but the service fee is not paid with a negotiable check until Dec. 20, 1979, the recordation date of the claims is Dec. 20, 1979. For claims located prior to Oct. 21, 1976, where the effective date of recordation of the location notices with BLM is Dec. 20, 1979, sec. 314 of FLPMA compels the conclusive determination that the claims are abandoned.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Hides International, Inc., 69 IBLA 251 (Dec. 21, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite or tunnel site filed for recordation shall be accompanied by a service fee of $5. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Where mining claims are located between July 8 and July 18, 1982, and copies of the location notices are submitted to the Bureau of Land Management Oct. 14, 1982, without the required service fees, there is no recordation within the 90 days allowed by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Vance W. Bighams, Leon S. Wright, 69 IBLA 394 (Jan. 4, 1983)

Where mining claims were located July 18 and 20, 1982, and a copy of the official record of the notices of location was not filed with the proper office of the Bureau of Land Management within 90 days thereafter, the claims are properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

David F. Matuszak, 70 IBLA 11 (Jan. 6, 1983)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Dearyl Riley, 70 IBLA 33 (Jan. 7, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of unpatented mining lode or placer mining claims located after Oct. 21, 1976, must file in the proper BLM office within 90 days after the location of such claims, a copy of the official record of the notice or certificate of location. Failure to file such instruments timely is deemed conclusively to constitute an abandonment of the mining claims by the owner, and they are properly declared void.

Thomas C. Hall, 72 IBLA 319 (Apr. 28, 1983)

Herbert Cilch, 73 IBLA 171 (May 24, 1983)

Where a mining claim was located in Sept. 1964 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim was properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

William E. Day, 72 IBLA 364 (May 2, 1983)

The Bureau of Land Management is not required to search state record offices for mining claims which have not been recorded with the Bureau of Land Management on behalf of an applicant for an Alaska regional conveyance. Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), failure to record such a claim shall be deemed conclusively to constitute abandonment of the claim, and obviates the need for the Bureau of Land Management to search state records.

Doyon, Ltd., 74 IBLA 139 (July 6, 1983) 90 I.D. 289

Where mining claims are located on public land that is subsequently transferred to the State of Utah, the Department of the Interior has no further interest in or control over that land, and a mining claimant is not required to comply with the recordation and filing requirements of the Federal Land Policy and Management Act of 1976.

Gordon J. Blake et al., 75 IBLA 1 (Aug. 2, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file with the Bureau of Land Management within 90 days after location of the claim a copy of the notice of location. This requirement is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure of a claimant to file an instrument required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive the requirements

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RECORDATION OF MINING CLAIMS AND ABANDONMENT--Continued

of the Act, or to afford claimants any relief from the statutory consequences.

Harold A. Hinkle, Michael R. Hinkle, Thomas J. Potter, 77 IBLA 152 (Nov. 16, 1983)

Where copies of location notices of mining claims were filed with the Bureau of Land Management in 1977 before promulgation of regulations pursuant to sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and where BLM later called upon the claim owner to pay the required filing fees, without setting a time limit for compliance, it is error for BLM to reject the mining claim filings because the first check submitted for payment of the filing fees was returned as uncollectible, although the claim owner had replaced that check with a guaranteed remittance upon notification.

Ranco Exploration, Inc., 77 IBLA 226 (Nov. 28, 1983)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

For purposes of recordation under sec. 314 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2744, 2769, 43 U.S.C. § 1744 (1976), the filing of notices of location, evidencing a date of location subsequent to the time at which mining claim location notices for the same land were declared null and void ab initio, together with such other information required by the applicable regulations, constitutes compliance with the recording requirements of the Act.

George Schultz et al., 81 IBLA 29 (May 17, 1984)

REPEALERS

The townsite laws were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790, and the initiation of an occupancy claim pursuant to any of the repealed laws after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right which would survive FLPMA.

Royal Harris, 45 IBLA 87 (Jan. 17, 1980)

Dennis L. Lattery, 45 IBLA 219 (Jan. 31, 1980)

Darrell P. Biggs, Karen Sue Biggs, 46 IBLA 132 (Mar. 19, 1980)

Dorothea M. Taylor, Robert Taylor, 46 IBLA 198 (Mar. 24, 1980)

Thomas Taggart, 46 IBLA 350 (Apr. 8, 1980)

George W. Murphy, 48 IBLA 123 (May 30, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

REPEALERS--Continued

Stephen Kenyon et al., 51 IBLA 368 (Dec. 30, 1980)

The Alaska townsite laws, 43 U.S.C. §§ 732-736 (1970), were repealed by the Federal Land Policy and Management Act of 1976, sec. 703(a), 90 Stat. 2789. The initiation of an occupancy claim, pursuant to the townsite laws, after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right.

Marko and Tarrow Lewis, 46 IBLA 257 (Mar. 27, 1980)

The townsite laws were repealed by sec. 703 of the Federal Land Policy and Mangement Act of 1976 (FLPMA), 90 Stat. 2790. A claim under the townsite laws will be rejected where appellants have submitted no proof that they occupied the land prior to the effective date of FLPMA, Oct. 21, 1976, thus giving them a valid exisitng right which would have survived FLPMA.

Patsy Karl Meakok, Smiley A.C. Meakok, 48 IBLA 377 (July 11, 1980)

The repeal of sec. 704(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2792, of certain statutory authority to reserve land as a waterhole only prohibits future withdrawals or reservations of land under the repealed statutes and does not affect known waterholes withdrawn prior to the repeal. It was proper for the Bureau of Land Management to reject a water pipeline right-of-way application for land containing a waterhole which was withdrawn prior to the Federal Land Policy and Management Act of 1976, and where the water is needed for a public use.

Grant L. Hacking, 50 IBLA 154 (Sept. 30, 1980)

Mining claims located on lands which are withdrawn for reclamation purposes under the first form are null and void ab initio. A first-form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding the repeal of the statute authorizing the initiation of such withdrawals.

Sam McCormack, 52 IBLA 56 (Jan. 6, 1981)

A mining claim located on lands which are withdrawn for reclamation purposes under the first form is null and void ab initio. A first form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, not withstanding the repeal of the statute authorizing the initiation of such withdrawals.

William C. Beiman, Richard H. Thompson, 54 IBLA 103 (Apr. 15, 1981)

The Alaska townsite laws, 43 U.S.C. §§ 732-736 (1970), were repealed by the Federal Land Policy and Management Act of 1976, sec. 703(a), 90 Stat. 2789. The initiation of an occupancy claim, pursuant to the townsite laws, after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right. No right was established where the only "improvement" prior to repeal consisted of clearing an area for site preparation in 1969, which clearing had thereafter revegetated with brush, and there was no

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

REPEALERS--Continued

other occupancy, use, or possession of the land until 1980.

Roland F. & Jackie M. Moody (Appellants), Alaknagik Village, Alaska (Respondent), 67 IBLA 121 (Sept. 16, 1982)

The Small Tract Act, 43 U.S.C. § 682a (1976) was repealed by sec. 702 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976.

Leon H. Rockwell et al., 72 IBLA 373 (May 4, 1983)

John Dillingham et al., 73 IBLA 156 (May 24, 1983)

Bethe McConkey, Robert L. Cook, 74 IBLA 4 (June 21, 1983)

Gladys Yonich, Doris L. Hartley, 74 IBLA 285 (July 25, 1983)

Anthony Chiarenza et al., 74 IBLA 350 (July 28, 1983)

Russell B. Gilson, 76 IBLA 20 (Sept. 6, 1983)

Although the Small Tract Act of June 1, 1938, was repealed by the Federal Land Policy and Management Act of 1976, this repeal was made expressly subject to any existing "land use right or authorization," including a vested contractual equitable property right. Thus, the repeal of the former by the latter did not remove the Department's authority to meet its ministerial duty to pass legal title where a binding contract to do so had been created prior to the enactment of FLPMA.

Chester F. Dawson, 73 IBLA 27 (May 9, 1983)

The Small Tract Act, 43 U.S.C. § 682a (1970), was repealed by sec. 702 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976.

M. Lawrence Berk, 81 IBLA 366 (June 27, 1984)

RESERVATION AND CONVEYANCE OF MINERAL INTERESTS

Bureau of Land Management may reject an application for conveyance of mineral interests pursuant to sec. 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1976), upon a determination that the application is fatally defective under 43 CFR 2720 or that conveyance would not be in the public interest, but where the record as to a rejection is not complete the decision may be set aside and the case remanded.

Basin Electric Power Cooperative, 50 IBLA 197 (Sept. 30, 1980)

Bureau of Land Management may reject an application for conveyance of mineral interests pursuant to sec. 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1976), upon a determination that the application is fatally defective under 43 CFR 2720 or that conveyance would not be in the public interest.

Dean A. and Craig D. Clark, 53 IBLA 362 (Mar. 30, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RESERVATION AND CONVEYANCE OF MINERAL INTERESTS--Continued

An application for conveyance of mineral interest to the owner of the surface estate pursuant to sec. 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1976), may be approved where BLM determines (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development. Absent a finding of the existence of one of these conditions, an application is properly rejected.

David D. Plater, 55 IBLA 296 (June 26, 1981)

John G. Hafernick, 69 IBLA 118 (Nov. 30, 1982)

Robert Gattis et al., 73 IBLA 92 (May 19, 1983)

Mr. & Mrs. E. J. Wright, 83 IBLA 92 (Oct. 1, 1984)

Under sec. 209 of FLPMA, 43 U.S.C. § 1719 (1976), the Secretary may convey mineral interests only where there are no known mineral values in the land, or where the reservation of mineral rights would interfere with or preclude appropriate nonmineral development of the land which would be a more beneficial use of the land than mineral development. Where the land contains a producing oil well and there is no showing that the reservation is interfering with or precluding nonmineral development which is a more beneficial use of the land than mineral development, an application for conveyance is properly rejected.

San Patricio County, 61 IBLA 80 (Dec. 31, 1981)

An application for conveyance of mineral interest to the owner of the surface estate pursuant to sec. 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1976), may be approved where BLM determines (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development. Absent a finding of the existence of one of these conditions, an application is properly rejected.

An applicant for conveyance of a mineral interest may not be entitled to such a conveyance even when either or both of the conditions in sec. 209(b)(1) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1976), are satisfied. The language of that subsection is discretionary and entitles the Secretary or his designated representative to reject an application upon a determination supported by facts of record that conveyance of the mineral interest would not be in the public interest.

Dennan Investment Corp., 78 IBLA 311 (Jan. 12, 1984)

BLM may reject an application for conveyance of a federally owned mineral interest, filed pursuant to sec. 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1982), because the applicant failed to pay estimated administrative processing costs within 30 days of receipt of notice to do so. However, when BLM has failed to deduct the fee submitted with the application in its cost calculation, the BLM decision may be set aside and the case remanded to BLM to afford the applicant another opportunity to pay the corrected amount.

Richard E. Doscher, Leida Doscher, 83 IBLA 264 (Oct. 25, 1984)

BLM may properly reject an application for conveyance of a federally owned mineral interest to the owner of the surface estate pursuant to sec. 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1982), where the applicant has not rebutted the conclusion that the land is prospectively valuable for oil and gas and has not shown that oil and gas development is interfering with or precluding the production of pecans, and that the latter use is a more beneficial use of the land than mineral development.

Jerry E. Schuster, Sonia A. Schuster, 83 IBLA 326 (Nov. 5, 1984)

RIGHTS-OF-WAY

Public Land Order No. 2676 (1962), requires the approval of an authorized officer of the Department of the Army before the Secretary of the Interior can grant a right-of-way over lands subject to the public land order. The Department of the Interior has no authority to grant a right-of-way where the approval is withheld.

City of Anchorage, Alaska, and Jack G. Fisher, et al., a.k.a. Concerned Chugach Citizens v. Chugach Electric Ass'n, Inc., 45 IBLA 171 (Jan. 30, 1980) 87 I.D. 21

The standard of review in the case of rights-of-way applications for domestic water pipelines is whether the decisions demonstrate a reasoned analysis of the factors involved, with due regard for the public interest. A decision by BLM, made in exercise of its discretion, will be affirmed in the absence of sufficient reason to disturb it.

Where the bases of decisions rejecting rights-of-way applications for domestic water facility are contradicted by the Environmental Analysis Report on the project and alternatives enumerated therein, and where BLM failed to consider possible mitigating actions suggested by appellant, the decisions will be vacated and remanded for further consideration.

East Canyon Irrigation Co., 47 IBLA 155 (May 6, 1980)

"Fair market value." Under the Federal Land Policy and Management Act of 1976 and existing Departmental regulations to the extent practicable, a grantee must pay fair market value for a right-of-way on public land. "Fair market value" is the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

B & M Service, Inc., 48 IBLA 233 (June 17, 1980)

All facilities related to an oil and gas lease which are located on Federal land outside the lease, regardless of their nature, may be constructed only after appropriate rights-of-way have been granted. Similarly, on-lease oil and gas transportation facilities and on-lease commercial facilities require rights-of-way. Depending on the nature of the facility, the right-of-way would be granted pursuant to either sec. 28 of the Mineral Leasing Act of 1920,

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

30 U.S.C. § 185 (1976), or Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976).

Right-of-Way Requirements for Gathering Lines and Other Production Facilities Located Within Oil and Gas Leaseholds, M-36921 (June 19, 1980) 87 I.D. 291

"Fair market value." Under the Federal Land Policy and Management Act of 1976 and existing Departmental regulations to the extent practicable, a grantee must pay fair market value for a right-of-way on public land. "Fair market value" is the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

The relevant regulation, 43 CFR 2802.1-7(d), does not absolutely prohibit acceptance of partial payments of past due rentals in all circumstances.

Northwestern Colorado Broadcasting Co., 49 IBLA 23 (July 15, 1980)

The Federal Land Policy and Management Act of 1976 authorizes the Bureau of Land Management to recover reasonable costs including costs of environmental analyses for applications of rights-of-way across public lands.

Costs not directly associated with the processing or monitoring of a right-of-way application, such as evaluation of the mine to be served by the rights-of-way, are not authorized by the Federal Land Policy and Management Act of 1976 and are not reimbursable pursuant to 43 CFR 2802.1-2.

U.S. Steel Corp., 50 IBLA 190 (Sept. 30, 1980) 87 I.D. 473

Under the Federal Land Policy and Management Act of 1976, a Bureau of Land Management rejection of a road right-of-way is discretionary and will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest.

Department of the Army, Corps of Engineers, 51 IBLA 26 (Oct. 28, 1980)

Anita Robinson, 71 IBLA 380 (Mar. 29, 1983)

A decision rejecting an application for an access road and canal right-of-way will be affirmed when the record shows that the appellant has failed to file a statement of the proper State official, or other evidence showing that he has a right to the use of the water.

Andrew A. Harrover, 51 IBLA 390 (Dec. 31, 1980)

The Federal Land Policy and Management Act of 1976 authorizes the Bureau of Land Management to recover reasonable costs including costs of environmental analyses for applications of rights-of-way across public lands.

Utah Power and Light Co., 52 IBLA 105 (Jan. 12, 1981)

Southern California Edison Co., 55 IBLA 210 (June 18, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

The standard of review in the case of a right-of-way application for a water diversion project is whether the decision demonstrated a reasoned analysis of the factors involved, with due regard for the public interest. A decision to reject such an application will not be affirmed where the record lacks sufficient reasons to support it.

Rejection of a right-of-way application for a water diversion project will not be affirmed where the record does not support a finding that approval would be incompatible with BLM's timber management plan; that it would adversely affect wildlife; or that it would result in a cumulative adverse impact contrary to the public interest.

Eugene T. Vogel, 52 IBLA 280 (Feb. 9, 1981) 88 I.D. 258

While the question of the establishment of a public highway under the Act of July 26, 1866, 43 U.S.C. § 932 (1976), otherwise known as R.S. § 2477, is ultimately a matter for the state courts, BLM may properly decide the matter for its own purposes where such a question arises during the consideration of an application for a private access road right-of-way under sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1976).

A Bureau of Land Management decision rejecting a right-of-way application for a private access road, filed pursuant to sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1976), because the road in question is a public highway established pursuant to the Act of July 26, 1866, 43 U.S.C. § 932 (1976), otherwise known as R.S. § 2477, will be vacated where the evidence in the record does not support the finding that the road is a public highway.

Nick DiRe et al., 55 IBLA 151 (June 8, 1981)

The standard of review in the case of right-of-way applications for domestic water pipelines is whether the decision demonstrates a reasoned analysis of the factors involved with due regard for the public interest. A decision by BLM, made in exercise of its discretion, will be affirmed in absence of sufficient reason to disturb it.

Gary and Celia Boucher, 55 IBLA 272 (June 25, 1981)

Under the Federal Land Policy and Management Act of 1976, a Bureau of Land Management rejection of a road right-of-way is discretionary and will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest. Where, however, an applicant significantly controverts BLM's reasons for rejecting his application, the case will be remanded to allow BLM to respond to the issues raised on appeal and to reconsider the application in light thereof.

Patrick O. Brown, 55 IBLA 336 (June 26, 1981)

Sec. 506 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1766 (1976), affords certain due process procedural protections to the holder of a right-of-way; however, sec. 506 is not applicable to the holder of a pre-FLPMA easement for a right-of-way granted under the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), who has not conformed the right-of-way to a FLPMA right-of-way pursuant to

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), because such an easement for a right-of-way was not granted, issued, or renewed pursuant to Title V of FLPMA.

"Right-of-way grant" is defined in the regulations, 43 CFR 2800.0-5(h), as an instrument issued pursuant to Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761 (1976). By implementing regulation, 43 CFR 2803.4, the Secretary has limited the applicability of sec. 506 of FLPMA, 43 U.S.C. § 1766 (1976), to "right-of-way grants."

James W. Smith (On Reconsideration), 55 IBLA 390 (June 30, 1981)

A communications site right-of-way issued pursuant to the Act of Mar. 4, 1911, 43 U.S.C. § 961 (1976), which expires after the effective date, Oct. 21, 1976, of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976), may not be renewed under the Act of Mar. 4, 1911, because that Act was repealed by FLPMA.

Donald B. Clark, 56 IBLA 167 (July 20, 1981)

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to a Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), right-of-way in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA easement for a right-of-way was not issued pursuant to Title V of FLPMA.

American Telephone and Telegraph Co., 57 IBLA 215 (Aug. 27, 1981)

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

Under the Uniform Appraisal Standards for Federal Land Acquisitions (1973), evidence of sums paid by condemning authorities for similar properties, regardless of whether condemnation proceedings have begun, is inadmissible to determine the fair market value of a particular property.

Where the current fair rental value of a communications site right-of-way has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error. However, where the lessee has provided sufficient evidence on appeal to engender substantial doubt as to the data utilized and the conclusion reached in the appraisal report, the matter will be remanded for reconsideration.

Denver and Rio Grande Western Railroad Co., 58 IBLA 4 (Sept. 15, 1981)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(b)(1), states that the Secretary shall require an applicant for a right-of-way to submit certain information prior to the issuance of the right-of-way, and an application for such right-of-way is properly canceled where the applicant fails to comply with the requirements.

John W. Barbee et al., 60 IBLA 81 (Nov. 19, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

Where a communications site right-of-way has been issued for a television translator site to provide improved television reception to a remote area, the holder of the right-of-way does not qualify for a waiver of the fair market rental as providing a "valuable benefit to the public" without charge under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), and 43 CFR 2803.1-2.

New Mexico Broadcasting Co., 60 IBLA 163 (Nov. 24, 1981)

Generally, new procedural regulations may be promulgated with retroactive effect and applied to a holder of preexisting interests. However, the present revised regulations in 43 CFR Part 2800 were not written with such effect. Therefore, where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), regulation 43 CFR 2803.1-2(d), which allows rental adjustment without a prior hearing, is not applicable.

Mountain States Telephone & Telegraph, 60 IBLA 221 (Nov. 30, 1981)

Where a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976) (repealed), and was not conformed to a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), the regulation at 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA right-of-way was not issued pursuant to Title V of FLPMA.

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), an application for a communication site right-of-way may be accepted or rejected by the Secretary or his duly authorized representative at his discretion. The standard for review of a decision rejecting an application is whether the decision represents a reasoned analysis of pertinent factors with due regard for the public interest. Where the record does not support BLM's decision to reject the application, as amended by subsequent negotiations, it will be remanded for further review.

In connection with an application under FLPMA for a communications site right-of-way, BLM may properly consider site-related technical questions, such as whether and to what degree operation of an FM broadcasting station will result in radio interference with existing uses of the site.

Peregrine Broadcasting Co., 62 IBLA 133 (Mar. 4, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a water pipeline right-of-way will ordinarily be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown. Where the Bureau of Land Management denies a right-of-way application because of the imminent conveyance of the land sought to a Native corporation which opposes the right-of-way and the record satisfactorily rebuts the substance of the opposition and identifies overriding public interest considerations such that the sole reason for the denial becomes the imminence of the conveyance and concern that the Native corporation control its own land, the BLM decision must be reversed. The problem of a Native corporation's control of the use of land conveyed to it is provided for in sec. 14(g) of the Alaska Native Claims Settlement Act and 43 CFR 2650.4-3 and should be addressed apart from the grant or denial of a right-of-way on its own merits.

Melbro Packing Co., 63 IBLA 176 (Apr. 8, 1982)

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for an annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), the Secretary of the Interior may charge less than fair market value for a right-of-way rental. The regulation, 43 CFR 2803.1-2(c), implementing that provision sets forth the circumstances under which no fee or a fee less than fair market rental may be authorized; however, it specifically excludes cooperatives whose principal source of revenue is customer charges from such consideration.

Tri-State Generation and Transmission Ass'n, Inc., 63 IBLA 347 (Apr. 29, 1982) 89 I.D. 227

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Socorro Electric Cooperative, Inc., 64 IBLA 65 (May 6, 1982)

San Miguel Power Ass'n, Inc., 64 IBLA 172 (May 26, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

San Miguel Power Association, Inc., 71 IBLA 213 (Mar. 16, 1983)

Under Departmental regulation 43 CFR 2803.1-2(c) a nonprofit electric distribution cooperative whose principal source of revenue is customer charges is not eligible for an exemption or reduction of fair market rental imposed for a right-of-way under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976).

San Miguel Power Ass'n, Inc., 64 IBLA 342 (June 15, 1982)

The effect of decisions of Bureau of Land Management officials regarding applications for use of the public land and its resources are stayed pending the time during which a party adversely affected thereby may file an appeal and during the pendency of any appeal properly filed except where statute or regulation provides otherwise. 43 CFR 4.21(a). Although the regulations governing issuance of rights-of-way pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), provide that such decisions shall be effective when issued, rights-of-way for Federal aid highways are expressly excluded from the scope of such regulation and thus, a decision to issue the latter type of right-of-way is stayed pending appeal.

Analysis of the environmental impact of the design of a segment of a proposed highway crossing public domain land does not constitute an improper narrowing of the scope of the project for purposes of environmental review where the route of the entire project has already been determined after completion of an environmental impact statement, the portion of the highway across land administered by the Bureau of Land Management has logical termini and a substantial independent utility regardless of whether the balance of the project is constructed, and construction of the highway on BLM land does not foreclose significant alternatives with respect to the balance of the highway project.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

Appraisals of rights-of-way for industrial pond sites will be upheld where there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the comparable sales data used by BLM was invalid or that the charges derived are excessive.

Pacific Power & Light Co., 65 IBLA 50 (June 23, 1982)

It is unnecessary for BLM to terminate a communications site right-of-way which has expired at the end of its primary term and which is not then subject to renewal because it was originally granted under authority subsequently repealed by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976). Nevertheless, BLM properly may provide notice of the expiration and inform the holder that continued use under the expired right-of-way is unauthorized.

Donald R. Clark, 65 IBLA 144 (June 29, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

In granting a right-of-way for a domestic water pipeline, pursuant to sec. 501(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), BLM properly may require stipulations providing that the right-of-way is not renewable and that the United States is not liable for damage or deterioration of the water supply. However, where the circumstances of a particular case indicate that a better course of action, and one that allows the balancing of the interests of BLM and the right-of-way applicant, is to allow the grant to be renewed, the Board may direct that the grant be renewable pursuant to 43 CFR 2803.6-5(a).

Eugene V. Vogel, 65 IBLA 213 (June 30, 1982)

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of reservoirs, pipelines, and ditches ... public land and continued use without prior authorization earns an applicant a right to a right-of-way under these statutes.

Prior to the repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, as amended, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, one who appropriated water pursuant to the 1866 Act could acquire a right-of-way for reservoirs, dams, pipelines, ditches, and canals crossing public land merely by constructing such improvements, no application to the Federal Government being necessary.

Repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, as amended, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, did not affect rights-of-way previously acquired under the 1866 Act.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

The grant of a right-of-way for construction of an access road under sec. 501 of the Federal Land Policy and Management Act of 1976 is discretionary. A decision exercising that discretion to reject an application may be set aside where the record on appeal discloses that factors cited as the basis for the decision are inconsistent with the facts and/or immaterial to a determination of the public interest.

William A. Sigman, 66 IBLA 53 (July 28, 1982)

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), the Secretary of the Interior may charge less than fair market value for a right-of-way rental under certain circumstances. The regulation, 43 CFR 2803.1-2(c), implementing that provision sets forth the circumstances under which no fee or a fee less than fair market rental may be authorized; however, it specifically excludes from such consideration cooperatives whose principal source of revenue is customer charges.

Northern Electric Cooperative, Inc., 66 IBLA 121 (Aug. 10, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

The standard of review in the case of a right-of-way application for a water diversion project is whether the decision demonstrates a reasoned analysis of the factors involved, with due regard for the public interest. A decision to reject such an application will be affirmed where there is insufficient basis in the record to disturb it.

Jack W. Hays, Gary L. Harrell, 66 IBLA 222 (Aug. 16, 1982)

In granting a right-of-way for a domestic water pipeline pursuant to sec. 501(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), BLM properly may require stipulations providing that the right-of-way is not renewable. However, the Board may direct that the grant be renewable pursuant to 43 CFR 2803.6-5(a) where the circumstances of a particular case indicate that a better course of action, and one that allows the balancing of the interests of BLM and the right-of-way applicant, is to allow the grant to be renewed.

Jean Mountaingrove, Ruth Mountaingrove, 67 IBLA 154 (Sept. 20, 1982)

Where rental charges for a reservoir right-of-way are based upon an appraisal report that does not comport with Departmental standards, the decision determining rental charges will be vacated and the case remanded for a new appraisal.

Paradise Oil, Water & Land Development, Inc., 68 IBLA 268 (Nov. 17, 1982)

In granting a right-of-way pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771, where the duration of the grant exceeds 20 years, BLM must condition the grant upon the power to review the grant after 20 years and regular intervals thereafter not to exceed 10 years and to revise and modify its terms at that time as mandated by Departmental regulation, 43 CFR 2801.1-1(i).

Shell Pipe Line Corp., 69 IBLA 103 (Nov. 30, 1982)

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), regulation 43 CFR 2803.1-2(d), which allows rental adjustment without a prior hearing, is not applicable.

U.S. Steel Corp., 71 IBLA 88 (Feb. 24, 1983)

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), regulation 43 CFR 2803.1-2(d), which allows rental adjustment without a prior hearing, is not applicable.

Where the current fair rental value of a communications site right-of-way has been determined in accordance with accepted appraisal procedures but where the lessee has provided sufficient evidence on appeal to engender substantial doubt as to the data utilized

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

and the conclusion reached in the appraisal report, the matter will be remanded for reconsideration.

Denver & Rio Grande Western Railroad Co., 71 IBLA 352 (Mar. 28, 1983)

Pending applications for rights-of-way filed under previous and repealed authority shall be considered as applications under the Federal Land Policy and Management Act of 1976. Such rights-of-way are subject to such terms and conditions as the Secretary may prescribe regarding extent, duration, survey, location, construction, maintenance, transfer or assignment, and termination. Termination for noncompliance with a condition of the right-of-way grant is within the discretionary authority of the Secretary.

A decision exercising the discretion to terminate a right-of-way grant may be reversed where the record of the decision does not represent a reasoned analysis of pertinent factors with due regard for the public interest.

Charles W. Nelson, Lucy A. Nelson, 75 IBLA 115 (Aug. 15, 1983)

The standard of review in the case of right-of-way applications for domestic water pipelines is whether the decision demonstrates a reasoned analysis of the factors involved, with due regard for the public interest. The burden is upon the appellant to establish reversible error in the decision appealed from.

Georgene E. Rieck, William L. Rieck, 76 IBLA 45 (Sept. 19, 1983)

Sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g), indicates that under certain circumstances the Secretary of the Interior may charge less than fair market value for annual right-of-way rental, including no charge. However, no reduction or waiver of the fee based on fair market rental will be made if the right-of-way user is a cooperative or similar organization whose principal source of revenue is customer charges.

Big Horn Canal Ass'n, 76 IBLA 283 (Oct. 18, 1983)

Wellton-Mohawk Irrigation & Drainage District, 79 IBLA 308 (Mar. 20, 1984)

Prior to the repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, as amended, 43 U.S.C. § 661 (1970), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, one who appropriated water pursuant to the 1866 Act could acquire a right-of-way for reservoirs, dams, pipelines, ditches, and canals crossing public land merely by constructing such improvements, no application to the Federal Government being necessary.

Repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, as amended, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, did not affect rights-of-way previously acquired under the 1866 Act.

R. W. Offerle, 77 IBLA 80 (Nov. 9, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

The holder of a right-of-way issued pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), is required to pay annually, in advance, the fair market value of the grant. Appellant's contention that it should not pay annual rental is properly rejected where appellant's flood control project is completed but the right-of-way grant remains in effect and the land is being used for a dam, spillway, and reservoir.

Bench Lake Irrigation Co., 78 IBLA 305 (Jan. 12, 1984)

Where BLM granted appellant's rights-of-way for communication sites under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1976), subject to a future appraisal, application of 43 CFR 2803.1-2(b) providing that BLM establish an estimated rental fee, collect the fee in advance, and adjust the advance rental fee upon receipt of an approved fair market appraisal, is not a prohibited imposition of a retroactive rental.

The preferred method for appraising the fair market value of nonlinear rights-of-way, including microwave transmission sites, is the comparable lease method of appraisal where there is sufficient comparable rental data and appropriate adjustments are made for differences between the subject sites and other leased sites.

Mountain States Telephone & Telegraph Co., 79 IBLA 5 (Feb. 2, 1984)

Under Departmental regulation 43 CFR 2803.1-2(c), a nonprofit electric distribution cooperative whose principal source of revenue is customer charges is not eligible for an exemption or reduction of fair market rental imposed for a right-of-way under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976).

Colorado-Ute Electric Ass'n, Inc., 79 IBLA 53 (Feb. 9, 1984)

Where BLM grants a right-of-way for a haul road under sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1976), subject to a future appraisal, BLM may subsequently appraise the land included in the right-of-way, and the rental charges imposed from the date of the right-of-way grant will not be considered retroactive.

Lone Star Steel Co., 79 IBLA 345 (Mar. 22, 1984)

An appellant seeking reversal of a decision denying a protest against issuance of a right-of-way across land in a wilderness study area to state-owned land must show that the decision was premised either on a clear error of law or a demonstrable error of fact. Where state land is encircled by Federal land within a wilderness study area, the state's lessee has a right of access across Federal land pursuant to 16 U.S.C. § 3210(b) (Supp. V 1981) adequate to secure the reasonable use and enjoyment of the leasehold. Because the BLM may not deny such access by requiring the lessee to use helicopters, BLM need not examine the feasibility of helicopter access in its consideration of a right-of-way application.

Utah Wilderness Ass'n, 80 IBLA 64 (Mar. 30, 1984)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

Where there is no appraisal to support a readjusted rental rate for a water pipeline right-of-way, a decision imposing the readjusted rate must be reversed.

A. Keith Barbon, 81 IBLA 332 (June 19, 1984)

BLM properly requires the holder of a right-of-way for an access road to pay its fair market rental value in accordance with sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1982), but where there is no evidence that BLM considered the question of whether the holder is entitled to a reduced fee because a valuable benefit is provided to the public by maintenance and improvement of the road, the case will be remanded to BLM to consider that question.

William F. Bieber, 82 IBLA 6 (July 2, 1984)

A decision imposing rental charges on a Rural Electrification Act cooperative for a powerline right-of-way grant, pursuant to sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1982), will be set aside where subsequent to the decision that section is amended, P.L. 98-300, 98 Stat. 215 (1984), to provide that rights-of-way shall be granted, without rental fees, for electric facilities financed pursuant to the Rural Electrification Act of 1936.

La Plata Electric Ass'n, Inc., 82 IBLA 159 (Aug. 2, 1984)

BLM may properly reject an application for a powerline right-of-way crossing the Snake River pursuant to its discretion under sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1982), in the interest of preserving the scenic quality of the area and protecting raptors listed as endangered and threatened where the record shows the decision to be a reasoned analysis of the factors involved, including the availability of feasible alternatives, made with due regard for the public interest.

Lower Valley Power & Light, Inc., 82 IBLA 216 (Aug. 22, 1984)

In granting a right-of-way for access over an existing road pursuant to sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1982), BLM may not unreasonably burden the right-of-way by requiring upgrading of the road where upgrading is neither commensurate with the holder's intended use of the road nor designed to protect any other resource value which might be adversely affected by such use.

James B. Loonan, Elizabeth K. Loonan, 82 IBLA 395 (Sept. 17, 1984)

Where the State of Idaho accepted a grant pursuant to sec. 8 of the Act of July 26, 1866, 43 U.S.C. § 932, otherwise known as R.S. 2477 (repealed, sec. 706(a) of FLPMA, 90 Stat. 2793), for a highway right-of-way over public lands, the State's right-of-way remains in effect pursuant to sec. 701(a) of FLPMA, 90 Stat. 2786.

R.S. 2477 does not provide for the construction of the grant according to the law of the state in which the land subject to the grant is situated; rather, its construction is a question of Federal law. By the time of the R.S. 2477 Idaho grant, Congress had already

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

determined that telephone cables were not within the scope of an R.S. 2477 highway right-of-way. Thus, a telephone cable buried along an R.S. 2477 highway with a right-of-way from the State of Idaho but without the requisite BLM right-of-way is in trespass.

Mountain Bell, 83 IBLA 67 (Sept. 26, 1984)

A decision imposing rental charges under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1982), for a right-of-way for a telephone line financed pursuant to the Rural Electrification Act of 1936 will be reversed on appeal to conform to the Act of May 25, 1984, P.L. 98-300, 98 Stat. 215, providing that rights-of-way shall be granted without rental fees for such facilities.

Pursuant to sec. 504(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(a) (1982), the Secretary of the Interior has discretion to set the limits of a right-of-way in light of the area to be occupied by the facilities authorized thereunder, the area required for operation and maintenance of the facilities, the area required for protection of public safety, and the area required for protection of the environment against unnecessary damage. An appellant challenging the determination of boundaries for a right-of-way has the burden of showing error.

Beehive Telephone Co., Inc., 83 IBLA 86 (Sept. 28, 1984)

Under the Federal Land Policy and Management Act of 1976, BLM has the discretion to grant or deny a road right-of-way across public lands, and its decision will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest. Therefore, when appellant proposes to build a road across BLM lands to provide alternate access to its ranch, but fails to introduce evidence to counter BLM findings that the site is unsuitable for road construction and the area would probably suffer extensive environmental damage from increased offroad vehicle traffic use, the Board will affirm the BLM decision.

Charing Cross Associates, 83 IBLA 167 (Oct. 15, 1984)

Amendment of sec. 504(g) of the Federal Land Policy and Management Act of 1976 to permit grants of rights-of-way for electric and telephone facilities without payment of fees in certain cases applies only to rights-of-way for transmission lines, and does not include a right-of-way for a microwave radio site within the facilities excused from payment of fees.

A hearing will be ordered where issues of fact concerning value are raised substantially disputing a decision imposing rental charges on a Rural Electrification Act cooperative for microwave site right-of-way grant pursuant to sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1982).

Colorado-Ute Electric Ass'n, Inc., 83 IBLA 358 (Nov. 15, 1984)

Where the State of Montana accepted a grant pursuant to sec. 8 of the Act of July 26, 1866, 43 U.S.C. § 932 (1970), otherwise known as R.S. 2477, repealed, sec. 706(a) of the Federal Land Policy and Management

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RIGHTS-OF-WAY--Continued

Act of 1976, 90 Stat. 2793, for a highway right-of-way over public lands, the State's right-of-way remains in effect pursuant to sec. 701(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2786.

R.S. 2477 does not provide for the construction of the grant according to the law of the state in which the land subject to the grant is situated; rather, it is a question of Federal law. Rights-of-way obtained by a state pursuant to R.S. 2477 do not contain a legal right on the part of the state to grant third-party rights-of-way. Thus, appellant was required to obtain a right-of-way under 43 U.S.C. § 1761 (1982) to bury cable along an R.S. 2477 highway even though appellant had already obtained permission to bury the cable from the county.

Mountain States Telephone & Telegraph Co., 84 IBLA 1 (Nov. 21, 1984)

RULES AND REGULATIONS

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to BLM for recordation on Oct. 18, 1979, and the filing fee therefor is not paid to BLM until Nov. 7, 1979, the recordation date of the notice of location is Nov. 7, 1979. In the circumstances, under 43 CFR 3833.1-2 appellant's filing was not completed until Nov. 7, 1979, which is after the cutoff date of Oct. 22, 1979, for mining claims located prior to Oct. 21, 1976, and the mining claim must be deemed abandoned and void.

Nevada Pacific Co., Inc., 46 IBLA 208 (Mar. 24, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim was submitted to BLM for recordation on Oct. 22, 1979, the deadline date, and the filing fee therefore is not paid to BLM until after the deadline for filing had passed, the mining claim must be deemed abandoned and void.

L. Leon Jennings, Mansfield L. Jennings, Gilbert R. Jennings, 47 IBLA 47 (Apr. 14, 1980)

R. L. Durrant, Mod Mulville, R. E. Kerr, 47 IBLA 208 (May 13, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where certificates of location of mining claims are submitted to BLM for recordation on Oct. 18, 1979, and the filing fee therefor is not paid to BLM until Feb. 25, 1980, the recordation date of the notices of location is Feb. 25, 1980. In the circumstances, under 43 CFR 3833.1-2 appellant's filing was not completed until Feb. 25, 1980, which is after the cutoff date of Oct. 22, 1979, for mining claims located prior to Oct. 21, 1976, and the mining claims must be deemed abandoned and void.

Cecil V. Clifford, Jr., 47 IBLA 262 (May 13, 1980)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RULES AND REGULATIONS--Continued

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of mining claims, were submitted to BLM for recordation and the filing fees therefor were not paid to BLM until after the deadline (90 days after the date of location) had passed, the mining claims must be deemed abandoned and void.

Virginia Edwards, 47 IBLA 301 (May 19, 1980)

An assertion of a preference right to purchase public land offered for public sale pursuant to the Unintentional Trespass Act of Sept. 26, 1968, 82 Stat. 870 (43 U.S.C. §§ 1431-1435 (1976)) (now covered by the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701, 1722 (1976)), is improperly rejected when the applicant submits satisfactory equitable proof of his "ownership" of contiguous lands by showing that he has contracted to purchase such land, has made at least partial payment therefor, and is in possession thereof.

J. Burton Tuttle, 49 IBLA 278 (Aug. 18, 1980) 87 I.D. 350

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a claimant files for recordation on Oct. 19, 1979, but the filing fee is not paid to BLM until after the deadline for filing, Oct. 22, 1979, the mining claim must be deemed abandoned and void.

Robert W. Miller, Marjorie Kipper Miller, 51 IBLA 364 (Dec. 29, 1980)

While the Bureau of Land Management may suspend action on applications for recordable disclaimers of interest filed pursuant to sec. 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1745 (1976), where no implementing regulations have been issued and where there is no contrary policy directive, an application may be properly rejected where the statutory criteria have not been met.

Edward C. Miller, 56 IBLA 388 (Aug. 3, 1981)

Under 43 CFR 3833.1-2(d), a location notice for each mining claim filed for recordation must be accompanied by the stated fee. As this is a mandatory requirement there is no recordation unless the documents are accompanied by the stated fee.

R. L. Nielsen, R. W. Tompkins, 57 IBLA 114 (Aug. 25, 1981)

Pursuant to 43 CFR 3833.1-2(d), payment of a $5 service fee must accompany the filing with BLM of each notice or certificate of mining location; otherwise, each unpaid filing shall be rejected.

Frank E. Evans, 60 IBLA 44 (Nov. 17, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

RULES AND REGULATIONS--Continued

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

SALES

An assertion of a preference right to purchase public land offered for public sale pursuant to the Unintentional Trespass Act of Sept. 26, 1968, 82 Stat. 870 (43 U.S.C. §§ 1431-1435 (1976)) (now covered by the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701, 1722 (1976)), is improperly rejected when the applicant submits satisfactory equitable proof of his "ownership" of contiguous lands by showing that he has contracted to purchase such land, has made at least partial payment therefor, and is in possession thereof.

J. Burton Tuttle, 49 IBLA 278 (Aug. 18, 1980)
87 I.D. 350

The exercise of a right of first refusal pursuant to sec. 214 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1722 (1976), by one having a preference right to purchase public land in accordance with sec. 2 of the Unintentional Trespass Act of 1968, 43 U.S.C. § 1432 (1976), is properly rejected when the preference right holder fails to submit satisfactory evidence of the ownership of contiguous lands within the time specified by the authorized officer as provided by regulation.

Lorraine Lawler (Trust), 52 IBLA 227 (Jan. 30, 1981)

BLM properly rejects an application to purchase mineral rights where the record shows that these rights were previously sold to a private party. In the absence of any proof to the contrary, it is presumed that the sale of these interests was regularly consummated by the issuance of a deed or other appropriate instrument of conveyance to the private party.

Watkins Hutcheson Building Co., Inc., 54 IBLA 137 (Apr. 17, 1981)

BLM classifications of land as suitable for disposition by public sale are not subject to appeal to the Board of Land Appeals. Likewise, BLM's dismissal of a protest against a resource management plan is not appealable to the Board. In each instance, other provisions for agency review have been made by regulations.

Oregon Natural Resources Council, 78 IBLA 124 (Dec. 27, 1983)

Pursuant to the provision of sec. 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1713 (1976), the Secretary is directed to condition any patent issued thereunder with such terms or reservations as are necessary to ensure proper land use and protect the public interest. A party challenging any such condition must show that it does not

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

SALES--Continued

reasonably ensure proper land use or protect the public interest.

August & Mary Sobotka, 79 IBLA 340 (Mar. 22, 1984)

The existence of a mining claim precludes the sale of the land under sec. 203 of the Federal Land Policy and Management Act of 1976 until the claim is found to be invalid or otherwise extinguished.

Historic but unauthorized use of the land can be considered when determining whether public lands can be offered for sale utilizing the modified competitive bidding procedures outlined in 43 CFR 2711.3-2(a).

In a noncompetitive sale of land under the provisions of sec. 203(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1713(a) (1982), to other than a governmental entity, it must be demonstrated that the tract identified for sale is an integral part of a project of public importance or that there is a need to recognize a previous authorized use.

Hazel Anne Smith et al., 82 IBLA 230 (Aug. 23, 1984)

Where BLM appraises a parcel of land subject to a communication site right-of-way for direct sale to the holder of the grant pursuant to sec. 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1713 (1982), it is proper for BLM to appraise the parcel as if unencumbered, since the right-of-way is extinguished upon the right-of-way holder's acquisition of the fee title.

Cole Industries, Inc., 82 IBLA 289 (Aug. 31, 1984)

SERVICE CHARGES

The owner of a mining claim located on or before Oct. 21, 1976, had until Oct. 22, 1979, to record a copy of the location notice with Bureau of Land Management and pay the required service fee, and where the fee was not paid 43 CFR 3833.1-2(d) requires that the notice of location be returned as unacceptable.

George B. Flewelling, 48 IBLA 141 (May 30, 1980)

A copy of a recorded notice or certificate of location of a mining claim will not be accepted by BLM for recordation if it is not accompanied by the service fee required under 43 CFR 3833.1-2(d).

Susan Nativo, 52 IBLA 134 (Jan. 16, 1981)

Where a mining claimant attempts to file notices of location for 24 claims pursuant to 43 CFR 3833.1-2 and tenders payment for filing costs in an amount sufficient to cover only 23 of those claims, BLM shall require the claimant to select 23 claims to which the money tendered shall be applied. The remaining one claim is properly declared abandoned and void in accordance with 43 CFR 3833.4.

Floyd R. Moody, 52 IBLA 153 (Jan. 21, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

SURFACE MANAGEMENT

Sec. 302 of the Federal Land Policy and Management Act of 1976 vests in the Secretary the responsibility to prevent unnecessary or undue degradation of the public lands. It also preserves a mining claimant's right of ingress and egress. Consequently, the grant of a right-of-way, which is directionary under the Act, is not the proper method of regulating a mining claimant's access in conjunction with surface management to prevent undue degradation. Rather, questions of access to mining claims are properly resolved under the surface management regulations at 43 CFR Subpart 3809 which were promulgated pursuant to sec. 302 and specifically address mineral entry, access, and operations.

Hosch Mining Co., 75 IBLA 153 (Aug. 18, 1983)
90 I.D. 382

BLM may properly condition the approval of a plan of operations for open pit mining on the acceptance of stipulations designed to prevent unnecessary and undue degradation of the public lands where such stipulations are reasonable and properly reflect considerations of the public interest. However, where the language of the stipulations does not accurately reflect the intent of the parties BLM should consider language modifications to answer legitimate concerns of the operator and incorporate the assurances given by BLM.

Draco Mines, Inc., 75 IBLA 278 (Aug. 26, 1983)

WILD AND FREE-ROAMING HORSES AND BURROS

Where the Bureau of Land Management has retained custody of wild free-roaming horses, adopted pursuant to the Act of Dec. 15, 1971, as amended, 16 U.S.C.A. § 1331 (West Supp. 1980), on the basis that the horses have been commercially exploited and the case presents substantial issues of fact, the assignees under the original cooperative agreements are entitled to a hearing before an Administrative Law Judge.

Geneva Barry et al., 54 IBLA 48 (Apr. 9, 1981)

A decision cancelling a cooperative agreement for private maintenance of wild free-roaming horses will be affirmed on appeal where the record indicates the horses were commercially exploited as rodeo bucking stock in violation of the cooperative agreement and the relevant regulations.

Cecil McCandless et al., 64 IBLA 76 (May 10, 1982)

WILDERNESS

Where the land embraced in a proposed geothermal lease has been identified as having wilderness characteristics and is being reviewed for possible preservation as wilderness pursuant to sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), it is proper for the Bureau of Land Management to require the execution of special wilderness protection stipulations.

Thermal Power Co., 49 IBLA 169 (July 30, 1980)

Sec. 603(a) of the Federal Land Policy and Management Act directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendation as to the suitability or

WILDERNESS--Continued

nonsuitability of each such area or island for preservation as wilderness.

Where the Bureau of Land Management fails to designate an inventory unit as a Wilderness Study Area (WSA) because, inter alia, it lacks outstanding opportunities for solitude or a primitive and unconfined type of recreation, and thereafter a protest and appeal are filed which contain no affirmative allegations of facts or provide no legal arguments sufficient to compel a reversal, BLM's decision will be affirmed.

Sierra Club, 53 IBLA 159 (Mar. 12, 1981)

Sec. 603(a) of the Federal Land Policy and Management Act directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

Sierra Club, 54 IBLA 31 (Apr. 6, 1981)

Sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), mandates review by the Secretary only of those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a), 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in sec. 2(c) of the Wilderness Act, 43 U.S.C. § 1131(c) (1976).

Even if a 720-acre nonisland area of public land were considered as exhibiting the wilderness characteristics of size, i.e., of sufficient size as to make practicable its preservation and use in an unimpaired condition, sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), would not require review by the Secretary because such a parcel contains less than 5,000 acres.

Where the Bureau of Land Management's final initial inventory decision states that certain public land is eliminated from wilderness review in that it obviously lacks wilderness characteristics because it is too small to make practicable its preservation and use in an unimpaired condition, that decision will be affirmed in the absence of sufficient reasons to change the result.

Save the Glades Committee, 54 IBLA 215 (Apr. 23, 1981)

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Richard J. Leaumont, 54 IBLA 242 (Apr. 27, 1981)
88 I.D. 490

Oregon Wilderness Coalition, 71 IBLA 67 (Feb. 22, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

Sec. 603 of the Federal Land Policy and Management Act directs the Secretary of the Interior to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory as having wilderness characteristics, and report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

Where, after initial wilderness inventory, the Bureau of Land Management decides that an area might possess wilderness characteristics, an appellant who objects to such a determination must show that there is no realistic possibility that these lands may be suitable for wilderness designation.

Jerry D. Reynolds, 54 IBLA 300 (Apr. 29, 1981)

While the Board of Land Appeals will give "considerable deference" to Bureau of Land Management designations of Wilderness Study Areas if thorough investigation underlies the Bureau's decision, where an appellant can specifically and convincingly show that there is sufficient reason to change the Bureau's decision, the Board must resolve the issue in favor of appellant. Such is the case where appellant has convinced the Board that the designated Wilderness Study Area is not "wilderness," as that term is described in 16 U.S.C. § 1131(c) (1976), by submitting detailed maps and photographs showing the adverse impact of appellant's open-pit mining operation on the area.

Union Oil Co., 56 IBLA 206 (July 22, 1981)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Union Oil Co. (On Reconsideration), 58 IBLA 166 (Sept. 28, 1981)

Sec. 603 of the Federal Land Policy and Management Act directs the Secretary of the Interior to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory as having wilderness characteristics, and report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

Where the definition of "road," utilized in the Wilderness Inventory Handbook, cannot be said to be contrary to the statutory language or legislative intent manifested in sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), decisions employing such definition will not be set aside on appeal unless it can be shown that it was improperly applied.

The Bureau of Land Management can regulate the route and method of state access to lands in a designated wilderness study area in order to prevent impairment of wilderness characteristics under sec. 603(c) of the Federal Land Policy and Management Act of 1976, so long as such limitations do not impair full economic development of state school lands and lands chosen in lieu thereof.

California State Lands Commission, 58 IBLA 213 (Sept. 29, 1981)

Valid existing rights are limitations upon the Secretary's authority to manage activities occurring within wilderness study area under the nonimpairment standard. In general, the nonimpairment standard remains the management norm unless it would preclude enjoyment of the rights. When it is determined that the rights can be enjoyed only through activities that will permanently impair an area's suitability, the Secretary must manage the lands to prevent unnecessary and undue degradation and to afford environmental protection.

The Bureau of Land Management Wilderness Review and Valid Existing Rights, M-36910 (Supp.) (Oct. 5, 1981) 88 I.D. 909

Sec. 603(a) of the Federal Land Policy and Management Act of 1976 directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness. BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrysteems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Where the record evidences BLM's first-hand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to great deference.

National Outdoor Coalition, 59 IBLA 291 (Oct. 30, 1981)

Sec. 603(a) of the Federal Land Policy and Management Act directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Bureau of Land Management's practice of designating an area containing roads or other intrusions as a nonwilderness corridor (cherrystem), thereby excluding such area from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful or prohibited practice in

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

fulfilling the inventory phase of the wilderness review program.

C & K Petroleum Co., 59 IBLA 301 (Nov. 3, 1981)

The Bureau of Land Management has authority to determine the route of a pipeline authorized under 30 U.S.C. § 185 (1976), and is required to consider all relevant factors including its impact on proposed WSA's, as well as the cost to the applicant, in selecting any specific route.

Fuel Resources Development Co., 59 IBLA 378 (Nov. 9, 1981)

An appellant or intervenor requesting this Board to reverse a Bureau of Land Management decision regarding the inclusion or exclusion of a unit of land as a wilderness study area must show the decision to be based on a clear and specific error of law or fact, otherwise the Board will affirm.

Merrill G. Hastings, 60 IBLA 54 (Nov. 17, 1981)

The Bureau of Land Management may designate an area as a wilderness study area, in accordance with sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), even though it is traversed by a temporary road constructed pursuant to a right-of-way permit granted after the effective date of the Act where BLM has taken actions to ensure that such a grant would not result in permanent impairment of the area for suitability for preservation as wilderness.

California Ass'n of Four-Wheel Drive Clubs, Inc., National Outdoor Coalition, 60 IBLA 240 (Dec. 4, 1981)

Sec. 603(a) of the Federal Land Policy and Management Act of 1976 directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendations as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

Under Organic Act Directive No. 78-61, Change 3, July 12, 1979, the effects of the imprints of man which occur outside an inventory unit are generally factors to be considered during the study phase of the wilderness review program. Imprints of man outside the unit may be considered during the inventory stage only in situations where the imprint is adjacent to the unit and its impact is so extremely imposing that it cannot be ignored, and if not considered reasonable application of inventory guidelines would be lost.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Jacqueline L. McGarva, Cal-Nova Willow Creek Range Improvement Ass'n, 60 IBLA 278 (Dec. 17, 1981)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

The nonimpairment mandate of sec. 603(c), 43 U.S.C. § 1782(c) (1976), is therefore not applicable to those areas of less than 5,000 acres. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Tri-County Cattlemen's Ass'n, Idaho Cattlemen's Ass'n, 60 IBLA 305 (Dec. 18, 1981)

The Bureau of Land Management is directed by sec. 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that the continuation of existing mining uses in the same manner and degree in which they were being conducted on the date of enactment of FLPMA (Oct. 21, 1976) is allowed. Such grandfathered use is properly regulated to prevent unnecessary or undue degradation of the land and its resources.

The existence of mining operations actually being conducted on the land on Oct. 21, 1976, and not mere statutory right to use is required to authorize subsequent mining activities in the same manner and degree.

A mining claim located prior to the Federal Land Policy and Management Act of 1976 (Oct. 21, 1976) on which a valid discovery has existed from Oct. 21, 1976, to the present constitutes a valid existing right. The owner of such a claim on land under wilderness review will be allowed to continue mining operations to full development even if operations will impair wilderness suitability, subject to regulation to preclude unnecessary or undue degradation of the land and its resources.

Dale F. Gieblett, 60 IBLA 341 (Dec. 22, 1981)

Haylah Group, 60 IBLA 349 (Dec. 22, 1981) 88 I.D. 1115

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless"

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Conoco, Inc. et al., 61 IBLA 23 (Dec. 29, 1981)

Where, in a decision published in the Federal Register designating wilderness study areas pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the Bureau of Land Management grants interested parties 30 days to initiate a protest challenging the decision, the 30-day appeal period as to that decision will commence upon expiration of the 30 days accorded for filing protests. An appeal filed after the time period allowed must be dismissed.

Where a BLM state office issues a decision adding additional acreage to a wilderness study area in response to a protest which points out that BLM failed to obtain an exception from the Director, BLM, in accordance with Organic Act Directive 78-61, Change 3, July 12, 1979, permitting it to exclude such land because of a failure to satisfy the outstanding opportunity criterion, and the record supports a finding that the unit as a whole satisfies that criterion, the decision to add the acreage will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

City of Colorado Springs, 61 IBLA 124 (Jan. 15, 1982)

Koch Industries, Inc., 62 IBLA 45 (Feb. 24, 1982)

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of five thousand acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes review of an area for wilderness characteristics prior to an inventory of all public lands.

Where part of a unit designated as a wilderness study area appears not to possess outstanding opportunities for solitude or a primitive and unconfined type of recreation, BLM may consider this factor during its study phase and make any appropriate boundary adjustments. However, the lack of an outstanding opportunity for solitude or a primitive and unconfined type of recreation will not disqualify part of a unit from consideration during the study phase where other parts of the unit have been identified during the inventory phase as meeting the outstanding opportunity criterion.

Petroleum, Inc., 61 IBLA 139 (Jan. 18, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

The argument that a wilderness study area would be better utilized for a flood control project is premature during the inventory phase of the wilderness review process. During the study phase, BLM will determine the suitability or nonsuitability of each wilderness study area for wilderness preservation. This determination, made through BLM's land use planning system, will consider all values, resources, and uses of the public lands.

Ruskin Lines et al., 61 IBLA 193 (Jan. 26, 1982)

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Animal Protection Institute of America, 61 IBLA 222 (Jan. 28, 1982)

A decision of the State Director designating an inventory unit as a wilderness study area will not be disturbed on appeal where the appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. More than mere disagreement with BLM's conclusion is required to reverse its decisions or place a factual matter at issue.

L. J. Cornelius, 61 IBLA 279 (Feb. 2, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Where, in assessing the wilderness characteristics of a unit during the intensive inventory, the Bureau of Land Management determines only that the unit in conjunction with adjacent Forest Service land possesses a

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

certain wilderness characteristic, the method of assessment is improper. The Bureau is required to assess whether the unit itself has the requisite characteristic.

Don Coops et al., 61 IBLA 300 (Feb. 3, 1982)

While the extent of public support for wilderness preservation is not a proper factor to be considered during the inventory phase of the wilderness review mandated by sec. 603 of FLPMA, 43 U.S.C. § 1782 (1976), public comments which relate to the existence or nonexistence of wilderness characteristics within an inventory unit must be evaluated.

While the existence of a realistic possibility that land within an inventory unit possesses wilderness characteristics is sufficient to require that the land be intensively inventoried, such land may be included within a wilderness study area (WSA), only where it is shown that the statutory criteria have, in fact, been met.

Where BLM has refused to designate an area as a wilderness study area (WSA), pursuant to sec. 603 of FLPMA, 43 U.S.C. § 1782 (1976), an appellant must not merely show that various errors may have occurred in the consideration of the unit, but is required to show that these errors resulted in an erroneous conclusion as to the unit's suitability for further study.

Sierra Club, 61 IBLA 329 (Feb. 10, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

The requirement in sec. 2(c) of the Wilderness Act of 1964, 16 U.S.C. § 1131(c) (1976), that a wilderness possess, inter alia, outstanding opportunities for solitude or a primitive and unconfined type of recreation is properly construed to require outstanding opportunities for either solitude or a primitive and unconfined type of recreation; both need not be present in an inventory unit to allow the unit to enter the study phase of the wilderness review process.

Churchill County Board of Commissioners, 61 IBLA 370 (Feb. 17, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Frank Vaughn, 61 IBLA 387 (Feb. 18, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Walter B. Benoit, 62 IBLA 99 (Mar. 1, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Where, in assessing the wilderness characteristics of a unit during the intensive inventory, the Bureau of Land Management determines that a unit possesses a certain wilderness characteristic only in conjunction with contiguous lands administered by agencies other than BLM, the method of assessment is improper. BLM is required to assess whether the unit itself has the requisite characteristic.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

State of Nevada et al., 62 IBLA 153 (Mar. 5, 1982)

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusion on that criterion.

Sierra Club, Utah Chapter, 62 IBLA 263 (Mar. 15, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Wolter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusion on that criterion.

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Committee for Idaho's High Desert, 62 IBLA 319 (Mar. 22, 1982)

Organic Act Directive 78-61, Change 3 (July 12, 1979, at p. 3), specifies that as a general rule the boundary of a wilderness inventory unit is to be determined based on an evaluation of the imprints of man within the unit.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Organic Act Directive 78-61, Change 2 (June 28, 1979, at p. 5), specifies that BLM must evaluate the cumulative effect of minor imprints of man on an inventory unit. When multiple imprints of man are considered to be substantially noticeable and the decision has been made to eliminate a group of these imprints, natural portions of the unit, which are located between the individual imprints of man, must not be automatically excluded.

Sierra Club et al., 62 IBLA 367 (Mar. 24, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect wilderness characteristics of the land pending a study required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulation is reasonable.

Banner Oil & Gas, Ltd., 63 IBLA 23 (Mar. 26, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Idaho Cattlemen's Ass'n. Bennett Hills Grazing Ass'n, 63 IBLA 30 (Mar. 26, 1982)

When the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Catlow Steens Corp., The Victorio Co., 63 IBLA 85 (Mar. 31, 1982)

Sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), mandates review by the Secretary only of those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a), 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in sec. 2(c) of the Wilderness Act, 43 U.S.C. § 1131(c) (1976).

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

"Public lands." Reclamation withdrawn lands on which there are no authorized or constructed reclamation projects are administered by the Bureau of Land Management under a memorandum of agreement between the Bureau of Reclamation and Bureau of Land Management (Mar. 1972). In the absence of contrary language in an order withdrawing lands for reclamation purposes, reclamation withdrawn lands which do not have authorized or constructed projects on them are "public lands" within the meaning of secs. 103(e) and 603(a) of the Federal Land Policy and Management Act of 1976.

During the study phase of the wilderness review process, BLM will consider all values, resources, and uses of the lands within a wilderness study area.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

George Azar, 63 IBLA 172 (Apr. 8, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

In order to enter the study phase of the wilderness review process, an inventory unit need not be free of all intrusions or imprints of man. Sec. 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires only that an area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot.

Marvin Casey et al., 63 IBLA 208 (Apr. 12, 1982)

Don S. Orlando et al., 64 IBLA 7 (May 4, 1982)

Sec. 603 of the Federal Land Policy and Management Act of 1976 directs the Secretary of the Interior to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory as having wilderness characteristics, and report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Inyo County Board of Supervisors, 63 IBLA 321 (Apr. 27, 1982)

Inventory units of the public lands under 5,000 acres in area are properly excluded from the intensive inventory phase of BLM's wilderness review process, because such lands clearly and obviously do not meet the criteria for designation as a wilderness study area.

California Wilderness Coalition et al., 63 IBLA 330 (Apr. 28, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of 5,000 acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes a review of the public lands for wilderness characteristics prior to a multiresource inventory of the public lands.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

An inventory unit must qualify as having wilderness characteristics without considering rehabilitation potential, i.e., rehabilitation should not be the basis for concluding that wilderness values exist in a unit. Rehabilitation potential should be considered only for those imprints of man that exist within a unit but are not so significant as to automatically disqualify the unit or portion of a unit.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Amoco, Inc., et al., 64 IBLA 50 (May 6, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

An appellant seeking reversal of a decision to include land in a Wilderness Study Area must show that the decision appealed from was premised on either a clear error of law or a demonstrable error of fact.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

It is not proper to exclude land from a wilderness study area merely because there has been no consideration of its potential mineral value. The mineral potential of any tract is to be considered in the study phase rather than the inventory phase of the wilderness review process in order to move more carefully to determine the effect of a permanent wilderness designation on such values.

A wilderness study area designation will not be overturned on appeal on the basis of an appellant's claim that roads exist in the area, in the absence of allegations that mechanical improvements or mechanical maintenance has taken place on such routes.

P. W. Martin, 64 IBLA 307 (June 8, 1982)

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference and may not be overcome by expressions of simple disagreement.

A state director's decision designating an inventory unit as a wilderness study area apparently on the strength of conclusory unsupported public opinion statements will be reversed where BLM's firsthand assessment shows that the unit in question did not possess the requisite outstanding opportunity for solitude or for a primitive and unconfined type of recreation.

Conoco, Inc., 65 IBLA 84 (June 23, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities, opportunities for solitude, or primitive and unconfined recreation, are entitled to considerable deference.

Where, during the pendency of an appeal involving the protest of the designation of land units as WSA's, the Board issues a decision in another case involving the same units in which it holds that BLM's designation of these units as WSA's is error, and thereby achieves the result sought by the appellant whose appeal is pending, the issue is moot and the appeal is dismissed.

Arizona State Ass'n of 4-Wheel Drive Clubs, 65 IBLA 126 (June 28, 1982)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities, opportunities for solitude, or primitive and unconfined recreation, are entitled to considerable deference.

The Bureau of Land Management is directed by sec. 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that the continuation of existing mining uses in the same manner and degree in which they were being conducted on the date of enactment of FLPMA (Oct. 21, 1976) is allowed. Such grandfathered use is properly regulated to prevent unnecessary or undue degradation of the land and its resources.

Carl W. Clark, 65 IBLA 153 (June 29, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find seclusion.

The Bureau of Land Management is directed by sec. 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that the continuation of existing mining uses in the same manner and degree in which they were being conducted on the date of enactment of FLPMA (Oct. 21, 1976) is allowed. Such grandfathered use is properly regulated to prevent unnecessary or undue degradation of the land and its resources.

Gilbert W. Daily, 65 IBLA 223 (July 9, 1982)

A Bureau of Land Management determination that mining claims located in a wilderness study area constitute valid existing rights under sec. 701(h) of the Federal Land Policy and Management Act of 1976, made in conjunction with a review of a proposed mine plan of operation, is an integral part of the review process, serving to identify the applicable standard governing regulation of mining activities on the claims. Where

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

the claim operator withdraws the mine plan and indicates that he plans no activity on the claims, an appeal of the initial BLM determination must be dismissed because, in absence of the proposed operations, the determination is no longer ripe for review.

Douglas McFarland, Sierra Club, Desert Survivors, 65 IBLA 380 (July 20, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities is entitled to considerable deference.

The argument that a wilderness study area would be better utilized for oil and gas development is premature during the inventory phase of the wilderness review process. During the study phase, BLM will determine the suitability or nonsuitability of each wilderness study area for wilderness preservation. This determination, made through BLM's land use planning system, will consider all values, resources, and uses of the public lands.

Tom H. Ford, 66 IBLA 14 (July 23, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Where the definition of "road," utilized in the Wilderness Inventory Handbook, cannot be said to be contrary to the statutory language or legislative intent manifested in sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), decisions employing such definition will not be

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

set aside on appeal unless it can be shown that it was applied improperly.

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

Where the record evinces BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

BLM's practice of examining the mineral potential in the study phase of the wilderness review process, rather than the inventory phase, does not violate sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1976).

Sec. 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), does not require that the policy and procedures of the Wilderness Inventory Handbook be promulgated as rules and regulations pursuant to sec. 4 of the Administrative Procedure Act, 5 U.S.C. § 553 (1976).

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal. Statements that the area is affected by outside sights and sounds and bears noticeable scars of man's intrusions will not suffice in the absence of evidence that the impact on the unit is so pervasive as to preclude a rational finding of wilderness characteristics.

City of Delta, 66 IBLA 282 (Aug. 19, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Organic Act Directive (OAD) 78-61, Change 2 at 5, provides that BLM may properly adjust the boundary of an inventory unit to exclude a substantially noticeable imprint of man.

Organic Act Directive (OAD) 78-61, Change 3 at 3, provides that BLM may in certain instances properly

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

adjust the boundary of an inventory unit based on the outstanding opportunity criterion.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

The Wilderness Society et al., 66 IBLA 287 (Aug. 19, 1982)

In determining whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation, it is not improper for BLM to compare the opportunities of the unit under consideration with those of other units; the term "outstanding" is necessarily comparative in concept.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Sierra Club et al., 66 IBLA 300 (Aug. 20, 1982)

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities is entitled to considerable deference.

A BLM decision to eliminate a portion of an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where on appeal the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit meets the naturalness criterion, and the record does not adequately support BLM's conclusion on that criterion.

National Public Lands Task Force et al., 66 IBLA 340 (Aug. 26, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

Sec. 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires, inter alia, that an area designated for wilderness preservation generally appear to have been affected primarily by the

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

forces of nature with the imprint of man's work substantially unnoticeable. The underscored language, taken verbatim from the statute, is ample support for the proposition that a wilderness study area (WSA) need not be free of all intrusions.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Square Butte Grazing Ass'n, 67 IBLA 25 (Sept. 7, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Ken Brower, 67 IBLA 124 (Sept. 16, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

In order to enter the study phase of the wilderness review process, an inventory unit need not be free of all intrusions or imprints of man. Sec. 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires only that an area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable.

Charles Schwenke, 67 IBLA 201 (Sept. 22, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

During the study phase of the wilderness review process, BLM will consider all values, resources, and uses of the lands within a wilderness study area.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Charles E. Hauptman, 67 IBLA 207 (Sept. 22, 1982)

"Public lands." Lands within a powersite withdrawal do not cease being "public lands" by virtue of such withdrawal and continue to remain subject to BLM's wilderness inventory process under the Federal Land Policy and Management Act of 1976, secs. 103(e) and 603(a).

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness, opportunities for solitude, or opportunities for primitive and unconfined recreation, are entitled to considerable deference.

An appellant seeking reversal of a decision to include land in a wilderness study area must show that the decision appealed from was premised on either a clear error of law or a demonstrable error of fact.

Colorado River Water Conservation District, 67 IBLA 287 (Sept. 28, 1982)

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Mitchell Energy Corp., Texas Gas Exploration Corp., 68 IBLA 219 (Nov. 12, 1982)

A decision to establish a wilderness study area pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, is proper absent a showing of compelling reasons requiring modification or reversal. Arguments that the area is affected by outside industrial and commercial activity do not preclude further study of the area's fitness for wilderness classification in the absence of proof that the intrusions by man

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

are so great as to prevent the possibility of wilderness classification.

Arguments which question the ultimate best use of a proposed wilderness study area for wilderness purposes are prematurely raised at the intensive inventory stage of agency review.

Public Service Co. of Colorado, Koch Industries, Inc., 68 IBLA 262 (Nov. 17, 1982)

When the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed where appellant fails to point out specific errors of law or fact in the decision below--more than mere disagreement with the conclusion of BLM is required to reverse a decision or place a factual matter at issue.

Kenneth H. Berg, Doris M. Berg, 69 IBLA 182 (Dec. 15, 1982)

Consistent with Secretarial policy directives, where an oil and gas lease offer embraces lands in either a wilderness study area or an instant study area action on such an offer must be suspended, to the extent that the lands are within a wilderness study area or instant study area, until congressional action is taken on the President's recommendations as provided by sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

Ida Lee Anderson, 70 IBLA 259 (Jan. 26, 1983)

Where the wilderness inventory discloses an area to be affected primarily by the forces of nature with the imprint of man's work substantially unnoticeable, the presence of minor intrusions which are substantially unnoticeable will not preclude designation as a wilderness study area.

A decision to draw the boundary of a wilderness study area along the edge of an imprint of man will be affirmed in the absence of a showing that the adjacent imprint so impinges upon lands within the wilderness study area as to deprive them of wilderness characteristics.

Owyhee Cattlemen's Ass'n, Idaho Board of Land Comm'rs, Idaho Cattlemen's Ass'n, 71 IBLA 6 (Feb. 10, 1983)

The proper scope of the wilderness inventory conducted under secs. 201 and 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1711, 1782 (1976), involves a determination of whether the land inventoried is possessed of the wilderness characteristics defined by Congress so as to require designation as a wilderness study area. The question of the suitability of a tract of land within a wilderness study area for designation as wilderness, as contrasted with devotion of the land to other purposes, is properly considered during the subsequent study phase of the wilderness review process.

James Stewart Co., 71 IBLA 100 (Feb. 24, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

The subjective judgment of BLM as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation is entitled to considerable deference where the record discloses BLM's firsthand knowledge of the land within the unit.

Richard J. Leaumont, 71 IBLA 112 (Feb. 28, 1983)

Action must be suspended on an oil and gas lease offer to the extent it includes lands in either a wilderness study area or an instant study area until Congressional action on the President's recommendations as provided by sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

Fortune Oil Co., 71 IBLA 153 (Mar. 9, 1983)
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The Bureau of Land Management is directed by sec. 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that the continuation of existing mining uses in the same manner and degree in which they were being conducted on the date of enactment of FLPMA (Oct. 21, 1976) is allowed. Such grandfathered use is properly regulated to prevent unnecessary or undue degradation of the land and its resources.

John Loskot, 71 IBLA 165 (Mar. 10, 1983)

Consistent with Secretarial policy directives, where an oil and gas lease offer embraces lands in a wilderness study area, action on such an offer must be suspended, to the extent that the lands are within a wilderness study area, until Congressional action is taken on the President's recommendations as provided by sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

John R. Anderson, 71 IBLA 172 (Mar. 10, 1983)

The Secretary of the Interior is required by sec. 603(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent the impairment of the wilderness characteristics of those lands. Where the Bureau of Land Management denies a mine plan of operations for mining claims located in a wilderness study area on the basis that the proposed open pit operation would impair the naturalness of the study area, the denial will be upheld where the mining claimant fails to establish error in the determination.

Keith R. Kummerfeld, 72 IBLA 1 (Apr. 4, 1983)

Although boundaries of wilderness inventory units are ordinarily located along roads or other substantially noticeable imprints of man, configuration of the unit may justify adjustment of the unit boundary on the basis of the outstanding opportunity criteria in certain circumstances. A decision subdividing a unit into three subunits on this basis will be set aside and the case remanded for further consideration where the record fails to reflect analysis of the basis for subdivision.

Evaluations made by BLM personnel in the wilderness inventory process are necessarily subjective and judgmental. The conclusions reached must be accorded

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

considerable deference notwithstanding that the result might be one over which reasonable men could differ. An appellant seeking reversal must ordinarily show either a clear error of law or a demonstrable error of fact.

Timothy O. Keninger, 72 IBLA 100 (Apr. 14, 1983)

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the unit's naturalness qualities and whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite naturalness or outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusions on those criteria.

Utah Wilderness Ass'n et al., 72 IBLA 125 (Apr. 18, 1983)

The authority of BLM state directors to designate the boundaries of wilderness study areas derives from the Secretary, and their determinations are appealable to the Board of Land Appeals, which is empowered to decide such appeals as fully and finally as might the Secretary. The Board, therefore, may affirm, reverse or modify such boundary designations on appeal with finality, and BLM's ministerial implementation of such final decisions will not create a new right of appeal.

Phelps Dodge Corp. et al., 72 IBLA 226 (Apr. 26, 1983)

An appellant seeking reversal of a decision involving lands in a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Southwest Resource Council, Inc., National & Arizona Wildlife Federations, 73 IBLA 39 (May 11, 1983)

An appellant requesting this Board to reverse a Bureau of Land Management decision including lands in a wilderness study area must show that the decision was based either on a clear error of law or a demonstrable error of fact, or the decision will be affirmed.

Jaca Bros., Inc., 73 IBLA 192 (May 26, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

The Bureau of Land Management is directed by sec. 603(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that it allows the continuation of existing mining, grazing, or mineral leasing uses in the same manner and degree in which they were being conducted on the date of enactment, Oct. 21, 1976, and except to the extent that the exercise of valid existing rights is not prevented under sec. 701(h).

Colorado Open Space Council, 73 IBLA 226 (May 31, 1983)

The Secretary of the Interior is required by sec. 603(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of their wilderness characteristics.

A decision by BLM disapproving plans of operations concerning mining claims located within wilderness study areas will be upheld where BLM's determination, pursuant to 43 Subpart 3802, that proposed operations would impair the suitability of the study areas for preservation as wilderness is reasonable based on the record and the mining claimant fails to present any new, relevant information in support of an appeal from BLM's decision.

Mining plans of operations concerning claims or portions thereof located outside a wilderness study area are properly evaluated under the surface management provisions of 43 CFR Subpart 3809, rather than under the provisions governing lands under wilderness review contained in 43 CFR Subpart 3802.

Keith R. Kumperfeld, 74 IBLA 106 (June 30, 1983)

Secs. 102(a)(5), 202(a), 202(f), and 309(e) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701(a)(5), 1712(a), 1712(f), and 1739(e) (1976), do not require that the policy and procedural clarifications of the Wilderness Inventory Handbook as expressed in OAD 78-61, Changes 2 and 3, be subject to public notice and review. OAD 78-61, Changes 2 and 3, are within the exception of sec. 4(a) of the Administrative Procedure Act, 5 U.S.C. § 553 (1976), providing that interpretative rules, general statements of policy, or rules of agency organization procedure, or practice are not required to be promulgated as formal regulations.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Red Rock 4-Wheelers, 75 IBLA 140 (Aug. 17, 1983)

The lack of an outstanding opportunity for solitude or a primitive and unconfined type of recreation will not disqualify part of an inventory unit from designation as a wilderness study area and from consideration during the study phase where other parts of the unit have been identified during the inventory phase as meeting the outstanding opportunity criterion.

Davis Oil Co., 75 IBLA 163 (Aug. 18, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

Consistent with Secretarial policy directives, where an oil and gas lease offer embraces lands in a wilderness study area BLM may not issue a lease, and action on such an offer must be suspended until congressional action on the President's recommendations as provided by sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

Lawrence E. Kerr, 75 IBLA 186 (Aug. 22, 1983)

BLM may properly eliminate areas of the public lands of less than 5,000 acres from further consideration as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

In deciding whether to designate an inventory unit as a wilderness study area under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), BLM may not compare a unit with other units but may compare it with other areas in a particular region, on the basis of topographic, vegetative, and other features.

In deciding whether to designate an inventory unit as a wilderness study area under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), BLM may properly consider the configuration of the unit in assessing opportunities for solitude or primitive, unconfined recreation.

Sierra Club -- Rocky Mountain Chapter et al., 75 IBLA 220 (Aug. 23, 1983)

The mere assertion that an area is subject to outside sights and sounds, without evidence that they are both adjacent and so extremely imposing that they cannot be ignored, will not preclude a finding by BLM that the area is natural and offers outstanding opportunities for solitude.

The desirability of managing an area for competing multiple uses, including off-road vehicle use, is properly considered during the study phase of the wilderness review process.

Idaho Trail Machine Ass'n et al., 75 IBLA 256 (Aug. 26, 1983)

Instruction Memorandum (IM) 83-237 (Jan. 7, 1983) provides that BLM's policy is to issue no leases in BLM administered Wilderness Study Areas (WSAs). A subsequent clarification to this policy provides that BLM may continue to lease portions of WSAs that are immediately adjacent to producing oil and gas fields or areas that are prospectively valuable. IM 83-237, Change 2 (Mar. 7, 1983).

Phyllis M. Odell, 75 IBLA 313 (Aug. 30, 1983)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Wilford Cothern, 76 IBLA 23 (Sept. 8, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Edward H. Howe, Fred Huff, Gerald A. Strauss, 76 IBLA 27 (Sept. 8, 1983)

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of 5,000 acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes a review of the public lands for wilderness characteristics prior to a multiresource inventory of the public lands.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

Phelps Dodge Corp., 76 IBLA 31 (Sept. 8, 1983)

Sec. 603 of the Federal Land Policy and Management Act of 1976 directs the Secretary of the Interior to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory as having wilderness characteristics, and report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

In determining whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation, it is not improper for BLM to compare the opportunities of the unit under consideration with those of other units for the purpose

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

of determining whether the opportunities are "outstanding"; the term "outstanding" is necessarily comparative in concept.

In assessing the wilderness characteristics of a unit during intensive inventory, BLM must consider whether the unit itself possesses those characteristics regardless of the character of adjacent areas that are not public lands.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or primitive and unconfined type of recreation are entitled to considerable deference.

Michael Huddleston et al., 76 IBLA 116 (Sept. 21, 1983)

The Secretary of the Interior is required by sec. 603(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent the impairment of the wilderness characteristics of those lands. Where the Bureau of Land Management rejects a plan of operations for drilling on mining claims located in a wilderness study area on the basis that the proposed operation would impair the naturalness of the study area, the rejection will be upheld where the mining claimant fails to establish error in the determination.

Golden Triangle Exploration Co., 76 IBLA 245 (Oct. 17, 1983)

The Secretary on Dec. 30, 1982, directed that no mineral leasing or permitting take place on BLM wilderness study areas. Instruction Memorandum 83-237, Change 3 (June 24, 1983), provides, however, that BLM may continue to lease portions of wilderness study areas that are "immediately adjacent to producing oil and gas fields or areas that are prospectively valuable."

Ida Lee Anderson, 76 IBLA 395 (Oct. 27, 1983)

Where there is no evidence that a route has been improved by mechanical means, it will not be considered a road even where it is subject to relatively regular and continuous use and maintenance is unnecessary.

BLM may not properly eliminate an inventory unit from further consideration as a WSA because of the adverse impact on naturalness due to unauthorized construction of post-FLPMA roads, even where BLM concludes that the roads cannot be rehabilitated to a substantially unnoticeable condition.

BLM may properly eliminate an area of less than 5,000 acres from further consideration as a WSA under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

A BLM decision to eliminate an area from further consideration as a WSA will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the area has the requisite naturalness and the record does not adequately support BLM's conclusion on that criterion.

Philip Allen, Desert Wilderness Coalition, 77 IBLA 330 (Dec. 5, 1983)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

BLM may properly eliminate an area of less than 5,000 acres from further consideration as a WSA under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

Nothing in Change 3 of the WIH prohibits consider ation of the effect of scenic vistas on enhancing opportunities for solitude within an inventory unit, and where such vistas are "so extremely imposing" they cannot be ignored, a decision of BLM declining to designate the unit as a WSA arrived solely on the basis of ignoring these scenic vistas will be reversed.

New Mexico Natural History Institute, 78 IBLA 133 (Dec. 29, 1983)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701, 1782(c) (1976), requires the Secretary to regulate mining operations in lands under wilderness review to prevent impairment of the suitability of these areas for prospective or potential inclusion in the wilderness system. Where a proposed mining plan of operation on such land calls for the use of mechanized earthmoving equipment to clear a new area and the creation of new roads in new areas, BLM properly rejected the plan.

Mining operations in lands under wilderness review may continue even if they are determined to be impairing wilderness values if the operations are occurring in the same manner and degree that they were being conducted on Oct. 21, 1976. Mining activities not exceeding that manner and degree shall be regulated only to prevent undue and unnecessary degradation of public lands. However, the existence of mining operations actually being conducted on the land on Oct. 21, 1976, and not mere statutory right to use, is required to authorize subsequent mining activities in the same manner and degree.

Doyle Capp, 79 IBLA 204 (Feb. 28, 1984)

Organic Act Directive 78-61, Change 3, at page 3, provides that BLM may in certain instances properly adjust the boundary of an inventory unit based on the outstanding opportunity criterion.

In evaluating a unit's opportunity for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot.

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal, and such judgments may not be overcome by expressions of simple disagreement.

The Wilderness Society et al., 81 IBLA 101 (June 1, 1984)

Significant alteration and enlargement of an existing access road constructed within a wilderness study area requires approval of a plan of operations.

William E. Godwin, 82 IBLA 105 (July 26, 1984)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

WILDERNESS--Continued

Evaluations made by BLM personnel in the wilderness inventory process are necessarily subjective and judgmental. The conclusions reached must be accorded considerable deference notwithstanding the result might be one over which reasonable men could differ. An appellant seeking reversal must ordinarily show either a clear error of law or a demonstrable error of fact.

John R. Swanson, 84 IBLA 127 (Dec. 10, 1984)

WITHDRAWALS

A mining claim located on land temporarily segregated from appropriation under the mining laws pursuant to 43 U.S.C. § 1714(b) (1976) is null and void ab initio.

Under 43 U.S.C. § 1714(b) (1976) a publication in the Federal Register of notification of an application for withdrawal, which publication temporarily segregates land from the operation of the mining laws, does not withdraw the land, and therefore the notice need not be signed by the Secretary or an individual in the Office of the Secretary who has been appointed by the President, by and with the advice and consent of the Senate.

Stephen W. Fox, 50 IBLA 186 (Sept. 30, 1980) 87 I.D. 462

Mining claims located on lands which are withdrawn for reclamation purposes under the first form are null and void ab initio. A first-form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding the repeal of the statute authorizing the initiation of such withdrawals.

Sam McCormack, 52 IBLA 56 (Jan. 6, 1981)

A mining claim located on lands which are withdrawn for reclamation purposes under the first form is null and void ab initio. A first form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, not withstanding the repeal of the statute authorizing the initiation of such withdrawals.

William C. Reiman, Richard H. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

The segregative effect of an application to withdraw land filed prior to Oct. 21, 1976, continues, under sec. 204(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1714(g) (1976), until Oct. 21, 1991, unless the application is either approved or rejected in the interim. Publication of a notice of hearing for such an application as provided by sec. 204(h), 43 U.S.C. § 1714(h) (1976), does not alter this time period.

James C. Robinson et al., 68 IBLA 84 (Oct. 21, 1982)

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT
(See also Surplus Property--if included in this Index.)

Where oil and gas deposits in lands acquired by the United States and devoted to use for military purposes become "surplus property" under the Federal Property and Administrative Services Act, such deposits may be leased only under the provisions of that

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT--Continued

Act, and are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

Edvard C. Shepardson, 53 IBLA 79 (Mar. 2, 1981)

Jerald A. Waters, 78 IBLA 387 (Jan. 31, 1984)

FEES
(See also Accounts--if included in this Index.)

Where mining claimants attempt to record their claims on Oct. 28, 1977, which were located prior to Oct. 21, 1976, but do not submit the mandatory service fee, as required by 43 CFR 3833.1-2(d), until May 3, 1978, recordation of the claims is effective as of May 3, 1978, and the claimants are not required to file evidence of annual assessment work until Oct. 22, 1979.

W. Verne Kight, Eva M. Kight, 47 IBLA 351 (May 21, 1980)

Acceptance for recordation of a timely filed certificate of location of unpatented mining claim and negotiation of the check for the required service fee creates no estoppel to subsequently declare the claim abandoned and void for failure to file timely the required evidence of assessment work or notice of intention to hold.

Margaret E. Peterson, 55 IBLA 136 (June 4, 1981)

Filing fees submitted in the form of an instrument drawn by a bank on its own assets, and which is signed by an officer of the bank and is a direct obligation of the issuing bank are acceptable under 43 CFR 3112.2-2.

Eloise Miller, David Miller, 56 IBLA 7 (June 30, 1981)

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for an annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), the Secretary of the Interior may charge less than fair market value for a right-of-way rental. The regulation, 43 CFR 2803.1-2(c), implementing that provision sets forth the circumstances under which no fee or a fee less than fair market rental may be authorized; however, it specifically excludes cooperatives whose principal source of revenue is customer charges from such consideration.

Tri-State Generation and Transmission Ass'n, Inc., 63 IBLA 347 (Apr. 29, 1982) 89 I.D. 227

The Bureau of Land Management may properly charge fees for special recreation permits authorizing commercial rafting on the Rogue River, a designated wild and scenic river, under sec. 4(c) of the Land and Water Conservation Fund Act, 16 U.S.C. § 460l-6a(c), and Departmental regulations at 43 CFR Part 8372.

Where, on appeal, commercial outfitters protesting the imposition and increase of special recreation permit fees for commercial raft trips on the Rogue River, fail to demonstrate that the Bureau of Land Management's actions did not comport with its regulations or that the new fee levels have no reasonable basis under the regulations, a decision denying the protest will be affirmed.

Departmental regulations at 43 CFR Subpart 8372 require that, when the Bureau of Land Management issues special recreation permits authorizing use of special areas such as a designated wild and scenic river, fees must be charged for noncommercial as well as commercial users engaging in the same activity, except to the extent that a user is exempted from paying fees by 43 CFR 8372.4(d).

Rogue River Outfitters Ass'n, Dave Helfrich River Outfitters, Inc., 63 IBLA 373 (Apr. 30, 1982)

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Socorro Electric Cooperative, Inc., 64 IBLA 65 (May 6, 1982)

San Miguel Power Ass'n, Inc., 64 IBLA 172 (May 26, 1982)

San Miguel Power Association, Inc., 71 IBLA 213 (Mar. 16, 1983)

Under Departmental regulation 43 CFR 2803.1-2(c) a nonprofit electric distribution cooperative whose principal source of revenue is customer charges is not eligible for an exemption or reduction of fair market rental imposed for a right-of-way under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976).

San Miguel Power Ass'n, Inc., 64 IBLA 342 (June 15, 1982)

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), the Secretary of the Interior may charge less than fair market value for a right-of-way rental under certain circumstances. The regulation, 43 CFR 2803.1-2(c), implementing that provision sets forth the circumstances under which no fee or a fee less than fair market rental may be authorized; however, it specifically excludes from such consideration cooperatives whose principal source of revenue is customer charges.

Northern Electric Cooperative, Inc., 66 IBLA 121 (Aug. 10, 1982)

Sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g), indicates that under certain circumstances the Secretary of the Interior may charge less than fair market value for annual right-of-way rental, including no charge. However, no reduction or waiver of the fee based on fair market rental will be made if the right-of-way user is a cooperative or similar organization whose principal source of revenue is customer charges.

Big Horn Canal Ass'n, 76 IBLA 283 (Oct. 18, 1983)

Wellton-Mohawk Irrigation & Drainage District, 79 IBLA 308 (Mar. 20, 1984)

FEES--Continued

Under Departmental regulation 43 CFR 2803.1-2(c), a nonprofit electric distribution cooperative whose principal source of revenue is customer charges is not eligible for an exemption or reduction of fair market rental imposed for a right-of-way under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976).

Colorado-Ute Electric Ass'n, Inc., 79 IBLA 53 (Feb. 9, 1984)

Where there is no appraisal to support a readjusted rental rate for a water pipeline right-of-way, a decision imposing the readjusted rate must be reversed.

A. Keith Barbon, 81 IBLA 332 (June 19, 1984)

A decision imposing rental charges on a Rural Electrification Act cooperative for a powerline right-of-way grant, pursuant to sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1982), will be set aside where subsequent to the decision that section is amended, P.L. 98-300, 98 Stat. 215 (1984), to provide that rights-of-way shall be granted, without rental fees, for electric facilities financed pursuant to the Rural Electrification Act of 1936.

La Plata Electric Ass'n, Inc., 82 IBLA 159 (Aug. 2, 1984)

Amendment of sec. 504(g) of the Federal Land Policy and Management Act of 1976 to permit grants of rights-of-way for electric and telephone facilities without payment of fees in certain cases applies only to rights-of-way for transmission lines, and does not include a right-of-way for a microwave radio site within the facilities excused from payment of fees.

A hearing will be ordered where issues of fact concerning value are raised substantially disputing a decision imposing rental charges on a Rural Electrification Act cooperative for microwave site right-of-way grant pursuant to sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1982).

Colorado-Ute Electric Ass'n, Inc., 83 IBLA 358 (Nov. 15, 1984)

Costs of a survey must be paid by a person authorized by a private law to purchase public lands.

Jerry L. Crow, 84 IBLA 119 (Dec. 10, 1984)

FISH AND WILDLIFE COORDINATION ACT

An over-the-counter offer for an oil and gas lease on lands within a game range or on coordination lands may not be summarily rejected under 43 CFR 3101.3-3(a) applicable to wildlife refuge lands. Subsecs. 3101.3-3(b) and (c) require that BLM confer with representatives of the U.S. Fish and Wildlife Service at a minimum before an offer can be rejected.

D. M. Yates, 70 IBLA 240 (Jan. 25, 1983)

FISH AND WILDLIFE COORDINATION ACT--Continued

BLM may not summarily reject a noncompetitive oil and gas lease offer under 43 CFR 3101.3-3(a), which prohibits noncompetitive leasing within wildlife refuge lands, where the evidence on appeal establishes that the lands are coordination lands, which may be subject to leasing under 43 CFR 3101.3-3(c).

D. M. Yates, 73 IBLA 353 (June 14, 1983)

Provisions of 43 CFR 3101.5-2(c) require the Bureau of Land Management to confer with representatives of the Fish and Wildlife Service and the state game commission concerned before rejecting oil and gas lease offers in cases involving offers for coordination lands. Where an agreement concerning leasing of coordination lands has been made, lands within an affected area which are not specifically excepted from oil and gas leasing remain subject to lease offers.

Bob G. Bowell, 75 IBLA 328 (Aug. 30, 1983)

Inasmuch as coordination lands are properly deemed to be units of the National Wildlife Refuge System, oil and gas lease offers for such lands may not be granted, unless drainage is occurring, until such time as the Secretary of the Interior promulgates new regulations in conformity with sec. 137 of the 1984 Continuing Resolution, 97 Stat. 981.

D. M. Yates, 82 IBLA 389 (Sept. 13, 1984)

FISH AND WILDLIFE SERVICE

In civil penalty proceeding concerning an alleged violation of the Eagle Protection Act, proof of conduct in violation of the Act must appear of record. Where the record fails to establish proof of an offer to sell an artifact agreed to be an eagle, there is no basis for assessment of a civil penalty.

Angel Nunez v. U. S. Fish & Wildlife Service, 4 OHA 25 (July 1, 1980)

An over-the-counter offer for an oil and gas lease on lands within a game range or on coordination lands may not be summarily rejected under 43 CFR 3101.3-3(a) applicable to wildlife refuge lands. Subsecs. 3101.3-3(b) and (c) require that BLM confer with representatives of the U.S. Fish and Wildlife Service at a minimum before an offer can be rejected.

D. M. Yates, 70 IBLA 240 (Jan. 25, 1983)

Provisions of 43 CFR 3101.5-2(c) require the Bureau of Land Management to confer with representatives of the Fish and Wildlife Service and the state game commission concerned before rejecting oil and gas lease offers in cases involving offers for coordination lands. Where an agreement concerning leasing of coordination lands has been made, lands within an affected area which are not specifically excepted from oil and gas leasing remain subject to lease offers.

Bob G. Bowell, 75 IBLA 328 (Aug. 30, 1983)

FISH AND WILDLIFE SERVICE--Continued

The Act of May 23, 1908, 35 Stat. 267, as amended, 16 U.S.C. § 671 (1976), providing for the establishment of the National Bison Range, terminated the status of the land included therein as land reserved for Indian use.

Pipeline Overthrust Oil & Gas, Inc., 80 IBLA 4 (Mar. 27, 1984)

FREEDOM OF INFORMATION ACT (Act of June 5, 1967)

FOIA's exemptions do not prevent USGS from publishing its finding that a well is producible or from releasing well logs.

USGS finding that a well is producible is a central event in the operation of the Outer Continental Shelf Lands Act, as amended. Therefore, FOIA requires USGS to release this finding to the public.

Well logs and findings of producibility are not "trade secrets" within the meaning of 18 U.S.C. § 1905 (1976).

Sec. 1905 allows disclosures authorized by law. 30 CFR 250.3, promulgated pursuant to 43 U.S.C. § 1352(c) (Supp. II 1978) and the Administrative Procedure Act, is adequate authority for disclosure of a lessee's well log after a two-year period of confidentiality.

Whether the U.S. Geological Survey May Make Public Certain Information About Offshore Oil and Gas Wells, M-36925 (Nov. 24, 1980) 88 I.D. 699

Final decisions and orders of the Department of the Interior made in the adjudication of cases, including Indian Child Welfare Act cases, are both available to the public and indexed in accordance with the requirements of 5 U.S.C. § 552(a)(2) (1976).

Native Americans for Community Action v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 214 (July 1, 1983) 90 I.D. 283

GEOLOGICAL SURVEY

A Geological Survey Area Supervisor is acting within the authority granted to him by applicable provisions of Indian oil and gas leases and Indian and Federal royalty regulations when he decides to adopt the greater of either 1) actual sales prices of production from the leased lands or 2) a substitute price computed by him which is reasonably based on sales prices from all production from other similar tribal leases in the area, as the "value" of gas produced on these leases, and when he directs lessees to compute royalty based on the greater of the two values so calculated.

Where the Area Supervisor assembles data concerning sales from all Jicarilla tribal leases for a particular year and determines the median sales price, his use of this figure as a minimum floor price by which to determine value will be affirmed, as this decision is within the latitude afforded him, and this price is reasonably based on transactions indicative of the actual value of the production in the area at that time.

GEOLOGICAL SURVEY--Continued

A lessee's obligation to pay royalty based on an accurate determination of the current value of production is not mitigated by its having committed by long-term contract to sell this product at a price below this value.

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of the payment subsequently.

The Area Supervisor has the authority to require a lessee to determine the value of the lease product by both the "BTU" and "net-realization" methods and may require the lessee to adopt as value whichever result is higher as the basis for computation of royalty for natural gas.

Where a United States district court has ordered a lessee to adopt a dual accounting method of determining value and has ordered the Department to require this dual accounting from the lessee, the question of the propriety of the Area Supervisor's order doing so is apparently res judicata, the only question being whether the order is the court's final action.

Under controlling provisions, an Area Supervisor has the discretion to establish a cost-of-manufacture allowance for use in the net-realization method of determining value for royalty purposes. Where this allowance is well based on the actual amounts needed to process out by-products of the crude gas, it will be upheld in the absence of a clear showing that it is erroneous.

Supron Energy Corp. et al., 46 IBLA 181 (Mar. 21, 1980)

An order by a GS conservation manager directing holders of two adjacent outer continental shelf oil and gas leases covering a single producing geological structure to unitize will be affirmed where the record shows that the producing mechanism of the structure is a gas cap almost wholly under the exclusive control of the holders of one of the leases, and that improper development of gas from this cap would reduce the ultimate recovery of oil and gas from the structure, as the Department has the authority to require unitization in order to conserve the resources of the outer continental shelf under sec. 5(a) of the OCS Lands Act, as amended.

Placid Oil Co. et al., 46 IBLA 392 (Apr. 10, 1980)

Where the Secretary has decided that production from phosphate leases should be valued in accordance with a particular method and what the value should be, the Board's review authority is limited to determining whether the Geological Survey Area Supervisor who issues orders to the phosphate lessees has properly followed the Secretary's instructions. No hearing is required as a prerequisite to the order.

Where the Department has not formally adopted any methodology for determining the value of production from phosphate leases, but has instead allowed lessees simply to pay royalty based on the minimum value specified in the lease after having advised them that a new method of determining a realistic value was being developed, it may assert that royalty was incorrect even after it has accepted these royalty payments, and may impose the method as approved by the Secretary.

Stauffer Chemical Co. et al., 49 IBLA 381 (Sept. 5, 1980)

GEOLOGICAL SURVEY--Continued

A determination by the Geological Survey to include certain land within the participating area of a producing oil or gas well established pursuant to an approved unit agreement will not be set aside where it is not arbitrary or capricious and is supported by competent evidence, and the appellant has not demonstrated by a clear and definite showing that the determination was in error.

Davis Oil Co., 53 IBLA 62 (Mar. 2, 1981)

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of payment subsequently.

An appellant who challenges a determination by the Geological Survey as to the value of gas or other hydrocarbons produced from a Federal oil and gas lease must show not merely that the methodology utilized by Geological Survey is susceptible to error; it must show that error did, in fact, occur.

An Area Supervisor's order which requires that royalty be based on either the price specified in the order or the amount actually received, whichever is greater, comports with all regulatory requirements as to definitiveness and finality.

Supron Energy Corp., Atlantic Richfield Co., 55 IBLA 318 (June 26, 1981)

Where a unit agreement approved by the Department provides that where a leased tract committed to the unit agreement is relinquished, unless the tract is included in a new lease within 6 months thereafter, the fee owner of the tract is deemed to have waived the right to lease such lands within a participating area in the unit and to have agreed, in consideration of compensation provided by the unit agreement, that operations under the unit agreement in the participating area shall not be affected by the relinquishment. The United States is considered to be the "fee owner" of unleased public domain in the context of the unit agreement.

Belco Development Corp., 66 IBLA 134 (Aug. 10, 1982)

GEOTHERMAL LEASES
(See also Hearings, Mineral Leasing Act--if included in this Index.)

GENERALLY

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

Where the high bidder for a geothermal lease presents data on appeal showing that a fundamental assumption made in Geological Survey's evaluation of the parcel is incorrect and that its bid therefore is not spurious or unreasonable, and where Geological Survey fails to defend its evaluation, a decision rejecting the high bid must be reversed.

California Energy Co., 63 IBLA 159 (Apr. 6, 1982)

GEOTHERMAL LEASES--Continued

GENERALLY--Continued

The Secretary of the Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and Departmental regulation, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Shaw Resources, Inc., 66 IBLA 57 (July 29, 1982)

ACREAGE LIMITATIONS

Under the applicable regulations, 43 CFR 3203.2(a) and 3210.2-1(c), if a section contains less than 640 unappropriated acres of available land, a geothermal resources lease application must, as a general rule, include all available lands in one or more adjoining sections until at least 640 unappropriated acres are accumulated in order to meet the requirements of 43 CFR 3210.2-1(c), and to insure that BLM will be able to issue a lease of no less than 640 acres.

Hassie Hunt Exploration Co., 46 IBLA 161 (Mar. 21, 1980)

Under the applicable regulation 43 CFR 3203.2(b), a geothermal resources lease application for less than 640 acres is properly rejected where the applicant intends to use the land for electrical generation.

Occidental Geothermal, Inc., 62 IBLA 22 (Feb. 24, 1982)

A denial of approval of assignments of geothermal leases will be set aside and the cases remanded to BLM for reevaluation and recalculation of the acreage chargeable to the parties involved when it is not clear from the record whether appellants have properly been charged with their proportionate share of acreage of leases to be held in common as per the regulations in 43 CFR 3201, and whether this acreage exceeds the maximum allowable acreage of 20,480 acres for any one lessee when considered in conjunction with their chargeable acreage in other outstanding leases.

Caroline Hunt (Trust Estate) et al. (On Reconsideration), 70 IBLA 65 (Jan. 10, 1983)

APPLICATIONS

Generally

Under the applicable regulations, 43 CFR 3203.2(a) and 3210.2-1(c), if a section contains less than 640 unappropriated acres of available land, a geothermal resources lease application must, as a general rule, include all available lands in one or more adjoining sections until at least 640 unappropriated acres are accumulated in order to meet the requirements of 43 CFR 3210.2-1(c), and to insure that BLM will be able to issue a lease of no less than 640 acres.

Hassie Hunt Exploration Co., 46 IBLA 161 (Mar. 21, 1980)

Under the applicable regulation 43 CFR 3203.2(b), a geothermal resources lease application for less than 640 acres is properly rejected where the applicant intends to use the land for electrical generation.

Occidental Geothermal, Inc., 62 IBLA 22 (Feb. 24, 1982)

GEOTHERMAL LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

A geothermal lease application is properly rejected where the applicant submits a proposed plan of operations which includes the building of homes and the development of mining claims on the geothermal lease site, if a lease is issued.

George M. Wilkinson, 70 IBLA 1 (Jan. 6, 1983)

Where lands in issue formerly were included in a now terminated geothermal resources lease, and no listing of units for re-leasing had been made as of the time appellant filed a noncompetitive geothermal resources lease application, BLM properly rejected the application in accordance with 43 CFR 3210.1.

C. Donald Adams, Dorothy M. Adams, 71 IBLA 371 (Mar. 28, 1983)

Amendments

The Bureau of Land Management has no authority to correct an error in a description of land sought under a geothermal lease application. An amendment of the land description in a noncompetitive geothermal lease application received after the close of the monthly filing period in which the initial offer was filed will not be allowed.

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such section.

Diane B. Katz, 47 IBLA 1 (Apr. 10, 1980)

Normally, a noncompetitive geothermal lease application which fails to include all available lands within surveyed or protracted sections, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such sections. However, where an applicant files for all the lands shown to be available on the BLM leasing plat, but immediately thereafter discovers and proves the plat to be in error because other lands are available in those sections, and covers the omissions by filing "companion" applications which, when combined with the originals encompass all the lands actually available, the "combined" applications will be deemed acceptable in the peculiar circumstances of that particular case.

Caithness Corp., 72 IBLA 350 (Apr. 29, 1983)

Description

The Bureau of Land Management has no authority to correct an error in a description of land sought under a geothermal lease application. An amendment of the land description in a noncompetitive geothermal lease application received after the close of the monthly filing period in which the initial offer was filed will not be allowed.

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such section.

Diane B. Katz, 47 IBLA 1 (Apr. 10, 1980)

GEOTHERMAL LEASES--Continued

APPLICATIONS--Continued

Description--Continued

Normally, a noncompetitive geothermal lease application which fails to include all available lands within surveyed or protracted sections, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such sections. However, where an applicant files for all the lands shown to be available on the BLM leasing plat, but immediately thereafter discovers and proves the plat to be in error because other lands are available in those sections, and covers the omissions by filing "companion" applications which, when combined with the originals encompass all the lands actually available, the "combined" applications will be deemed acceptable in the peculiar circumstances of that particular case.

Caithness Corp., 72 IBLA 350 (Apr. 29, 1983)

CANCELLATION

BLM may properly hold for cancellation a competitive geothermal resources lease, issued pursuant to sec. 3 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1002 (1982), for failure to engage in exploration operations meeting minimum per acre expenditure requirements or to pay an additional rental after the fifth year of the primary lease term, in accordance with 43 CFR 3203.5. The lessee must pay the increased rental in arrears and will have 30 days following receipt of notice of cancellation either to correct the violation or, if the lessee elects to engage in exploration operations and is unable to meet the expenditure requirements within 30 days, to commence such operations in good faith within that time period and thereafter to proceed diligently to meet such requirements, or may elect to continue payment of the rental at the increased rate.

Union Texas Exploration Co., 81 IBLA 153 (May 31, 1984) 91 I.D. 238

Where BLM has denied a protest of the proposed issuance of competitive geothermal resources leases pursuant to sec. 4 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1003 (1982), the effect of the decision is stayed during the time the protestant may file an appeal and while the appeal is pending, and issuance of the leases during that time will be considered subject to cancellation by the Board.

Where BLM has issued competitive geothermal resources leases to a corporation pursuant to sec. 4 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1003 (1982), with notice of a private dispute regarding the authority of an officer of the corporation to act on behalf of the corporation in submitting the lease bids, the Board will not direct cancellation of the leases, but BLM may not approve any assignments of the leases, or drilling permits on the leases until the dispute between the parties is resolved through agreement or litigation.

Lawrence M. Merchant, 81 IBLA 360 (June 27, 1984)

COMPETITIVE LEASES

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

Where the high bidder for a geothermal lease presents data on appeal showing that a fundamental assumption made in Geological Survey's evaluation of

GEOTHERMAL LEASES--Continued

COMPETITIVE LEASES--Continued

the parcel is incorrect and that its bid therefore is not spurious or unreasonable, and where Geological Survey fails to defend its evaluation, a decision rejecting the high bid must be reversed.

California Energy Co., 63 IBLA 159 (Apr. 6, 1982)

The Secretary of the Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and Departmental regulation, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

On appeal from a BLM decision rejecting an offeror's competitive bid for a geothermal lease on the basis of Geological Survey's valuation of the tract sought to be leased, the offeror has the burden of showing that the valuation was in error and that the bid should be considered acceptable. In the absence of such a showing, BLM is entitled to rely on the technical expertise of Geological Survey.

Shaw Resources, Inc., 66 IBLA 57 (July 29, 1982)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive geothermal lease sale where the record discloses a rational basis for the conclusion that the highest bid was inadequate. Where a competitive lease bid is not clearly spurious or unreasonable on its face and the record fails to disclose a rational basis for the conclusion that the bid is inadequate, the decision must be set aside and remanded for compilation of a more complete record and readjudication of the acceptability of the bid.

Amoil USA, Inc., 70 IBLA 5 (Jan. 6, 1983)

BLM may properly hold for cancellation a competitive geothermal resources lease, issued pursuant to sec. 3 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1002 (1982), for failure to engage in exploration operations meeting minimum per acre expenditure requirements or to pay an additional rental after the fifth year of the primary lease term, in accordance with 43 CFR 3203.5. The lessee must pay the increased rental in arrears and will have 30 days following receipt of notice of cancellation either to correct the violation or, if the lessee elects to engage in exploration operations and is unable to meet the expenditure requirements within 30 days, to commence such operations in good faith within that time period and thereafter to proceed diligently to meet such requirements, or may elect to continue payment of the rental at the increased rate.

Union Texas Exploration Co., 81 IBLA 153 (May 31, 1984) 91 I.D. 238

The Department is entitled to rely on the reasoned analysis of its technical experts in matters concerning geologic evaluation of tracts of land offered at a sale of competitive geothermal leases. Where a decision to reject a bid has been made in a careful and systematic manner utilizing the advice of such experts, the decision will not be reversed, even though the determination may be subject to reasonable differences of opinion, where an appellant fails to meet its affirmative obligation to establish that its bid is a reasonable reflection of fair market value.

Amoil USA, Inc., 81 IBLA 231 (June 6, 1984)

GEOTHERMAL LEASES--Continued

COMPETITIVE LEASES--Continued

Where BLM has denied a protest of the proposed issuance of competitive geothermal resources leases pursuant to sec. 4 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1003 (1982), the effect of the decision is stayed during the time the protestant may file an appeal and while the appeal is pending, and issuance of the leases during that time will be considered subject to cancellation by the Board.

Where BLM has issued competitive geothermal resources leases to a corporation pursuant to sec. 4 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1003 (1982), with notice of a private dispute regarding the authority of an officer of the corporation to act on behalf of the corporation in submitting the lease bids, the Board will not direct cancellation of the leases, but BLM may not approve any assignments of the leases, or drilling permits on the leases until the dispute between the parties is resolved through agreement or litigation.

Lawrence H. Merchant, 81 IBLA 360 (June 27, 1984)

CONSENT OF AGENCY

The directives of 30 U.S.C. § 1014(b) (1976) and 43 CFR 3201.1-3 are mandatory and unless the Forest Service gives its consent to the geothermal leasing of the national forest lands in dispute, the Department of the Interior may not issue leases on those lands.

E. B. Towns, Jr., 67 IBLA 187 (Sept. 22, 1982)

Where pursuant to regulation 43 CFR 3201.1-3 the U.S. Forest Service, the agency managing the surface lands, refuses to consent to leasing for geothermal exploration, the Department may not issue a lease.

Francana Resources, Inc., 75 IBLA 125 (Aug. 15, 1983)

DESCRIPTION OF LAND

The Bureau of Land Management has no authority to correct an error in a description of land sought under a geothermal lease application. An amendment of the land description in a noncompetitive geothermal lease application received after the close of the monthly filing period in which the initial offer was filed will not be allowed.

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such section.

Diane B. Katz, 47 IBLA 1 (Apr. 10, 1980)

Normally, a noncompetitive geothermal lease application which fails to include all available lands within surveyed or protracted sections, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such sections. However, where an applicant files for all the lands shown to be available on the BLM leasing plat, but immediately thereafter discovers and proves the plat to be in error because other lands are available in those sections, and covers the omissions by filing "companion" applications which, when combined with the originals encompass all the lands actually available, the "combined" applications will be deemed acceptable in the peculiar circumstances of that particular case.

Caithness Corp., 72 IBLA 350 (Apr. 29, 1983)

GEOTHERMAL LEASES--Continued

DISCRETION TO LEASE

Under the applicable regulations, 43 CFR 3203.2(a) and 3210.2-1(c), if a section contains less than 640 unappropriated acres of available land, a geothermal resources lease application must, as a general rule, include all available lands in one or more adjoining sections until at least 640 unappropriated acres are accumulated in order to meet the requirements of 43 CFR 3210.2-1(c), and to insure that BLM will be able to issue a lease of no less than 640 acres.

Hassie Hunt Exploration Co., 46 IBLA 161 (Mar. 21, 1980)

Where the Bureau of Land Management rejects an application to lease for geothermal resources solely on the objection of the commanding officer, Fallon Naval Air Station, and where Bureau officials did not make an independent determination whether leasing the lands is in the public interest, the rejection is not a proper exercise of discretion.

Occidental Geothermal, Inc., 48 IBLA 400 (July 11, 1980)

Decisions by BLM to require acceptance of special stipulations prior to leasing certain lands for geothermal resources will be upheld when the record shows that the decisions reflect a reasoned analysis of the factors involved based upon considerations of public interest, and no sufficient reason to disturb the decisions is shown. Where Geological Survey has reported that lands sought are valuable for geothermal resources and Congress recently passed legislation in support of the development of geothermal resources, decisions requiring no surface occupancy stipulations will be set aside and the cases remanded for consideration of the feasibility of the leases issuing with less onerous stipulations.

Earth Power Corp., Thermal Resources, Inc., 55 IBLA 249 (June 22, 1981) 88 I.D. 609

Under the applicable regulation 43 CFR 3203.2(b), a geothermal resources lease application for less than 640 acres is properly rejected where the applicant intends to use the land for electrical generation.

Occidental Geothermal, Inc., 62 IBLA 22 (Feb. 24, 1982)

Secretary of Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and implementing regulations, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales when such bids are deemed to be inadequate in dollar amount.

California Energy Co., 63 IBLA 159 (Apr. 6, 1982)

The decision whether or not to issue a particular geothermal lease is within the discretion of the Secretary of the Interior. A decision by the Bureau of Land Management that a lease should not be issued for certain lands will generally be upheld when the record shows the decision to be the result of a reasoned analysis of the environmental and public interest factors involved. The burden is on the applicant to show that the land would not be adversely affected as BLM indicated in rejecting the application.

The Bureau of Land Management has authority to require the execution of special stipulations to protect environmental and other land use values for lands where

GEOTHERMAL LEASES--Continued

DISCRETION TO LEASE--Continued

those values are present. Geothermal lease applications should not be rejected because of the asserted presence of environmental or other values, without prior consideration being given to the feasibility of stipulations to protect such values.

Atlantic Richfield Co., 63 IBLA 263 (Apr. 19, 1982)

The Secretary of the Interior has authority under Geothermal Steam Act, 30 U.S.C. §§ 1002-1003 (1976), and Departmental regulation, 43 CFR 3220.6(c), to reject bids submitted at competitive geothermal lease sales where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

On appeal from a BLM decision rejecting an offeror's competitive bid for a geothermal lease on the basis of Geological Survey's valuation of the tract sought to be leased, the offeror has the burden of showing that the valuation was in error and that the bid should be considered acceptable. In the absence of such a showing, BLM is entitled to rely on the technical expertise of Geological Survey.

Shaw Resources, Inc., 66 IBLA 57 (July 29, 1982)

Where lands in issue formerly were included in a now terminated geothermal resources lease, and no listing of units for re-leasing had been made as of the time appellant filed a noncompetitive geothermal resources lease application, BLM properly rejected the application in accordance with 43 CFR 3210.1.

C. Donald Adams, Dorothy M. Adams, 71 IBLA 371 (Mar. 28, 1983)

ENVIRONMENTAL PROTECTION

Generally

The decision whether or not to issue a particular geothermal lease is within the discretion of the Secretary of the Interior. A decision by the Bureau of Land Management that a lease should not be issued for certain lands will generally be upheld when the record shows the decision to be the result of a reasoned analysis of the environmental and public interest factors involved. The burden is on the applicant to show that the land would not be adversely affected as BLM indicated in rejecting the application.

The Bureau of Land Management has authority to require the execution of special stipulations to protect environmental and other land use values for lands where those values are present. Geothermal lease applications should not be rejected because of the asserted presence of environmental or other values, without prior consideration being given to the feasibility of stipulations to protect such values.

Atlantic Richfield Co., 63 IBLA 263 (Apr. 19, 1982)

Where BLM adopted a staged leasing approach to environmental review for a geothermal lease sale in the Mono-Long Valley Known Geothermal Resources Area, but the record contains ambiguities and inconsistencies concerning the exploration and development rights to be granted and the limitations to be placed on leases to be issued in that area and the notice of lease sale did not contain a "conditional stipulation," the decision dismissing a protest to the sale will be set aside and

GEOTHERMAL LEASES--Continued

ENVIRONMENTAL PROTECTION--Continued

Generally--Continued

the case remanded to allow BLM to clarify its intent concerning the proposed leasing.

Sierra Club, The Mono Lake Committee, 79 IBLA 240 (Mar. 1, 1984)

Where BLM has adopted staged leasing by notifying potential geothermal lessees that all postlease plans for exploration and development are subject to site-specific environmental review and that development might be limited or denied if such reviews were to disclose that unacceptable impacts on other land uses or resources would result, it is not necessary to prepare an environmental impact statement prior to leasing.

Sierra Club, The Mono Lake Committee (On Reconsideration), 84 IBLA 175 (Dec. 19, 1984)

KNOWN GEOTHERMAL RESOURCES AREA

An application for a noncompetitive geothermal lease must be rejected if the land is found to be within a Known Geological Resource Area (KGRA) at anytime prior to issuance of a lease, and no evidence has been offered to show the KGRA designation to be in error.

Marvin L. McGahey, 50 IBLA 4 (Sept. 5, 1980)

An application for a noncompetitive geothermal resources lease must be rejected if the land sought is within a known geothermal resources area and no evidence has been presented that the KGRA determination was in error.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982) 89 I.D. 496

BLM must reject noncompetitive geothermal resources lease applications where the land sought is determined to be within a known geothermal resources area at any time prior to the issuance of a lease. Applicants have presented unsubstantiated allegations that BLM discriminated against the applicants by improperly delaying the processing of their applications until the determination was made but have not rebutted the determination, which was based on the convergence of geologic, geophysical, and exploration well data, by a preponderance of the evidence.

Quadra Geothermal, Inc., et al., 82 IBLA 188 (Aug. 16, 1984)

An application for a noncompetitive geothermal lease must be rejected if the land is found to be within a known geological resource area prior to lease issuance where no evidence has been offered to show the known geological resource area designation to be in error.

John H. Asundson, Mary E. Murphy, 83 IBLA 340 (Nov. 5, 1984)

GEOTHERMAL LEASES--Continued

LANDS SUBJECT TO

Congress, with the passage of the Geothermal Steam Act, 30 U.S.C. § 1001 et seq., intended that geothermal leases be deemed as within the mineral leasing exception of sec. 4(d)(3) of the Wilderness Act of 1964, 16 U.S.C. § 1133(d)(3). Designated wilderness are open to geothermal leasing to the same extent they would have been at the date of their creation. Such leases are subject to the provisions of sec. 4(d)(3) of the Wilderness Act.

Geothermal Leasing in Designated Wilderness Areas, M-36937 (June 11, 1981) 88 I.D. 813

A reservation of "all minerals" in a patent of public lands pursuant to sec. 8 of the Taylor Grazing Act of June 28, 1934, as amended, 43 U.S.C.A. § 315g (repealed 1976), reserves to the United States geothermal resources underlying the patented lands. The reserved geothermal resources are subject to leasing only under the Geothermal Steam Act, 30 U.S.C. §§ 1001-1025 (1976).

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982) 89 I.D. 496

Where lands in issue formerly were included in a now terminated geothermal resources lease, and no listing of units for re-leasing had been made as of the time appellant filed a noncompetitive geothermal resources lease application, BLM properly rejected the application in accordance with 43 CFR 3210.1.

C. Donald Adams, Dorothy M. Adams, 71 IBLA 371 (Mar. 28, 1983)

NONCOMPETITIVE LEASES

An application for a noncompetitive geothermal lease must be rejected if the land is found to be within a Known Geological Resource Area (KGRA) at anytime prior to issuance of a lease, and no evidence has been offered to show the KGRA designation to be in error.

Marvin L. McGahey, 50 IBLA 4 (Sept. 5, 1980)

An application for a noncompetitive geothermal resources lease must be rejected if the land sought is within a known geothermal resources area and no evidence has been presented that the KGRA determination was in error.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982) 89 I.D. 496

BLM must reject noncompetitive geothermal resources lease applications where the land sought is determined to be within a known geothermal resources area at any time prior to the issuance of a lease. Applicants have presented unsubstantiated allegations that BLM discriminated against the applicants by improperly delaying the processing of their applications until the determination was made but have not rebutted the determination, which was based on the convergence of geologic, geophysical, and exploration well data, by a preponderance of the evidence.

Quadra Geothermal, Inc., et al., 82 IBLA 188 (Aug. 16, 1984)

GEOTHERMAL LEASES--Continued

NONCOMPETITIVE LEASES--Continued

An application for a noncompetitive geothermal lease must be rejected if the land is found to be within a known geological resource area prior to lease issuance where no evidence has been offered to show the known geological resource area designation to be in error.

John H. Amundson, Mary M. Murphy, 83 IBLA 340 (Nov. 5, 1984)

PATENTED OR ENTERED LANDS

A reservation of "all minerals" in a patent of public lands pursuant to sec. 8 of the Taylor Grazing Act of June 28, 1934, as amended, 43 U.S.C.A. § 315g (repealed 1976), reserves to the United States geothermal resources underlying the patented lands. The reserved geothermal resources are subject to leasing only under the Geothermal Steam Act, 30 U.S.C. §§ 1001-1025 (1976).

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D. 496

REINSTATEMENT

A geothermal resource lease automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date, and a terminated lease may only be reinstated if it is shown that the failure to pay the lease rental timely was justifiable or not due to a lack of reasonable diligence. The standards of reasonable diligence and justifiable delay govern reinstatement of oil and gas leases as well as geothermal leases, and principles established in oil and gas lease reinstatement cases generally govern cases involving reinstatement of geothermal leases as well.

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental payment to an out-of-town destination 1 day before the anniversary date of the lease does not constitute reasonable diligence.

A lack of diligence may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Neither the long term absence of appellant's secretary in this case nor the inexperience of appellant's other employees is a justifiable excuse for lack of payment of rental.

Leonard Lundgren, 53 IBLA 149 (Mar. 11, 1981)

A geothermal lease, terminated by operation of law for failure to pay timely the annual rental, will not be reinstated where the lessee through simple inadvertence mailed the rental payment to the wrong Bureau of Land Management office.

Thermal Resources, Inc., 54 IBLA 329 (May 5, 1981)

A late rental payment may be "justifiable" and entitle a geothermal lease, which terminated by operation of law, to reinstatement if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. However, circumstances are within the control of the lessee where the proximate cause of a

GEOTHERMAL LEASES--Continued

REINSTATEMENT--Continued

late payment was a computer error and not the illness of the individual entrusted with making the payment.

U.S. Geothermal Corp., Earth Power Corp., 61 IBLA 265 (Jan. 29, 1982)

RENTALS

Where the holder of geothermal resource leases mistakenly pays only half the amount of the full annual rental due by the anniversary date of the lease, the leases automatically terminate by operation of law and the cases are properly closed on the BLM records.

W. W. Hunt, 55 IBLA 14 (May 26, 1981)

STIPULATIONS

Where the land embraced in a proposed geothermal lease has been identified as having wilderness characteristics and is being reviewed for possible preservation as wilderness pursuant to sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), it is proper for the Bureau of Land Management to require the execution of special wilderness protection stipulations.

Thermal Power Co., 49 IBLA 169 (July 30, 1980)

Decisions by BLM to require acceptance of special stipulations prior to leasing certain lands for geothermal resources will be upheld when the record shows that the decisions reflect a reasoned analysis of the factors involved based upon considerations of public interest, and no sufficient reason to disturb the decisions is shown. Where Geological Survey has reported that lands sought are valuable for geothermal resources and Congress recently passed legislation in support of the development of geothermal resources, decisions requiring no surface occupancy stipulations will be set aside and the cases remanded for consideration of the feasibility of the leases issuing with less onerous stipulations.

Earth Power Corp., Thermal Resources, Inc., 55 IBLA 249 (June 22, 1981)
88 I.D. 609

The Bureau of Land Management has authority to require the execution of special stipulations to protect environmental and other land use values for lands where those values are present. Geothermal lease applications should not be rejected because of the asserted presence of environmental or other values, without prior consideration being given to the feasibility of stipulations to protect such values.

Atlantic Richfield Co., 63 IBLA 263 (Apr. 19, 1982)

TERMINATION

A geothermal resource lease automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date, and a terminated lease may only be reinstated if it is shown that the failure to pay the lease rental timely was justifiable or not due to a lack of reasonable diligence. The standards of reasonable diligence and justifiable delay govern reinstatement of oil and gas leases as well as geothermal leases, and principles established in oil and gas lease reinstatement cases

GEOTHERMAL LEASES--Continued

TERMINATION--Continued

generally govern cases involving reinstatement of geothermal leases as well.

Leonard Lundgren, 53 IBLA 149 (Mar. 11, 1981)

A geothermal lease, terminated by operation of law for failure to pay timely the annual rental, will not be reinstated where the lessee through simple inadvertence mailed the rental payment to the wrong Bureau of Land Management office.

Thermal Resources, Inc., 54 IBLA 329 (May 5, 1981)

Where the holder of geothermal resource leases mistakenly pays only half the amount of the full annual rental due by the anniversary date of the lease, the leases automatically terminate by operation of law and the cases are properly closed on the BLM records.

W. H. Hunt, 55 IBLA 14 (May 26, 1981)

BLM may properly hold for cancellation a competitive geothermal resources lease, issued pursuant to sec. 3 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1002 (1982), for failure to engage in exploration operations meeting minimum per acre expenditure requirements or to pay an additional rental after the fifth year of the primary lease term, in accordance with 43 CFR 3203.5. The lessee must pay the increased rental in arrears and will have 30 days following receipt of notice of cancellation either to correct the violation or, if the lessee elects to engage in exploration operations and is unable to meet the expenditure requirements within 30 days, to commence such operations in good faith within that time period and thereafter to proceed diligently to meet such requirements, or may elect to continue payment of the rental at the increased rate.

Union Texas Exploration Co., 81 IBLA 153 (May 31, 1984)
91 I.D. 238

GEOTHERMAL RESOURCES

Where the Bureau of Land Management rejects an application to lease for geothermal resources solely on the objection of the commanding officer, Fallon Naval Air Station, and where Bureau officials did not make an independent determination whether leasing the lands is in the public interest, the rejection is not a proper exercise of discretion.

Occidental Geothermal, Inc., 48 IBLA 400 (July 11, 1980)

"Mineral." Geothermal steam, as defined in sec. 2(c) of the Geothermal Steam Act of 1970, 30 U.S.C. § 1001(c), is not a "mineral" as the term is used in the mineral leasing laws. Congress generally did not intend the Steam Act to be treated as a "mineral leasing law."

Geothermal Leasing in Designated Wilderness Areas, M-36937 (June 11, 1981)
88 I.D. 813

GEOTHERMAL RESOURCES--Continued

A corporate applicant for geothermal leases does not lose its priority as senior offeror because it has been temporarily suspended by its state of incorporation for failure to pay taxes, where the state has a policy that a suspended corporation may regain full status, without penalty, upon payment of its obligations.

Where a corporation is organized under the laws of a state, geothermal leases may be issued to it.

California Energy Co., Inc., 70 IBLA 221 (Jan. 24, 1983)

GRAZING AND GRAZING LANDS

Where BLM renewed an Alaska grazing lease on lands for which the State of Alaska had previously filed a selection application, and where it first expressly advised the lessee that his lease would be subject to cancellation when the State's application was resolved, BLM may cancel the lease following tentative approval of the State selection application preparatory to transferring control over the lands to the State, as 43 CFR 4230.1 gives it the authority to cancel Alaska grazing leases to permit utilization of the land for other purposes in the public interest.

Estate of C. Walter Koester, 47 IBLA 363 (May 21, 1980)

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. Protection and management of Federal range lands is a continuing responsibility and may not be divested through agreement with a private party. An allotment management plan is not such a presumptively binding contract that the grazing user's refusal to agree to changes precludes BLM from modifying or vacating the plan upon a finding, rationally based, that the plan is inconsistent with BLM objectives and good range management.

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bert N. Smith, Paul Smith v. Bureau of Land Management, 48 IBLA 385 (July 11, 1980)

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

Ruskin Lings, Jr. v. Bureau of Land Management, 76 IBLA 170 (Sept. 30, 1983)

GRAZING AND GRAZING LANDS--Continued

Where facts and law are properly set forth and applied in Administrative Law Judge's decision dismissing an appeal from the BLM District Manager's rejection of appellant's grazing application, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

John Espil, 65 IBLA 231 (July 9, 1982)

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

Where facts and law are properly set forth and applied in Administrative Law Judge's decision affirming the BLM District Manager's decision requiring appellant to maintain a drift fence on public land within his grazing area, and appellant has made no showing that the decision is in error, the decision will be affirmed.

John J. Casey, 66 IBLA 332 (Aug. 26, 1982)

Implementation of the Taylor Grazing Act of 1934, as amended, is committed to the discretion of the Secretary of the Interior. An adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with the provisions of the Federal range code for grazing, 43 CFR Part 4100.

Clyde L. Dorius, Douglas L. Down v. Bureau of Land Management, 83 IBLA 29 (Sept. 24, 1984)

GRAZING LEASES
(See also Taylor Grazing Act--if included in this Index.)

APPLICATIONS

Where an applicant for a grazing lease has committed repeated, willful trespasses on the public lands resulting in the cancellation of the applicant's grazing preference, the area manager may properly reject an application to lease on the basis that it would not be in the best interest of proper range management to issue a lease to the applicant in preference over other qualified applicants for the same land.

James M. Stoos, 57 IBLA 394 (Sept. 10, 1981)

GRAZING LEASES--Continued

APPLICATIONS--Continued

Where two conflicting applicants for a grazing lease are preference right applicants, and neither is the holder of an expiring lease, a decision awarding a grazing lease to one applicant and rejecting a conflicting application, rendered in accordance with the governing regulatory standard (43 CFR 4110.5), will not be overturned in the absence of convincing reasons that the award is not warranted.

The Corporation of the Great Southwest, 69 IBLA 333 (Dec. 28, 1982)

A decision by an Administrative Law Judge setting aside a BLM decision rejecting the grazing preference application of the longstanding holder of a temporary nonrenewable license because of the equities in favor of the applicant will be set aside on appeal and remanded so that BLM may consider whether the applicant is entitled to a grazing permit for the additional forage within a particular allotment in accordance with 43 CFR 4110.3-1 and 4110.5.

Ray Pershall v. Bureau of Land Management, 80 IBLA 168 (Apr. 13, 1984)

ASSIGNMENT

Where there is a private dispute involving the validity or effect of a grazing lease assignment, it is improper for the Bureau of Land Management to take action on a request for assignment approval until final resolution of the private dispute and receipt of notice of the result of the final determination.

Charles H. Dorman et al. (Appellants), Robert L. Beyer, Roger H. Ramsey (Appellees), 79 IBLA 209 (Feb. 28, 1984)

CANCELLATION OR REDUCTION

Where BLM renewed an Alaska grazing lease on lands for which the State of Alaska had previously filed a selection application, and where it first expressly advised the lessee that his lease would be subject to cancellation when the State's application was resolved, BLM may cancel the lease following tentative approval of the State selection application preparatory to transferring control over the lands to the State, as 43 CFR 4230.1 gives it the authority to cancel Alaska grazing leases to permit utilization of the land for other purposes in the public interest.

Estate of C. Walter Keaster, 47 IBLA 363 (May 21, 1980)

PREFERENCE RIGHT APPLICANTS

Where an applicant for a grazing lease has committed repeated, willful trespasses on the public lands resulting in the cancellation of the applicant's grazing preference, the area manager may properly reject an application to lease on the basis that it would not be in the best interest of proper range management to issue a lease to the applicant in preference over other qualified applicants for the same land.

James M. Stoos, 57 IBLA 394 (Sept. 10, 1981)

GRAZING LEASES--Continued

PREFERENCE RIGHT APPLICANTS--Continued

Where two preference right applicants file conflicting applications for a grazing lease, sec. 402(c) of the Federal Land Policy and Management Act, 43 U.S.C. § 1752(c) (1976), mandates issuance of the new lease to the holder of the expiring lease provided that the holder of the expiring lease maintains his or her preference right qualifications and is otherwise in conformance with the applicable rules and regulations. However, where 43 U.S.C. § 1752(c) (1976) is not applicable, allocation of grazing privileges pursuant to 43 CFR 4110.5 is proper.

Bureau of Land Management v. Alfredo R. Maez, 67 IBLA 89 (Sept. 13, 1982)

Where two conflicting applicants for a grazing lease are preference right applicants, and neither is the holder of an expiring lease, a decision awarding a grazing lease to one applicant and rejecting a conflicting application, rendered in accordance with the governing regulatory standard (43 CFR 4110.5), will not be overturned in the absence of convincing reasons that the award is not warranted.

The Corporation of the Great Southwest, 69 IBLA 333 (Dec. 28, 1982)

A decision by an Administrative Law Judge setting aside a BLM decision rejecting the grazing preference application of the longstanding holder of a temporary nonrenewable license because of the equities in favor of the applicant will be set aside on appeal and remanded so that BLM may consider whether the applicant is entitled to a grazing permit for the additional forage within a particular allotment in accordance with 43 CFR 4110.3-1 and 4110.5.

Ray Pershall v. Bureau of Land Management, 80 IBLA 168 (Apr. 13, 1984)

RENEWAL

Where two preference right applicants file conflicting applications for a grazing lease, sec. 402(c) of the Federal Land Policy and Management Act, 43 U.S.C. § 1752(c) (1976), mandates issuance of the new lease to the holder of the expiring lease provided that the holder of the expiring lease maintains his or her preference right qualifications and is otherwise in conformance with the applicable rules and regulations. However, where 43 U.S.C. § 1752(c) (1976) is not applicable, allocation of grazing privileges pursuant to 43 CFR 4110.5 is proper.

Bureau of Land Management v. Alfredo R. Maez, 67 IBLA 89 (Sept. 13, 1982)

GRAZING PERMITS AND LICENSES
(See also Appeals, Hearings, Taylor Grazing Act--if included in this Index.)

GENERALLY

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. Protection and management of Federal range lands is a continuing responsibility and may not be divested through agreement with a private party. An allotment management plan is not such a permanently binding contract that the grazing user's refusal to

GENERALLY--Continued

agree to changes precludes BLM from modifying or vacating the plan upon a finding, rationally based, that the plan is inconsistent with BLM objectives and good range management.

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bert M. Smith, Paul Smith v. Bureau of Land Management, 48 IBLA 385 (July 11, 1980)

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. Where under 43 CFR 4120.2-4(d) BLM has discretionary authority to require ear-tagging to control unauthorized grazing use or to promote the orderly administration of public lands, a refusal to issue ear tags reasonably related to the protection of public lands will be sustained.

Kenneth B. and Doris M. Earp, 50 IBLA 235 (Sept. 30, 1980)

In ascertaining the reasonableness of a rental rate increase for grazing lands permitted under authority of 25 CFR Part 151, it was error for the Administrative Law Judge to conclude that "fair annual return" to which Indian landowners are entitled under the regulations is "something different and less than fair market value."

The independent market survey utilized by the Bureau of Indian Affairs in justifying an increase in grazing rental rates on the Fort Berthold Reservation cannot be regarded as invalid on grounds that off-reservation transactions were included in the survey.

In reviewing action of the Bureau of Indian Affairs in raising grazing rental rates, the Board of Indian Appeals should overturn the action only if it is found to be unreasonable. As long as the Bureau's action is supported in law and by substantial evidence, it would be an inappropriate intrusion into the Bureau's function for the Board to substitute its judgment for the agency's.

Fort Berthold Land and Livestock Association v. Area Director, Aberdeen Area Office, Bureau of Indian Affairs, 8 IBIA 230 (Feb. 20, 1981) 88 I.D. 315

An Administrative Law Judge's finding that trespasses were willful, grossly negligent, and repeated will not be disturbed on appeal where the record amply supports such finding.

Where penalties imposed by an Administrative Law Judge for trespasses are supported by the record and comport with the proscriptions of the regulations they will not be modified on appeal unless it appears that they are unreasonable, inequitable, or otherwise inappropriate.

Bureau of Land Management v. Holland Livestock Ranch and John J. Caser, 54 IBLA 247 (Apr. 27, 1981)

GRAZING PERMITS AND LICENSES--Continued

GENERALLY--Continued

Decisions rejecting applications for a free-use and a fee grazing permit are properly upheld where the applicant does not meet the qualifications for a free-use permit under 43 CFR 4130.3 and where the entire adjudicated grazing capacity of the allotments involved has been allocated to other permittees and uses.

Kent Gregersen v. Bureau of Land Management, 61 IBLA 381 (Feb. 17, 1982)

Where grazing licensees have executed a valid range line agreement approved by this Department, such an agreement has generally been treated by the Department as an enforceable contract. Therefore, those items specifically spelled out in the agreement which are unmistakably clear are binding upon the parties unless changed by their mutual consent with the approval of the Bureau of Land Management.

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. Under 43 CFR 4120.4(d) BLM has discretionary authority to require ear-tagging to control unauthorized grazing use or to promote the orderly administration of public lands and a decision requiring that domestic livestock be ear-tagged will be sustained where the record establishes a rational basis therefor.

C-Punch Corp., 67 IBLA 293 (Sept. 29, 1982)

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. Under 43 CFR 4120.4(d), BLM has discretionary authority to require marking and counting to control unauthorized grazing use or to promote the orderly administration of public lands. A decision requiring that domestic livestock be marked and counted will be sustained where the record establishes a rational basis therefor.

Cook Sheep Company (Trust), 70 IBLA 348 (Feb. 3, 1983)

GRAZING PERMITS AND LICENSES--Continued

GENERALLY--Continued

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 76 IBLA 170 (Sept. 30, 1983)

BLM has discretionary authority to require ear-tagging to promote the orderly administration of public lands, and a decision requiring that livestock be ear-tagged will be sustained where the record establishes a rational basis therefor.

Rees Land & Livestock Co., et al. v. Bureau of Land Management, 82 IBLA 265 (Aug. 29, 1984)

Implementation of the Taylor Grazing Act of 1934, as amended, is committed to the discretion of the Secretary of the Interior. An adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with the provisions of the Federal range code for grazing, 43 CFR Part 4100.

Clyde L. Dorius, Douglas L. Bown v. Bureau of Land Management, 83 IBLA 29 (Sept. 24, 1984)

ADJUDICATION

A decision of the Bureau of Land Management which does not reduce applicant's grazing use on an allotment but which restricts such use to the primary grazing season and precludes limited use during the winter will be sustained as an exercise of the discretionary authority to manage grazing lands where the record establishes a rational basis for that decision consistent with range management objectives.

Hugh A. Tipton, 55 IBLA 68 (June 1, 1981)

Implementation of the Taylor Grazing Act of 1934, as amended, is committed to the discretion of the Secretary of the Interior. An adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with the provisions of the Federal range code for grazing, 43 CFR Part 4100.

Eugene Allen, Lloyd Chappell v. Bureau of Land Management; Alfred Glen Deleguy v. Bureau of Land Management, 65 IBLA 196 (June 29, 1982)

A determination by the Bureau of Land Management of the carrying capacity for a unit of the Federal range will be reversed where substantial evidence establishes error in the determination.

Chris Claridge v. Bureau of Land Management, 71 IBLA 46 (Feb. 18, 1983)

GRAZING PERMITS AND LICENSES--Continued

ADJUDICATION--Continued

An application for exclusive grazing privileges in a long-established community grazing allotment is properly rejected under 43 CFR 4130.6(b) as inconsistent with the cooperative purposes and existing operations of a community allotment with numerous other long-time permittees.

Homer Spelger v. Bureau of Land Management, 75 IBLA 44 (Aug. 5, 1983)

No reduction of grazing preference will be set aside on appeal if it appears that it is reasonable and that it represents substantial compliance with the provisions of 43 CFR Part 4100. A determination of carrying capacity will not be set aside in the absence of substantial evidence establishing error in the determination.

Jason E. Briggs v. Bureau of Land Management, 75 IBLA 301 (Aug. 29, 1983)

An adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with the provisions of 43 CFR Part 4110.

Raymond C. Augo v. Bureau of Land Management, 76 IBLA 83 (Sept. 21, 1983)

A decision by an Administrative Law Judge setting aside a BLM decision rejecting the grazing preference application of the longstanding holder of a temporary nonrenewable license because of the equities in favor of the applicant will be set aside on appeal and remanded so that BLM may consider whether the applicant is entitled to a grazing permit for the additional forage within a particular allotment in accordance with 43 CFR 4110.3-1 and 4110.5.

Ray Forshall v. Bureau of Land Management, 80 IBLA 168 (Apr. 13, 1984)

APPEALS

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bert H. Smith, Paul Smith v. Bureau of Land Management, 48 IBLA 385 (July 11, 1980)

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

Ruskin Lings, Jr. v. Bureau of Land Management, 76 IBLA 170 (Sept. 30, 1983)

A decision of the Bureau of Land Management which does not reduce applicant's grazing use on an allotment but which restricts such use to the primary grazing season and precludes limited use during the winter will be sustained as an exercise of the discretionary authority to manage grazing lands where the record establishes a rational basis for that decision consistent with range management objectives.

Hugh A. Tipton, 55 IBLA 68 (June 1, 1981)

GRAZING PERMITS AND LICENSES--Continued

APPEALS--Continued

Where facts and law are properly set forth and applied in Administrative Law Judge's decision dismissing an appeal from the BLM District Manager's rejection of appellant's grazing application, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

John Kapil, 65 IBLA 231 (July 9, 1982)

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lings, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

Where facts and law are properly set forth and applied in Administrative Law Judge's decision affirming the BLM District Manager's decision requiring appellant to maintain a drift fence on public land within his grazing area, and appellant has made no showing that the decision is in error, the decision will be affirmed.

John J. Casey, 66 IBLA 332 (Aug. 26, 1982)

Where the Bureau of Land Management authorized officer issues a decision determining the grazing privileges of two conflicting applicants which is adverse to one of the applicants, and that applicant appeals to an Administrative Law Judge and receives a favorable decision, the failure of the other applicant to participate in the proceedings before the Administrative Law Judge does not foreclose that applicant from appealing that decision to the Board of Land Appeals, as that applicant is a party to a case adversely affected by a decision of an Administrative Law Judge within the meaning of 43 CFR 4.410.

Bureau of Land Management v. Alfredo B. Nanz, 67 IBLA 89 (Sept. 13, 1982)

Where the Bureau of Land Management refers a complaint about the issuance of a crossing permit under 43 CFR 4130.4-3 directly to an Administrative Law Judge for hearing, without taking any action, the decision of the Administrative Law Judge must be vacated.

Jones & Sandy Livestock, Inc., 75 IBLA 40 (Aug. 5, 1

No reduction of grazing preference will be set aside on appeal if it appears that it is reasonable that it represents substantial compliance with the provisions of 43 CFR Part 4100. A determination of carrying capacity will not be set aside in the absence o

GRAZING PERMITS AND LICENSES--Continued

APPEALS--Continued

substantial evidence establishing error in the determination.

James F. Briggs v. Bureau of Land Management, 75 IBLA 301 (Aug. 29, 1983)

A decision by an Administrative Law Judge setting aside a BLM decision rejecting the grazing preference application of the longstanding holder of a temporary nonrenewable license because of the equities in favor of the applicant will be set aside on appeal and remanded so that BLM may consider whether the applicant is entitled to a grazing permit for the additional forage within a particular allotment in accordance with 43 CFR 4110.3-1 and 4110.5.

Ray Pershall v. Bureau of Land Management, 80 IBLA 168 (Apr. 13, 1984)

Implementation of the Taylor Grazing Act of 1934, as amended, is committed to the discretion of the Secretary of the Interior. An adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with the provisions of the Federal range code for grazing, 43 CFR Part 4100.

Clyde L. Dorius, Douglas L. Bown v. Bureau of Land Management, 83 IBLA 29 (Sept. 24, 1984)

APPORTIONMENT OF FEDERAL RANGE

Where grazing licensees have executed a valid range line agreement approved by this Department, such an agreement has generally been treated by the Department as an enforceable contract. Therefore, those items specifically spelled out in the agreement which are unmistakably clear are binding upon the parties unless changed by their mutual consent with the approval of the Bureau of Land Management.

Bureau of Land Management v. Hazon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

A decision of a district manager involving the exercise of administrative discretion in the fulfillment of the purposes of the Taylor Grazing Act, 43 U.S.C. § 315a (1976), will be affirmed where there is a rational basis for the action, and where appellant has not shown by a preponderance of the evidence that the action was arbitrary or capricious.

Arthur J. Cook (Appellant), Bureau of Land Management (Respondent), Daniel Russell (Intervenor), 64 IBLA 293 (June 7, 1982)

An application for exclusive grazing privileges in a long-established community grazing allotment is properly rejected under 43 CFR 4130.6(b) as inconsistent with the cooperative purposes and existing operations of a community allotment with numerous other long-time permittees.

Homer Saelser v. Bureau of Land Management, 75 IBLA 44 (Aug. 5, 1983)

GRAZING PERMITS AND LICENSES--Continued

BASE PROPERTY (LAND)

Ownership or Control

The loss of ownership or control of base property results in the loss of grazing privileges attached thereto and requires the cancellation of the license, in the absence of a timely application for transfer of grazing privileges to new base property.

Jimmie and Leona Ferrara, 47 IBLA 335 (May 21, 1980)

Even if an open range law provides cattle belonging to a grazing permittee or licensee with access to forage on unfenced land owned by others within an allotment, the permittee or licensee does not have ownership or control over that land. Such land cannot be considered base property for the award of grazing preference under 43 CFR 4110.2.

James F. Briggs v. Bureau of Land Management, 75 IBLA 301 (Aug. 29, 1983)

Transfers

A timely transfer of grazing license privileges to new base property may be made only while the original base property is within the ownership or control of the licensee, and transfer may not be made following sale of the original property.

Jimmie and Leona Ferrara, 47 IBLA 335 (May 21, 1980)

CANCELLATION OR REDUCTION

A motion to dismiss an appeal from a decision of the District Manager is properly granted pursuant to 43 CFR 4.470 where the arguments set forth by an applicant for a grazing license or permit are immaterial to the issue of whether the applicant has previously made substantial use of his grazing privileges.

Floyd and Corwin Silva, 45 IBLA 11 (Jan. 8, 1980)

The loss of ownership or control of base property results in the loss of grazing privileges attached thereto and requires the cancellation of the license, in the absence of a timely application for transfer of grazing privileges to new base property.

Even if it be established that the Department had not applied in previous years regulation 43 CFR 4115.2-1(e)(8) (1975), which requires termination of grazing privileges upon loss of ownership or control of base property, such failure to apply the regulation is not authority to further disregard the regulation.

Jimmie and Leona Ferrara, 47 IBLA 335 (May 21, 1980)

An Administrative Law Judge's finding that trespasses were willful, grossly negligent, and repeated will not be disturbed on appeal where the record amply supports such finding.

Where penalties imposed by an Administrative Law Judge for trespasses are supported by the record and comport with the proscriptions of the regulations they will not be modified on appeal unless it appears that they are unreasonable, inequitable, or otherwise inappropriate.

Bureau of Land Management v. Holland Livestock Ranch and John J. Casey, 54 IBLA 247 (Apr. 27, 1981)

GRAZING PERMITS AND LICENSES--Continued

CANCELLATION OR REDUCTION--Continued

BLM may temporarily suspend portions of maximum allowable active grazing preferences under 43 CFR 4110.3-2(a) authorizing suspensions in cases of "drought, fire, or other natural causes," in order to provide forage for excess wild horses.

Bar X Sheep Co. et al., 56 IBLA 258 (July 24, 1981) 88 I.D. 665

In order to impose the provisions of 43 CFR 4170.1-3 the permittee or lessee must have been convicted or otherwise be found to have been in violation of State or Federal laws or regulations concerning conservation or protection of natural or cultural resources or the environment. Finding the officer, agent, or employee in violation of said laws or regulations will not support an action under this section against the principal.

Houghland Farms, Inc. v. Bureau of Land Management, 77 IBLA 245 (Nov. 30, 1983)

A decision by BLM reducing authorized livestock grazing use pursuant to 43 CFR 4110.3-2(b) in order to facilitate achieving multiple-use management objectives, viz., allocating available forage to a competing antelope herd in the interest of promoting hunting and future transplanting, will not be disturbed absent substantial evidence showing that the decision is improper.

Charles Blackburn et al., 80 IBLA 42 (Mar. 28, 1984)

EXCHANGE OF USE

The District Manager has discretion to grant or reject an exchange-of-use application. Where the District Manager considers the equities on both sides of a dispute involving an exchange-of-use application and partially grants the application, his decision will not be disturbed on appeal if it is reasonable, within the scope of his authority, and comports with sound management practices.

Harold J. Heath, Lawrence Walker, 73 IBLA 147 (May 23, 1983)

HEARINGS

Settlement agreements compromising prior trespasses may be considered an admission of liability only where, by the terms of a settlement, liability is admitted. Where, however, liability has been initially determined in a Departmental adjudication, such a determination is properly considered in a subsequent hearing. As probative of the issue of "repeated" violations, absent a stipulated settlement which expressly vacates the factual determinations made in the prior adjudication.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 (Feb. 19, 1981) 88 I.D. 275

Where the Bureau of Land Management refers a complaint about the issuance of a crossing permit under 43 CFR 4130.4-3 directly to an Administrative Law Judge for hearing, without taking any action, the decision of the Administrative Law Judge must be vacated.

Jones & Sandy Livestock, Inc., 75 IBLA 40 (Aug. 5, 1983)

GRAZING PERMITS AND LICENSES--Continued

RANGE SURVEYS

A determination by the Bureau of Land Management of the carrying capacity of a unit of the Federal range, based on a range survey, will not be disturbed in the absence of positive evidence of error.

Eugene Allen, Lloyd Chappell v. Bureau of Land Management; Alfred Glen Deleeuw v. Bureau of Land Management, 65 IBLA 196 (June 29, 1982)

A determination by the Bureau of Land Management of the carrying capacity for a unit of the Federal range will be reversed where substantial evidence establishes error in the determination.

Chris Claridge v. Bureau of Land Management, 71 IBLA 46 (Feb. 18, 1983)

Although annual forage must be given some consideration in determining range capacity, such forage varies widely from year to year so only the minimum amount that may be expected in any given year can serve as a basis in calculating grazing preference.

James E. Briggs v. Bureau of Land Management, 75 IBLA 301 (Aug. 29, 1983)

Absent proof of error, a Bureau of Land Management decision establishing range capacity will not be disturbed.

Raymond C. Agee v. Bureau of Land Management, 76 IBLA 83 (Sept. 21, 1983)

Where 43 CFR 4110.3-2 was amended to require supporting data prior to decision in certain cases involving changes in grazing use of the public lands, and the amended regulations became effective prior to decision by the Administrative Law Judge assigned to consider the decision on appeal, the amended rule was properly applied where the basis for the declared policy of the Department respecting grazing decisions rests upon a determination that the amended rule is required by known facts.

A regulation promulgated following decision by the Bureau of Land Management in 1982 is applicable to require use of trend studies to supplement a 1978 range survey where the 1978 survey alone, without trend studies made in intervening years, is an inadequate basis for decision pursuant to 43 CFR 4110.3-2(c) (1983).

Where the Bureau of Land Management uses a 1978 range survey as the sole basis for a 1982 decision limiting range cattle carrying capacity, the decision is not adequately supported where circumstances indicate the single survey may be inconclusive as to the true condition of the range under 42 CFR 4110.3-2(c) (1983).

Clyde L. Dorius, Douglas L. Bown v. Bureau of Land Management, 83 IBLA 29 (Sept. 24, 1984)

TRESPASS

In determining whether grazing trespasses are "willful," intent sufficient to establish willfulness may be shown by proof of facts which objectively show that the circumstances do not comport with the notion that the trespasser acted in good faith or innocent mistake, or that his or her conduct was so lacking in

GRAZING PERMITS AND LICENSES--Continued

TRESPASS--Continued

reasonableness or responsibility that it became reckless or negligent.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 (Feb. 19, 1981) 88 I.D. 275

An Administrative Law Judge's finding that trespasses were willful, grossly negligent, and repeated will not be disturbed on appeal where the record amply supports such finding.

Where penalties imposed by an Administrative Law Judge for trespasses are supported by the record and comport with the proscriptions of the regulations they will not be modified on appeal unless it appears that they are unreasonable, inequitable, or otherwise inappropriate.

Bureau of Land Management v. Holland Livestock Ranch and John J. Casey, 54 IBLA 247 (Apr. 27, 1981)

HEARINGS

(See also Administrative Procedure, Federal Land Policy & Management Act of 1976, Geothermal Leases, Grazing Permits & Licenses, Indian Probate, Mining Claims, Multiple Mineral Development Act, Rules of Practice, Surface Resources Act, Water Pollution Control--if included in this Index.)

Where a mining claim contestee fails to appear at a contest hearing and merely sends a message stating that he will not appear, without stating the reasons for his absence, a subsequent motion to reschedule the hearing and reopen the record is properly denied, as the regulations provide that a postponement may be granted only pursuant to a request made no later than the hearing date and stating in detail the reasons why a postponement is necessary.

The asserted inability of a contestee to drive an automobile due to his taking medication is not an extreme emergency which justifies beyond question the granting of a postponement of the hearing where it is not impossible to get to a hearing site by public transportation. Nor is restricted mobility due to arthritis justification for a postponement where the record shows that it is an ongoing condition which could have been anticipated, and that transportation to the hearing site could have been arranged by exercise of proper diligence.

Where a party fails to appear or participate in a hearing as scheduled even though no order postponing the hearing has been issued, the merits of the case may be reached and decided on the basis of the record as completed at the hearing, despite the absence of evidence in support of the party's case.

New evidence offered on appeal after an initial decision is rendered by an Administrative Law Judge may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. Richard H. Franklin, 45 IBLA 54 (Jan. 14, 1980)

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of the assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling

HEARINGS--Continued

objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard G. Clemens et al., 45 IBLA 64 (Jan. 17, 1980)

When the Bureau of Land Management has appraised the damages for a mineral trespass under 43 CFR Part 9230, an appraisal will be sustained in the absence of an offer of specific substantial evidence that it is incorrect.

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

Evidence submitted on appeal after an initial decision in a mining contest may not be relied upon in making a final decision but may only be considered to determine if the hearing should be reopened.

United States v. Ludvig G. Rosenkranz, 46 IBLA 109 (Feb. 29, 1980)

United States v. Alice W. House et al., 56 IBLA 36 (July 8, 1981)

Where Bureau of Land Management determines that an application for a Native allotment should be rejected for failure to establish use and occupancy of the land, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Estate of Guy C. Groat, Jr., Violet Roehl, 46 IBLA 165 (Mar. 21, 1980)

Where a corporate simultaneous oil and gas lease offeror alleges no facts which could disprove its failure to comply with 43 CFR 3102.4-1, no hearing will be granted as requested.

Cheyenne Resources, Inc., 46 IBLA 277 (Mar. 27, 1980) 87 I.D. 110

A Native allotment application filed pursuant to the Alaska Native Allotment Act of 1906 must be rejected if it was not pending before the Department of the Interior on Dec. 18, 1971. Where there are factual questions concerning the pendency of an application they can best be resolved at a hearing pursuant to a Government contest.

Eleanor H. Wood, 46 IBLA 373 (Apr. 8, 1980)

Where the State Office determines that an oil and gas lease committed to a unit has expired at the end of its primary term because there is not within it or the unit a well capable of production in paying quantities, the lessee is entitled to notice and an opportunity for a hearing on that issue where it has presented evidence that raises an issue of fact regarding the status of wells in the unit.

Burton/Hawks, Inc., 47 IBLA 125 (Apr. 29, 1980)

HEARINGS--Continued

Where Bureau of Land Management determines that an application for a Native allotment is invalid because the facts are not as stated in the application, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Evan Chukwak, 47 IBLA 241 (May 13, 1980)

Where a question of fact exists as to when accreted land was formed in front of a patented upland lot along the Yellowstone River and whether title to the accreted land is in the United States and, therefore, subject to oil and gas leasing, a hearing may be ordered by this Board pursuant to 43 CFR 4.415.

Eldin L. B. Johnson, Marilyn Johnson, 47 IBLA 366 (May 21, 1980)

A hearing is properly ordered pursuant to 43 CFR 3521.1-1(j) where a preference right lease application for trona is rejected and the applicant has alleged in his application facts sufficient to show that he is entitled to a lease. At the hearing, the permittee shall have both the burden of going forward and the burden of proof, and must show by a preponderance of the evidence that he has discovered a valuable deposit of trona and that the land is chiefly valuable therefor.

John S. Wold, Eugene Y. Simons, 48 IBLA 106 (May 30, 1980)

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting against multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of Eden Capital Corp. and its clientele where there are ambiguities in the complex contract which provides for a preliminary division of lease obligations and proceeds and establishment of a lease escrow fund to protect funds promised to the client if the client exercises an option by which Eden will buy all leases in a particular lease program subscribed to by the client, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients of Eden have given to the terms.

Barry S. Hills, Kenneth E. Roth, 48 IBLA 356 (July 11, 1980)

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of a leasing service and its clientele where there are ambiguities in the complex contract between them, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients have given to the terms.

Valerie Weller, Elizabeth E. Drozda, 49 IBLA 303 (Aug. 20, 1980)

HEARINGS--Continued

Where the Secretary has decided that production from phosphate leases should be valued in accordance with a particular method and what the value should be, the Board's review authority is limited to determining whether the Geological Survey Area Supervisor who issues orders to the phosphate lessees has properly followed the Secretary's instructions. No hearing is required as a prerequisite to the order.

Stauffer Chemical Co. et al., 49 IBLA 381 (Sept. 5, 1980)

A second hearing of a Government mining contest will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, where he was actually present at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result. A petition to reopen a hearing of a Government mining contest will be denied when the contestee offers no valid justification for the neglect to offer evidence which was or could have been available at the original hearing. A further hearing will not be ordered merely to afford a claimant an additional opportunity to explore and make a discovery.

United States v. Leon R. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

John Swanson, 51 IBLA 239 (Dec. 15, 1980)

Willard Pease Oil & Gas Co., 52 IBLA 379 (Feb. 19, 1981)

Settlement agreements compromising prior trespasses may be considered an admission of liability only where, by the terms of a settlement, liability is admitted. Where, however, liability has been initially determined in a Departmental adjudication, such a determination is properly considered in a subsequent hearing. As probative of the issue of "repeated" violations, absent a stipulated settlement which expressly vacates the factual determinations made in the prior adjudication.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 (Feb. 19, 1981) 88 I.D. 275

Where a Native allotment application declares that the applicant first initiated use and occupancy after the date that the land was segregated from appropriation by the filing of a selection application by the State of Alaska, allowance of the Native allotment application is precluded as a matter of law and may be properly rejected without a hearing.

Rosalyn Isaac (On Reconsideration), 53 IBLA 306 (Mar. 25, 1981)

Where the Bureau of Land Management has retained custody of wild free-roaming horses, adopted pursuant to the Act of Dec. 15, 1971, as amended, 16 U.S.C.A. § 1331 (West Supp. 1980), on the basis that the horses have been commercially exploited and the case presents substantial issues of fact, the assignees under the

HEARINGS--Continued

original cooperative agreements are entitled to a hearing before an Administrative Law Judge.

Geneva Barry et al., 54 IBLA 48 (Apr. 9, 1981)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Daniel Johansen (On Reconsideration), 54 IBLA 295 (Apr. 29, 1981)

Victor A. Anahonak (On Reconsideration), 54 IBLA 289 (June 8, 1982)

Mary A. A. Aspinwall (On Reconsideration), 66 IBLA 367 (Aug. 27, 1982)

Evidence submitted on appeal after an initial decision in a mining contest may not be relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. J. L. Moss and Mary F. Moss, 54 IBLA 355 (May 12, 1981)

Where a Native allotment application filed in 1961 is rejected, more than 13 years after applicant has submitted acceptable evidence of his use and occupancy of the land for more than the required 5-year period set out in the appropriate statute, solely on the basis of a Geological Survey report in 1974 that the land was believed to be prospectively valuable for phosphate, the decision rejecting the application will be set aside and the matter remanded to BLM to proceed to issuance of patent as land must be considered to be nonmineral in character absent a showing that minerals are present in such quantities and such qualities as would induce a person of ordinary prudence to expend time and money with a reasonable prospect of success in developing a paying mine thereon.

Heirs of Simon Panoak, 55 IBLA 305 (June 25, 1981)

Where a Native allotment application declares that the applicant first initiated use and occupancy after the date that the land was withdrawn for lighthouse purposes, allowance of the Native allotment application is precluded as a matter of law and may be properly rejected without a hearing.

Stanislaus Mike, 56 IBLA 69 (July 10, 1981)

While it may be appropriate in some cases to refer a matter for a hearing before an Administrative Law Judge to determine whether a mining claim, the location notice for which is dated after withdrawal of the land, is based on an amended location and thus survives withdrawal of the land for mining purposes, the allowance of a request for a hearing is within the discretion of the Board, and this discretion is likely to be employed to deny the request for hearing where the appellant has failed to provide the Board with any evidence to support the allegation that the amended location can be proved.

Due process does not require notice and a right to be heard in every case where a person is deprived of an

HEARINGS--Continued

asserted property right so long as the individual is given notice and an opportunity to be heard before the initial Bureau of Land Management decision, adverse to him, becomes final. Appeal to this Board satisfies the due process requirements.

Gary Willis, 56 IBLA 217 (July 22, 1981)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

American Telephone and Telegraph Co., 57 IBLA 215 (Aug. 27, 1981)

Where a party fails to appear or participate in a hearing as scheduled even though no order postponing the hearing has been issued, the merits of the case may be reached and decided on the basis of the record completed at the hearing, despite the absence of evidence in support of the party's case.

United States v. Claude T. and Sarah E. Orme, 57 IBLA 373 (Sept. 8, 1981)

A mining claimant is not entitled to a hearing before his claim can be declared invalid for having been located on land which is segregated from location.

Sherman C. Smith, Michael Mitchell, Jr., 58 IBLA 188 (Sept. 28, 1981)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Cascade E., Inc., 36 IBLA 260 (1978).

American Telephone and Telegraph Co. (On Reconsideration), 59 IBLA 343 (Nov. 5, 1981)

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

The Board of Land Appeals will not order a fact-finding hearing to determine whether a pool agreement violates regulations requiring disclosure of other parties in interest in a simultaneous oil and gas lease filing where there are no ambiguities in the agreement and it is clear that there are other parties in interest to the lease offer other than appellant.

Ilean M. Landis, 59 IBLA 353 (Nov. 9, 1981)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State

HEARINGS--Continued

Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).
Mountain States Telephone & Telegraph, 60 IBLA 221 (Nov. 30, 1981)

Where an applicant for a noncompetitive oil and gas lease submits probative evidence opposing the determination by the Geological Survey that certain lands are within the known geologic structure, a hearing will be ordered so that a complete record may be developed.

Daniel A. Engelhardt, 61 IBLA 65 (Dec. 31, 1981)

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the adverse Bureau of Land Management decision becomes final. Appeal to this Board satisfies the due process requirements.

Francis Skav et al., 63 IBLA 235 (Apr. 19, 1982)

Upon a determination that an oil and gas lease terminated because no drilling operations were being performed on the leased lands, or for the lease under an approved communitization agreement, on the last day of the lease term, the lessees of record and its de facto assignee are entitled to a hearing on issues of fact, where they have alleged that the well was actually spudded prior to midnight on the relevant date.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

No rights inure to the estate of a deceased Native allotment applicant where the application does not show prima facie entitlement because the land was segregated by a State selection at the asserted time when use and occupancy commenced. A request for a hearing on appeal is properly denied in the absence of any evidence or allegation of use and occupancy predating the State selection.

Heirs of Howard Isaac, 63 IBLA 343 (Apr. 28, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land.

William B. Tennyson, Jr., 66 IBLA 38 (July 23, 1982)

HEARINGS--Continued

The obligation to establish a valid color-of-title claim is upon claimant. Where claimants have not alleged facts which, if proved, would establish the color of title, a request for a fact-finding hearing pursuant to 43 CFR 4.415 will be denied.

Bernard B. Snyder, M. Marie Snyder, 70 IBLA 207 (Jan. 24, 1983)

Where there are disputed facts determinative of the legal issues posed therefrom, this Board has the discretionary authority to order a hearing on the matter before an Administrative Law Judge pursuant to 43 CFR 4.415.

Patricia C. Alker, 70 IBLA 211 (Jan. 24, 1983)

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard S. Arbo, 70 IBLA 244 (Jan. 25, 1983)

No lease for lands on which there is a well capable of producing oil and gas in paying quantities shall expire because the lessee fails to produce, unless the lessee fails to place the well in a producing status within 60 days of receipt of notice to do so. Upon a BLM determination that a lease has expired at the end of its extended term because the well on the leasehold is not capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

C & K Petroleum, Inc., Twin Arrow, Inc., 70 IBLA 354 (Feb. 3, 1983)

A hearing before an Administrative Law Judge is necessary only where there is a material issue of fact requiring resolution through the introduction of testimony and other evidence. In the absence of such an issue, no hearing is required.

KerrCo Drilling Co., et al., 71 IBLA 53 (Feb. 22, 1983)

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure. A BLM decision informing appellant of its right to file a request for a hearing with the Board of Land Appeals after BLM has determined the rental does not meet the requirements of 43 CFR 2802.1-7(e) (1979).

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge,

HEARINGS--Continued

that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

U.S. Steel Corp., 71 IBLA 88 (Feb. 24, 1983)

A request for postponement made at a hearing is properly denied where there has been no showing of an extreme emergency which could not have been anticipated and which justifies beyond question the granting of a postponement. This standard is not met by a request to postpone a hearing to obtain the testimony of additional witnesses when the need for the testimony was anticipated more than 1 month prior to the hearing and the party seeking postponement failed to file a proper motion at that time.

Geosearch, Inc., Lloyd Chemical Sales, Inc. v. Resource Service Co., Inc., Bureau of Land Management, 71 IBLA 138 (Mar. 9, 1983)

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Impel Energy Corp., 71 IBLA 237 (Mar. 18, 1983)

Pursuant to 43 CFR 2650.4-7(b), a transportation easement for public access may not be reserved across Native lands where there exists a reasonable alternative route of transportation across publicly owned lands. Where the reasonableness of an alternate route is put in dispute and the facts of record are insufficient to find that a BLM decision not to reserve an easement based on that route is supported by a rational basis, this Board has the discretionary authority to order a hearing in the matter before an Administrative Law Judge pursuant to 43 CFR 4.415.

State of Alaska, 71 IBLA 256 (Mar. 21, 1983)

Doyon, Ltd. (On Reconsideration), 77 IBLA 219 (Nov. 28, 1983)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Denver & Rio Grande Western Railroad Co., 71 IBLA 352 (Mar. 28, 1983)

Where the Bureau of Land Management has assessed treble damages for a trespass occurring in connection with a contract for sale of sand and gravel and the purchaser offers to produce evidence to show that severance of material not included in the contract of sale was not grossly negligent, contrary to the finding by BLM, a hearing is ordered to afford the purchaser an opportunity to prove facts as claimed.

Sunrise Construction Co., 73 IBLA 185 (May 26, 1983)

Where the lessee under a noncompetitive oil and gas lease, which is canceled to the extent it includes land which had been determined to be within a known geologic structure prior to issuance of the lease, submits probative evidence contravening the determination by the Geological Survey, a hearing will be ordered so that a complete record may be developed. Only evidence pertaining to the period prior to lease issuance will be admissible.

Celeste C. Grynberg, 74 IBLA 180 (July 18, 1983)

No hearing is required to declare a mining claim invalid when it is shown that at the time of location of the claims the land was not open to location.

Larry McMaster et al., 76 IBLA 370 (Oct. 25, 1983)

Where there exist factual questions about the location of a subdivisional corner in a dependent resurvey, the Board of Land Appeals may order a hearing pursuant to 43 CFR 4.415 to resolve these questions.

Elmer A. Swan et ux., 77 IBLA 99 (Nov. 14, 1983)

In order to be entitled to an adjudicative hearing, as an adjunct of due process, a party must have a sufficient property interest in that which is the subject of the Government action.

Village & City Council of Alakanuk, Mary M. Olson, Lawrence Murphy, Sr., 77 IBLA 130 (Nov. 15, 1983)

Where a Native allotment applicant alleges use and occupancy prior to the filing of a State selection application, it is improper to reject his application without affording him notice and opportunity for a hearing. The Bureau of Land Management must initiate contest proceedings against the application and give the State of Alaska an opportunity to participate as a party to such contest.

Walter Titus (On Reconsideration), 77 IBLA 321 (Dec. 1, 1983)

An application for an exchange of land pursuant to sec. 206 of FLPMA requires first a determination that the public interest will be well served by the exchange and, second, that the total value of the Federal land does not exceed the value of the offered land by more than 25 percent. Where, during the pendency of an appeal from the rejection of a proposal to exchange oil shale lands, certain economic events occur which both diminish the advantage of the exchange to the public interest and increase the disparity in the relative values of the offered and selected lands, the decision will be affirmed without an evidentiary hearing on the previous evaluations of the two properties.

Superior Oil Co. (Appellant), Cleveland-Cliffs Iron Co., & Sohio Shale Oil Co. (Intervenors), 78 IBLA 68 (Dec. 16, 1983)

HEARINGS--Continued

The holder of a right-of-way issued pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), is required to pay annually, in advance, the fair market value of the grant. Appellant's contention that it should not pay annual rental is properly rejected where appellant's flood control project is completed but the right-of-way grant remains in effect and the land is being used for a dam, spillway, and reservoir.

Beach Lake Irrigation Co., 78 IBLA 305 (Jan. 12, 1984)

A prima facie case is made where sufficient evidence is presented to establish the essential facts. Prima facie evidence is that evidence that will justify a finding in favor of the one presenting the evidence. It is not necessary to present evidence that is compelling, and the determination must be made on a case-by-case basis. An important factor in making a determination regarding the amount of evidence required for a prima facie case is the availability of the evidence and the difficulty which may reasonably be encountered in obtaining the evidence.

S & M Coal Co. & Jewell Smokeless Coal Co., v. Office of Surface Mining Reclamation & Enforcement, 79 IBLA 350 (Mar. 22, 1984) 91 I.D. 159

Where a simultaneous oil and gas lease applicant, whose application has been rejected because it covers land within a known geologic structure, submits probative evidence contravening the determination that the land is presumptively productive of oil and gas, which is not fully rebutted, but where, nonetheless, questions of fact remain unresolved by the record, a hearing is appropriate to establish a sufficient record to permit decision.

Lloyd Chemical Sales, Inc., 82 IBLA 182 (Aug. 13, 1984)

Under 43 CFR 2802.1-7(c) (1974), which provided that charges for use and occupancy of a right-of-way may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure where the right-of-way was issued pursuant to the Act of Mar. 3, 1911, as amended, 43 U.S.C. § 961 (1976), and has not been conformed to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1982).

Cole Industries, Inc., 82 IBLA 289 (Aug. 31, 1984)

A hearing is not necessary in the absence of a material issue of fact, which, if proven, would alter the disposition of the matter. An oral hearing on a color-of-title application will be denied where there are no allegations of fact which would establish the color-of-title claim.

Kim C. Evans, 82 IBLA 319 (Sept. 6, 1984)

A second hearing will not be afforded to an Alaska Native allotment applicant where the applicant was afforded an initial hearing in accordance with due process, and where nothing has been submitted which suggests that an additional hearing would produce a different result. Where an applicant fails to introduce all relevant evidence at an initial hearing when such evidence was available and could have been submitted, he waives his right to introduce that evidence. A further hearing is not necessary in the absence of a

HEARINGS--Continued

material issue of fact which, if proven, would alter the disposition of the appeal.

Ouzinkie Native Corp., v. Edward B. Orbeig, 83 IBLA 225 (Oct. 19, 1984)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a State selection application, it is improper, as a general matter, to reject the application without affording the applicant notice and opportunity for a hearing.

Oleanna Hanson, 84 IBLA 150 (Dec. 12, 1984)

HOMESTEADS (CERTIFICATE)
(See also Additional Homesteads, Enlarged Homesteads, Reclamation Homesteads, Soldiers' Additional Homesteads, Stock-Raising Homesteads--if included in this Index.)

GENERALLY

An entryman's final proof is properly rejected when it is defective on its face, with the final proof showing that the applicable residence and cultivation requirements have not been met.

Richard L. Merritt, 67 IBLA 257 (May 13, 1982)

Where a homestead entry is on land within a second-form reclamation withdrawal, and compliance with the provisions of the reclamation laws is still required, the mere filing of ordinary homestead final proof is not sufficient to vest the entryman with equitable title.

The revocation of a second-form reclamation withdrawal is effective upon the date specified in the order of revocation, regardless of whether the land had ever been suitable for the purpose for which it was withdrawn. Where an entryman has complied with all the requirements of the ordinary homestead law, but not with the requirements of the reclamation law, the revocation of the reclamation withdrawal does not operate retroactively to vest equitable title in the entryman as of the time final proof under the ordinary homestead law was submitted. Such equitable title cannot be deemed to have vested prior to the effective date of the revocation of the withdrawal.

A waiver of mineral rights pursuant to 30 U.S.C. §§ 121-123 (1976) is properly required where there is a finding that land within a reclamation homestead entry is valuable for one of the minerals specified in that Act prior to the submission of reclamation final proof and other compliance with the law, even though ordinary homestead final proof was accepted many years before. Where the entryman or his successor in interest executed the waiver rather than appeal the decision requiring it, the waiver is binding on all successors in interest.

Vincent Hayward, 66 IBLA 100 (Aug. 6, 1982)

CONTESTS

BLM may not summarily dismiss a private contest complaint against a homestead entry for failure to file with BLM proof of service on the contestee within 30 days of service, as required by 43 CFR 4.450-3,

HOMESTEADS (ORDINARY)--Continued

CONTESTS--Continued

where the evidence indicates that the contestant actually served the complaint and the contestant files proof of such service on appeal.

BLM may not dismiss a private contest complaint against a homestead entry for failure to offer reasons, not a matter of public record, in accordance with 43 CFR 4.450-1, where the complaint alleges failure to establish a residence within 6 months after the date of entry, as required by 43 CFR 2567.5(a), and the BLM land report, which concluded that there was such failure, was based on an examination of the land prior to the last day on which a residence could be established.

BLM must dismiss a private contest complaint against a homestead entry where it is not supported by the affidavit of a corroborating witness which alleges facts which, if proved, would subject the homestead entry to cancellation as required by 43 CFR 4.450-4(c).

Jennie L. Hanewacht v. Glenn W. Price, 74 IBLA 373 (July 29, 1983)
90 I.D. 338

CULTIVATION

An application for reduction in cultivation requirements pursuant to 43 CFR 2511.0-3(b)(1) will be subject to rejection if it appears at the date of initiation of the claim the conditions were such as to indicate to a prudent person that cultivation of the required acreage was not reasonably practicable.

A decision rejecting an application for reduction of cultivation requirements will ordinarily be affirmed where it appears that the entry contains sufficient cultivatable acreage, but that the applicant has not succeeded in reducing the required acreage to cultivation.

Richard L. Hewitt (On Judicial Remand), 84 IBLA 192 (Dec. 21, 1984)

LANDS SUBJECT TO

An application to make homestead entry on land previously classified for selection by the State of Alaska is properly rejected.

Deborah Lowmaster, 52 IBLA 190 (Jan. 26, 1981)

Under the decision in Reeves v. Andrus, 465 F. Supp. 1065 (D. Alaska 1979), upon a determination of the Federal Power Commission that the value of land withdrawn for power purposes would not be injured by the allowance of entries under the public land laws, the Secretary of the Interior is required to restore the land to entry, at least insofar as the powersite withdrawal is concerned, within a reasonable time thereafter. Such land, however, does not become available until an order of restoration is issued. No rights may be acquired by a settler on the public land who initiates settlement at a time when the records of the Department indicate that the land is not open to entry.

Where the Department issues a decision finally adjudicating rights to the public land adverse to an appellant and the appellant does not seek judicial review of that decision, the Department will bar reconsideration of that decision, even if arguably erroneous, where a third party has initiated adverse rights to the land originally sought.

Carmel J. McIntyre (On Judicial Remand), 67 IBLA 317 (Oct. 1, 1982)

HOMESTEADS (ORDINARY)--Continued

MINERAL RESERVATION

A patent issued pursuant to the Homestead Act of May 20, 1862, 43 U.S.C. § 161 (1976), reserving to the United States all coal under the Act of June 22, 1910 (36 Stat. 583) and sodium under the Act of July 17, 1914 (38 Stat. 509) in the lands described by such patent, cannot be construed as reserving to the United States other minerals, such as oil and gas, which are not specifically reserved therein.

Circular 1021, July 21, 1925, instructed the land offices to impress upon a nonmineral applicatios a reservation of those minerals for which the land had been embraced in applications for permit or lease.

Lee E. Williamson, 48 IBLA 329 (July 3, 1980)

SETTLEMENT

Under the decision in Reeves v. Andrus, 465 F. Supp. 1065 (D. Alaska 1979), upon a determination of the Federal Power Commission that the value of land withdrawn for power purposes would not be injured by the allowance of entries under the public land laws, the Secretary of the Interior is required to restore the land to entry, at least insofar as the powersite withdrawal is concerned, within a reasonable time thereafter. Such land, however, does not become available until an order of restoration is issued. No rights may be acquired by a settler on the public land who initiates settlement at a time when the records of the Department indicate that the land is not open to entry.

Where the Department issues a decision finally adjudicating rights to the public land adverse to an appellant and the appellant does not seek judicial review of that decision, the Department will bar reconsideration of that decision, even if arguably erroneous, where a third party has initiated adverse rights to the land originally sought.

Carmel J. McIntyre (On Judicial Remand), 67 IBLA 317 (Oct. 1, 1982)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN

GENERALLY

An application for an Indian allotment, filed pursuant to 25 U.S.C. § 334 (1976), must contain a land description sufficient for the land applied for to be identified on official BLM records, or the application is subject to rejection.

Ira Jean Petworth, 45 IBLA 24 (Jan. 18, 1980)

Where disputed issues of fact are raised by an Indian allotment applicant concerning whether (1) the applicant's occupancy qualifies her for an Indian allotment, (2) the applied for land taken together with other patented land would be enough to sustain a family of four through the grazing season, and (3) the public interest could best be served if the land were retained in Federal ownership, the applicant is entitled to notice and an opportunity for hearing before the application is rejected on the record.

Lorinda L. Bulgean, 46 IBLA 303 (Mar. 31, 1980)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

GENERALLY--Continued

An application for an Indian allotment, filed on behalf of a minor child, pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which is unaccompanied by the certificate of eligibility required by 43 CFR 2531.1(b) and (d), is properly rejected.

Genoiva Nell Haston Smith et al., 48 IBLA 199 (June 16, 1980)

No rights of Indians are violated because public lands have been withdrawn from settlement and must be classified pursuant to the Taylor Grazing Act, 43 U.S.C. § 315 (1976), before such lands can be allotted to an Indian under sec. 4 of the General Allotment Act of 1887, 25 U.S.C. § 334 (1976).

An application for an Indian allotment, filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(b) and (d) or the petition for classification required by 43 CFR 2531.2 may be rejected.

Don Stokes et al., 48 IBLA 365 (July 11, 1980)

Tansy Lou Hicker Smith et al., 49 IBLA 251 (Aug. 18, 1980)

No rights of Indians are violated because public lands have been withdrawn from settlement and must be classified pursuant to the Taylor Grazing Act, 43 U.S.C. § 315 (1976), before public lands can be allotted to an Indian under sec. 4 of the General Allotment Act of 1887, 25 U.S.C. § 334 (1976).

An application for an Indian allotment, filed on behalf of a minor child, pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which is unaccompanied by the certificate of eligibility required by 43 CFR 2531.1(b) and (d), is properly rejected.

Nolis Fern Hicker, Clyde Lloyd Atwater, 48 IBLA 373 (July 11, 1980)

Applications for Indian allotment on the public domain pursuant to sec. 4, General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which are unaccompanied by the certificate of eligibility required by 43 CFR 2531.1 are properly rejected.

Applications for Indian allotment on the public domain filed pursuant to sec. 4 of the General Allotment Act, as amended 25 U.S.C. § 334 (1976), which are not accompanied by the petition for classification required by 43 CFR 2531.2 are properly rejected.

No rights of Indians are violated because public lands have been withdrawn from settlement and must be classified pursuant to the Taylor Grazing Act, 43 U.S.C. § 315 (1976), before public lands can be allotted to an Indian under sec. 4 of the General Allotment Act of 1887, 25 U.S.C. § 334 (1976).

Robert Dale Haston et al., 51 IBLA 115 (Nov. 20, 1980)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

GENERALLY--Continued

An application for Indian allotment, filed pursuant to 25 U.S.C. § 334 (1976), must be rejected where the land applied for does not exist.

Loretta Berlene Garrison Lee, 51 IBLA 176 (Nov. 26, 1980)

No rights of Indians are violated because public lands have been withdrawn from settlement and must be classified pursuant to the Taylor Grazing Act, 43 U.S.C. § 315 (1976).

An application for an Indian allotment, filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(b) and (d) or the petition for classification required by 43 CFR 2531.2 may be rejected.

Roy H. Miller, Jr., 52 IBLA 52 (Jan. 6, 1981)

Applications for Indian allotments on the public domain pursuant to sec. 4, General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which are unaccompanied by the certificate of eligibility required by 43 CFR 2531.1, are properly rejected.

Samuel Lee Gifford et al., 53 IBLA 23 (Feb. 26, 1981)

An appeal from a Bureau of Land Management decision suspending action on an Indian allotment application pending final action on a previously filed application for the same lands will be dismissed and the case remanded to BLM where the record shows that the previously filed application requesting the same land was, in fact, filed prior to appellant's application.

Applications for Indian allotments on the public domain pursuant to sec. 4, General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which are unaccompanied by the certificate of eligibility required by 43 CFR 2531.1, are properly rejected.

Wanda Lois Lee McKinney et al., 53 IBLA 279 (Mar. 24, 1981)

An application for an Indian allotment filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), for land which has not been classified for such disposition, and which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(b) or the petition for classification required by 43 CFR 2531.2 is properly rejected.

Kathryn F. Wright Bulbes, 68 IBLA 179 (Nov. 8, 1982)

An application for an Indian allotment filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), is properly rejected where the applicant has refused to provide a certificate of eligibility required by 43 CFR 2531.1(b).

Howard E. Smithson, 70 IBLA 126 (Jan. 13, 1983)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

GENERALLY--Continued

Where applications for Indian allotments are not accompanied by a certificate of eligibility of the applicant, the applications are properly rejected.

Suellen Gay Stewart Wilson, 70 IBLA 165 (Jan. 19, 1983)

Applications for Indian allotment on the public domain pursuant to sec. 4, General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which are unaccompanied by the certificate of eligibility required by 43 CFR 2531.1, are properly rejected.

George L. Clay Lee et al., 70 IBLA 196 (Jan. 21, 1983)

An application for an Indian allotment filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), for land which has not been classified for such disposition, and which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(b) or the petition for classification required by 43 CFR 2531.2 is properly rejected.

Phyllis Inez Maston Bartlett, Daniel Walker Taylor, 71 IBLA 1 (Feb. 9, 1983)

An application for Indian allotment on the public domain pursuant to sec. 4, General Allotment Act, that is unaccompanied by the certificate of eligibility required by 43 CFR 2531.1(b) is properly rejected.

Ellis Eugene Hardcastle, 74 IBLA 20 (June 24, 1983)

Ella Mae Jones, 76 IBLA 205 (Oct. 11, 1983)

An application for an Indian allotment filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), for land which has not been classified for such disposition, and which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(b) or the petition for classification required by 43 CFR 2531.2(a) is properly rejected.

James O. Jones, 75 IBLA 192 (Aug. 22, 1983)

Where the Secretary of Agriculture has made a determination pursuant to sec. 31 of the Act of June 25, 1910, 36 Stat. 863, 25 U.S.C. § 337 (1976), that lands within a national forest are of no value for the timber found thereon and are of negligible value for agricultural or grazing purposes, the Secretary of the Interior may properly reject the allotment where the record shows that the land in question is not a viable economic agricultural unit.

Warren J. Conrad, 79 IBLA 394 (Mar. 27, 1984)

CLASSIFICATION

Where petitions for classification and applications for Indian allotments are filed together, it is improper to reject the applications without first ruling on the petitions.

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

CLASSIFICATION--Continued

Where applications for Indian allotments are not accompanied by petitions for classification of the lands, the applications must be rejected.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Where petitions for classification and applications for Indian allotments are filed together, it is improper to reject the applications without first ruling on the petitions.

Where applications for Indian allotments are not accompanied by petitions for classification of the lands, the applications must be rejected.

Where applications for Indian allotments are not accompanied by a certificate of eligibility of the applicant, the applications must be rejected.

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Where Congress has authorized the Secretary to administer reconveyed Coos Bay Wagon Road lands in accordance with a perpetual timber yield policy, and where the Secretary classified them as timber lands in 1947 and they remain so today, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

Under relevant enabling statutes, the Secretary is without authority to classify reconveyed Coos Bay Wagon Road lands as suitable for Indian allotments under the General Allotment Act.

Mary Margaret Wear et al., 67 IBLA 8 (Sept. 1, 1982)

Where Congress has withdrawn lands for use of the Air Force, and thereby segregated them from all forms of disposal under the public land laws, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

The Secretary is without authority to classify lands withdrawn for Wallis Air Force Base by Congress in the Act of Sept. 26, 1961, as suitable for Indian allotments under sec. 4 of the General Allotment Act.

Lewis Quentin Garver, 67 IBLA 140 (Sept. 16, 1982)

Where a petition for classification and an application for Indian allotment are filed together, it is improper to reject the application without first ruling on the petition.

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

Where land has been segregated from all forms of disposition under the public land laws pursuant to an Act of Congress, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act, and are not available for Indian allotment.

Where a petition for classification and an application for Indian allotment are filed together, for land not "otherwise appropriated," it is improper to

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

CLASSIFICATION--Continued

reject the application without first ruling on the petition.

Gary Lester Gray, Grace Marie Mayfield Gray, 67 IBLA 188 (Sept. 22, 1982)

Where petitions for classification and applications for Indian allotments are filed together, it is improper to reject the applications on the ground that the land is not classified as suitable for such disposition without first ruling on the petitions.

Suellen Gay Stewart Wilson, 70 IBLA 165 (Jan. 19, 1983)

When an application is for an allotment under the provisions of 25 U.S.C. § 337 (1976), the application is referred to the Secretary of Agriculture for a determination as to whether the lands are more valuable for agricultural or grazing purposes than for the timber found thereon, the Department of the Interior is bound by the determination of the Secretary of Agriculture and is constrained to follow that decision.

Shirley A. Clark, 77 IBLA 51 (Nov. 7, 1983)

When an application is made for an allotment under the provisions of 25 U.S.C. § 337 (1976), governing allotments to Indians within national forests, the application is referred to the Secretary of Agriculture for a determination whether the lands are more valuable for agricultural or grazing purposes than for the timber found thereon. The Department of the Interior is bound by the determination of the Secretary of Agriculture and is constrained to follow that decision.

Warre, J. Conrad, 79 IBLA 394 (Mar. 27, 1984)

LANDS SUBJECT TO

Sec. 8 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected where the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been transferred from Federal ownership.

Sandra June Underwood Lentell, Marvin Curtis Swanner, 49 IBLA 317 (Aug. 20, 1980)

Ato B. Hart Hedrick, 55 IBLA 143 (June 4, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from appropriation under the agricultural land laws on July 7, 1967, when the "Notice of Classification of Public Lands for Multiple Use Management" was published in the Federal Register.

Pamela June Wood Finch, 69 IBLA 325 (Aug. 22, 1980)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

LANDS SUBJECT TO--Continued

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected land to the extent indicated in the notice, and applications for such land must be rejected.

Robert Dale Marston et al., 51 IBLA 115 (Nov. 20, 1980)

Lands withdrawn for reclamation purposes are not available for disposition under the public land laws, including the Indian Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), and an application thereunder for land so withdrawn is properly rejected.

James A. Foxx, 51 IBLA 285 (Dec. 15, 1980)

The effect of the issuance of a patent is to transfer legal title from the United States and to remove the land from jurisdiction of the Department of the Interior. Where BLM's records show lands have been patented, an Indian allotment application filed under the General Allotment Act of Feb. 8, 1887, for such lands is properly rejected.

Mary Patricia Anne Newman Gibson et al., 52 IBLA 216 88 I.D. 244 (Jan. 30, 1981)

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected lands to the extent indicated in the notice, and subsequent Indian allotment applications for such lands must be rejected.

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected where the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from all forms of entry under the public land laws by the Act of Mar. 6, 1958.

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior.

Where BLM records show lands have been patented, an Indian allotment application filed under the General Allotment Act of Feb. 8, 1887, for such lands is properly rejected.

Samuel Lee Gifford et al., 53 IBLA 23 (Feb. 26, 1981)

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected lands to the extent indicated in the notice, and subsequent Indian allotment applications for such lands must be rejected.

Wanda Lois Lee McKinney et al., 53 IBLA 279 (Mar. 24, 1981)

Jan Christian Sykes, 55 IBLA 23 (May 26, 1981)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

LANDS SUBJECT TO--Continued

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior.

Where BLM records show lands have been patented, an Indian allotment application filed under the General Allotment Act of Feb. 8, 1887, for such lands is properly rejected.

Samuel Lee Gifford et al. (On Reconsideration), 55 IBLA 1 (May 21, 1981)

Jimmy Lorn Gibson, 59 IBLA 170 (Oct. 26, 1981)

Publication in the Federal Register of a classification for multiple use management pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. § 1411 (1976), will segregate the affected land to the extent indicated in the notice, and applications for such land pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), must be rejected.

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior.

Where BLM records show lands have been patented, an Indian allotment application filed pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), for such lands, is properly rejected.

Dorothy L. Standridge et al., 55 IBLA 131 (June 3, 1981)

Publication in the Federal Register of a classification for multiple use management pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. § 1411 (1976), will segregate the affected land to the extent indicated in the notice, and applications for such land pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), must be rejected.

Gladys Lee Cardwell Gifford, Betty Ann Gifford Jarman, 55 IBLA 332 (June 26, 1981)

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected lands to the extent indicated in the notice, and subsequent Indian allotment applications for such lands must be rejected.

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from appropriation under the public land laws on Sept. 5, 1969, when the "Notice of Classification of Public Lands for Multiple Use Management" was published in the Federal Register.

Terry Burl Fryrear, 58 IBLA 94 (Sept. 24, 1981)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

LANDS SUBJECT TO--Continued

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected lands to the extent indicated in the notice, and subsequent Indian allotment applications for such lands must be rejected.

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected where the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from all forms of entry under the public land laws by the Act of Mar. 6, 1958.

Marvin Coy Gifford et al., 58 IBLA 98 (Sept. 24, 1981)

Betsy Roeaine Bevill, 58 IBLA 260 (Oct. 6, 1981)

William Milton, Jr., Cordell Eldon Eugene Morgan, Myrna June Morgan, Jackie Lavern Jarman, 59 IBLA 182 (Oct. 27, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they were segregated from appropriation under the agricultural land laws on July 7, 1967, and Sept. 5, 1969, when the "Notice[s] of Classification of Public Lands for Multiple Use Management" were published in the Federal Register.

Don W. Hill, Sr., Lois Sallee Kelso Shrode, 58 IBLA 103 (Sept. 24, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from appropriation under the public land laws on July 7, 1967, when the "Notice of Classification of Public Lands for Multiple Use Management" was published in the Federal Register.

Claires Inez Wood Swanner, 58 IBLA 108 (Sept. 24, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from all forms of entry under the public land laws by the Act of Mar. 6, 1958, and selected by the State of Nevada pursuant to that Act.

Marvin Lee Stokes, 58 IBLA 199 (Sept. 29, 1981)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

LANDS SUBJECT TO--Continued

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected where the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from all forms of entry under the public land laws by the Act of Mar. 6, 1958.

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected lands to the extent indicated in the notice, and subsequent Indian allotment applications for such lands must be rejected.

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior.

Where BLM records show lands have been patented, an Indian allotment application filed under the General Allotment Act of Feb. 8, 1887, for such lands is properly rejected.

Lula Lorene McCracken Slower, 58 IBLA 202 (Sept. 29, 1981)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the Federal Register.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

Where Congress has authorized the Secretary to administer reconveyed Coos Bay Wagon Road lands in accordance with a perpetual timber yield policy, and where the Secretary classified them as timber lands in 1947 and they remain so today, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

Under relevant enabling statutes, the Secretary is without authority to classify reconveyed Coos Bay Wagon Road lands as suitable for Indian allotments under the General Allotment Act.

Mary Margaret Wenk et al., 67 IBLA 8 (Sept. 1, 1982)

Where Congress has withdrawn lands for use of the Air Force, and thereby segregated them from all forms of disposal under the public land laws, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

The Secretary is without authority to classify lands withdrawn for Nellis Air Force Base by Congress

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

LANDS SUBJECT TO--Continued

in the Act of Sept. 26, 1961, as suitable for Indian allotments under sec. 4 of the General Allotment Act.

Lewis Quentin Garver, 67 IBLA 140 (Sept. 16, 1982)

Where a petition for classification and an application for Indian allotment are filed together, for land not "otherwise appropriated," it is improper to reject the application without first ruling on the petition.

Gary Lester Gray, Grace Marie Mayfield Gray, 67 IBLA 184 (Sept. 22, 1982)

Where land has been withdrawn from lease or disposal under the public land laws pursuant to an Executive order, the lands are "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act and are not available for Indian allotment.

George L. Clay Lee et al., 70 IBLA 196 (Jan. 21, 1983)

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior. Where BLM records show lands have been legally patented, an Indian allotment application for such lands is properly rejected.

Hank Patterson, 71 IBLA 109 (Feb. 28, 1983)

Where land has been designated for specific disposal pursuant to statutory authority, the land is "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act, and not available for Indian allotment.

Ellis Eugene Hardcastle, 74 IBLA 20 (June 24, 1983)

Ella Mae Jones, 76 IBLA 205 (Oct. 11, 1983)

BLM must reject an Indian allotment application filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), where the land has been segregated from all forms of entry under the public land laws pursuant to sec. 3 of the Act of Mar. 6, 1958, P.L. 85-339, 72 Stat. 31 (1958), and reserved for acquisition by the Colorado River Commission of the State of Nevada. The land remains segregated even where the segregation has expired by its terms, but it is still reflected on the public land records of BLM.

Regina Anne Jones, Claudia Lee Jones, 76 IBLA 17 (Sept. 6, 1983)

When an application is for an allotment under the provisions of 25 U.S.C. § 337 (1976), the application is referred to the Secretary of Agriculture for a determination as to whether the lands are more valuable for agricultural or grazing purposes than for the timber found thereon, the Department of the Interior is bound by the determination of the Secretary of Agriculture and is constrained to follow that decision.

Land included in an application for powersite development under the Federal Power Act of June 10, 1920, 16 U.S.C. § 818 (1976), shall from the date of filing of the application be reserved from entry, location, or other disposal under the laws of the

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

LANDS SUBJECT TO--Continued

United States, unless otherwise directed by the Federal Power Commission or by Congress. No rights may be acquired by a settler on the public land who initiates settlement at a time when the land is not open to entry.

Shirley A. Clark, 77 IBLA 51 (Nov. 7, 1983)

When an application is made for an allotment under the provisions of 25 U.S.C. § 337 (1976), governing allotments to Indians within national forests, the application is referred to the Secretary of Agriculture for a determination whether the lands are more valuable for agricultural or grazing purposes than for the timber found thereon. The Department of the Interior is bound by the determination of the Secretary of Agriculture and is constrained to follow that decision.

Where the Secretary of Agriculture has made a determination pursuant to sec. 31 of the Act of June 25, 1910, 36 Stat. 863, 25 U.S.C. § 337 (1976), that lands within a national forest are of no value for the timber found thereon and are of negligible value for agricultural or grazing purposes, the Secretary of the Interior may properly reject the allotment where the record shows that the land in question is not a viable economic agricultural unit.

Warren J. Conrad, 79 IBLA 394 (Mar. 27, 1984)

INDIAN CHILD WELFARE ACT OF 1978

FINANCIAL GRANT APPLICATIONS

Generally

Although the ultimate decision on whether to select a particular proposal for grant funding under the Indian Child Welfare Act and its implementing regulations is discretionary, the regulations provide certain legal guidelines and requirements that must be followed in reaching that decision. An alleged violation of these guidelines and requirements could serve as the basis for Board jurisdiction limited to the alleged violations of law.

Billings American Indian Council v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 142 (Apr. 1, 1983)

25 CFR 23.25(c)(3) does not require that an organization providing Indian child welfare or family assistance programs have previously received grant funds under the Indian Child Welfare Act in order to qualify for its exemption.

Read in context, 25 CFR 23.29(b)(4) is an integral part of sec. 23.29, which is intended to help ensure that each application for grant funds under the Indian Child Welfare Act will ultimately be evaluated on its merits, rather than disapproved because of technical shortcomings.

The remedy for failure to meet the deadlines established in 25 CFR 23.30, 23.32, and 23.34 for consideration of an application for grant funds under the Indian Child Welfare Act is provided in 25 CFR 23.65 and is the right to request a decision from the next higher official having approval authority.

Urban Indian Council, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 146 (Apr. 4, 1983)

INDIAN CHILD WELFARE ACT OF 1978--Continued

FINANCIAL GRANT APPLICATIONS--Continued

Generally--Continued

Regulations requiring the use of "near reservation" designations for funding under the Indian Child Welfare Act establish reasonable procedures through which the limited funds under the Act can be allocated to organizations operating on or near reservations and those operating off the reservations to ensure nonduplication of coverage.

United Indians of All Tribes Foundation v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 226 (July 5, 1983)

If there is no duplication of service population between a tribe providing services under the Indian Child Welfare Act and an independent organization providing the same types of services, the mere fact that the organization is located in an area designated "near reservation" by the tribe does not render it ineligible to seek grant funds.

When more than one otherwise eligible grant applicant applies for funds under the Indian Child Welfare Act to provide services to the same Indian population, funding should be given only to the organization whose proposal best promotes the purposes of the Act.

Seattle Indian Center v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 67 (Dec. 5, 1983) 90 I.D. 515

Although the ultimate decision on whether to select a particular proposal for grant funding under the Indian Child Welfare Act and its implementing regulations is discretionary, the regulations provide certain legal guidelines and requirements that must be followed in reaching that decision. An alleged violation of these guidelines and requirements could serve as the basis for Board jurisdiction limited to the alleged violations of law.

Part 23 of 25 CFR places the burden on the applicant to prove that it is entitled to receive Federal funds under the Indian Child Welfare Act.

Receiving technical assistance from the Bureau of Indian Affairs in the preparation of an application for grant funding under the Indian Child Welfare Act does not guarantee that the application will be funded.

Nambe Pueblo v. Deputy Ass't Secretary--Indian Affairs (Operations), 13 IBIA 53 (Dec. 7, 1984)

Disapproval

A violation of the responsibilities undertaken by the Bureau of Indian Affairs in 25 CFR 23.29(b)(4) is not proven merely by a showing that an application for grant funds under the Indian Child Welfare Act was disapproved without prior notification of possible disapproval and an opportunity to correct errors. Rather, the reasons for disapproval must be examined to determine whether they are the kinds of problems addressed by the regulation.

Urban Indian Council, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 146 (Apr. 4, 1983)

INDIAN CHILD WELFARE ACT OF 1978--Continued

FINANCIAL GRANT APPLICATIONS--Continued

Disapproval--Continued

The failure of an Indian organization providing Indian Child Welfare Act services in an area designated "near reservation" to seek funding through the governing body of the tribe making the designation constitutes a "special problem or impediment" to approval of the application within the meaning of 25 CFR 23.29(b)(4).

United Indians of All Tribes Foundation v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 226 (July 5, 1983)

Funding

Under Departmental regulations, areas officially designated to be on or near an Indian reservation are considered part of the reservation for purposes of funding social services programs. Departmental regulations implementing the Indian Child Welfare Act of 1978 do not permit an Indian tribe to combine with a social services corporation within an area designated "near reservation" for social services funding purposes.

Navajo Tribe v. Commissioner of Indian Affairs, 10 IBIA 78 (Aug. 30, 1982) 89 I.D. 424

Failure to timely file application for grant funding under the Indian Child Welfare Act of 1978 permits rejection of late offers pursuant to Departmental notice and regulation.

Indian Lodge Consortium & Chiloquin Indian Lodge v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 9 (Dec. 10, 1982)

An organization which received funding under the Indian Child Welfare Act during one fiscal year has no right to continued funding during a subsequent fiscal year. There is no analogy between the termination of welfare benefits without a hearing and the expiration of a grant under its own terms.

The Bureau of Indian Affairs has promulgated regulations in 25 CFR Part 23 setting forth criteria for the allocation of limited grant funds under the Indian Child Welfare Act. These regulations, including the requirement that tribes be responsible for seeking funding for those tribal members living off the reservation but within areas designated "near reservation" by publication in the Federal Register, are reasonable attempts to conserve limited funds and ensure that duplication of benefits does not occur.

Native Americans for Community Action v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 214 (July 1, 1983) 90 I.D. 283

So long as a departure from prior practice is clearly explained and shown to be neither arbitrary nor capricious, the Department has full authority to correct prior erroneous interpretations of law.

The Board of Indian Appeals will not permit a collateral attack on the designation of an area as "near reservation" in the context of an appeal from the denial of a grant application.

United Indians of All Tribes Foundation v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 226 (July 5, 1983)

INDIAN CHILD WELFARE ACT OF 1978--Continued

FINANCIAL GRANT APPLICATIONS--Continued

Funding--Continued

Geographic location alone does not determine whether a program seeking funding under the Indian Child Welfare Act is to be characterized as "off" or "near" reservation; rather the client population served by the program is the determinative factor.

The definition of "Indian" in 25 CFR 23.2(d)(2) specifies the type of proof of Indian ancestry necessary to qualify for receipt of services funded under the Indian Child Welfare Act. It does not purport to define the client population of "near reservation" programs.

United Indians of All Tribes Foundation v. Acting Deputy Assistant Secretary--Indian Affairs (Operations) (On Reconsideration), 11 IBIA 276 (Aug. 15, 1983) 90 I.D. 376

INDIAN LANDS
(See also Exchanges of Land, Indian Probate, Rights-of-Way--if included in this Index.)

GENERALLY

Where the Bureau of Land Management (BLM) has offered lands for competitive oil and gas lease sale, and on appeal the high bidder presents evidence which raises a question concerning the leasability by BLM of certain of those lands because of possible conflicting ownership problems between the United States and the Choctaw, Chickasaw, and Cherokee Indian Nations, the sale shall be voided and the high bidder's bonus bid deposit returned.

Samson Resource Co., 55 IBLA 51 (May 29, 1981)

The Act of May 23, 1908, 35 Stat. 267, as amended, 16 U.S.C. § 671 (1976), providing for the establishment of the National Bison Range, terminated the status of the land included therein as land reserved for Indian use.

Hingeline Overthrust Oil & Gas, Inc., 80 IBLA 4 (Mar. 27, 1984)

Lands within the Colville Indian Reservation were segregated from mineral entry on Sept. 19, 1934, and the land was not thereafter opened to mineral location. A mining claim located on such land after Sept. 19, 1934, is null and void ab initio.

Dora Trudell, 83 IBLA 196 (Oct. 16, 1984)

ABORIGINAL TITLE

Alaskan Native aboriginal occupancy claims, or claims under the organic Act of Alaska of May 17, 1884, and the Act of June 6, 1900, were extinguished by the Alaska Native Claims Settlement Act. A Native applicant's rights under the 1906 Native Allotment Act are based upon his or her individual compliance with that Act and not upon any ancestral use of the land.

Willian Bouvens et al., 46 IBLA 366 (Apr. 8, 1980)

INDIAN LANDS--Continued

ACQUIRED LANDS

The discretion given to the Secretary of the Interior under 25 U.S.C. § 409a (1976) to approve the acquisition of certain lands in Indian trust or restricted status encompasses the power to reconsider the approval of such an acquisition when it appears that approval may have been granted through fraud or misrepresentation.

Once reconsideration of approval of an acquisition of land in Indian trust or restricted status in accordance with 25 U.S.C. § 409a (1976) is properly undertaken and the requirements of due process are met, conclusive evidence that the transaction did not meet the statutory or regulatory requirements provides grounds for termination of the trust or restricted status.

Under 25 U.S.C. § 409a (1976), the funds used to purchase land to be held in trust in order to replace Indian trust or restricted lands taken for a public purpose or voluntarily sold by the Indian owner must be shown to have been derived from the prior taking or sale of such trust or restricted lands.

Dora Joyce Prieto v. Acting Area Director, Sacramento Area Office, Bureau of Indian Affairs, 11 IBIA 124 (Mar. 22, 1983)

ALLOTMENTS

Generally

The Commissioner, Bureau of Indian Affairs, properly required the publication of a notice to offer for sale oil and gas leases on Navajo allotment lands pursuant to 25 CFR 172.4 after disapproval of leases negotiated with Indian allottees.

Mesa Petroleum Co., 47 IBLA 66 (Apr. 18, 1980)

Under 25 CFR Part 121 the issuance to qualified applicants of fee patent title to trust allotments is a discretionary act of the Secretary. Thus, where both an applicant for issuance of a fee patent to trust lands and the tribe of which he is a member have addressed policy arguments to the Secretary to move his discretion regarding termination of an allotment's trust status, it is error to refuse to decide the issue presented on its merits.

Gila River Indian Community v. Commissioner of Indian Affairs and Henry Martinez, Jr., 8 IBIA 150 (Aug. 18, 1980)

A "trust patent" cannot be canceled administratively without providing notice and opportunity for a hearing, and any purported cancellation which is not premised on due process is without effect and void.

Irene Mitchell Pallin, Edward E. Mitchell, Jr., 80 IBLA 383 (May 14, 1984)

Alienation

An Indian tribe, seeking to enforce debt collection of loan secured by mortgage of trust lands and assignment of income from trust lands executed more than 1 year prior to bankruptcy, presented an assignment of trust income executed in conformity with 25 CFR 109.4 to BIA officials responsible for administration of appellant's IIM account. The security interest thus obtained in appellant's trust lands by the tribe is a perfected security interest which attaches to the fund and entitles the tribe to the payments made by the

INDIAN LANDS--Continued

ALLOTMENTS--Continued

Alienation--Continued

agency officials despite appellant's intervening adjudication of bankruptcy.

Clarence Rupe After v. Aberdeen Area Director, Bureau of Indian Affairs, and Cheyenne River Sioux Tribe, 8 IBIA 170 (Oct. 27, 1980) 87 I.D. 501

In light of the unique history of land ownership and Federal-Indian relations on the Quinault Reservation, any Quinault allottee living on June 1, 1934, should be entitled to receive other trust land on the reservation by gift deed in accordance with the provisions of secs. 5 and 19 of the Indian Reorganization Act (25 U.S.C. §§ 465 and 479 (1976)).

Walter S. Brown v. Commissioner of Indian Affairs, 8 IBIA 183 (Oct. 28, 1980) 87 I.D. 507

Where the owner of an Alaska Native allotment notified the Bureau of Indian Affairs that an agreement to alienate part of his allotment had been procured from him by fraud and that he revoked his consent to the use of his land for a road and pipeline by the State of Alaska, the Acting Area Director correctly declined to take action to grant an easement across the allotment to the State for a road and pipeline. Departmental regulations deny the agency authority to permit alienation of part of an Alaska Native allotment subject to restrictions against alienation where the allottee refuses to consent to the alienation, and there is no other provision of law requiring or permitting the alienation.

State of Alaska v. Juneau Area Acting Director, Bureau of Indian Affairs, and Arctic John Ekalook, 9 IBIA 126 (Nov. 9, 1981) 88 I.D. 1020

Under Departmental and judicial precedents, the Secretary of the Interior has the authority to give retroactive approval to the conveyance of Indian trust or restricted land despite the fact that the Indian grantor has died before approval is given.

The Secretary or his delegate has the authority to approve a conveyance of Indian trust or restricted land after the death of the Indian grantor if the Secretary is satisfied that the consideration for the conveyance was adequate; the grantor received the consideration; and there was no fraud, overreaching, or other illegality in the procurement of the conveyance.

Wesley Wishkeno et al. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 21 (Dec. 30, 1982) 89 I.D. 655

The Secretary or his delegate has the authority to approve a conveyance of Indian trust or restricted land after the death of the Indian grantor if the Secretary is satisfied that the consideration for the conveyance was adequate; the grantor received the consideration; and there was no fraud, overreaching, or other illegality in the procurement of the conveyance.

Terese L. Garrett v. Ass't Secretary for Indian Affairs, 13 IBIA 8 (Aug. 21, 1984) 91 I.D. 262

INDIAN LANDS--Continued

ASSIGNMENTS

An Indian tribe, seeking to enforce debt collection of loan secured by mortgage of trust lands and assignment of income from trust lands executed more than 1 year prior to bankruptcy, presented an assignment of trust income executed in conformity with 25 CFR 109.4 to BIA officials responsible for administration of appellant's IIM account. The security interest thus obtained in appellant's trust lands by the tribe is a perfected security interest which attaches to the fund and entitles the tribe to the payments made by the agency officials despite appellant's intervening adjudication of bankruptcy.

Clarence Pugs After v. Aberdeen Area Director, Bureau of Indian Affairs, and Cheyenne River Sioux Tribe, 8 IBIA 170 (Oct. 27, 1980) 87 I.D. 501

While portions of assigned Indian trust land might be properly canceled for nonuse by appellant assignee, where it appeared she had leased nonresidential portions of the assigned lands despite provisions of her assignment which required the lands be devoted entirely to her exclusive personal use and that of her heirs, cancellation of the assignment, even if found to be a legally proper response to the leasing, may not be ordered without giving prior notice of the proposed action, including the reasons therefor, and an opportunity to respond.

Lois Jean Brewer v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 10 IBIA 110 (Sept. 30, 1982) 89 I.D. 488

CEDED LANDS

Generally

"Public lands." Lands ceded by the Chippewa Indians under the Act of Feb. 20, 1904, 33 Stat. 46, which were unappropriated under the terms of said Act, and which were restored to tribal ownership in 1945, were never "public lands" within the meaning of the Color of Title Act, 43 U.S.C. § 1068 (1976), and a color-of-title application for such land must be rejected.

Marlyn Haugen et al., 63 IBLA 12 (Mar. 25, 1982)

Restoration

Restoration of ceded lands to tribal ownership under sec. 3 of the Indian Reorganization Act of June 18, 1934, held not to require apportionment of income from restored lands on the basis of populations at the time of cession.

Delaware Tribe of Western Oklahoma v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 10 IBIA 80 (July 30, 1982) 89 I.D. 392

The Seneca-Cayuga Tribe ceded lands to the United States by treaty which provided for creation of a reservation for Wyandotte Tribe. Where the Wyandotte Tribe later ceded the lands to the United States for use as school lands, the subsequent restoration of those lands by the United States to the Wyandotte Tribe, under 40 U.S.C. § 483(a)(2), was held proper.

Seneca-Cayuga Tribe of Oklahoma v. Deputy Assistant Secretary--Indian Affairs, 10 IBIA 90 (Sept. 2, 1982) 89 I.D. 441

CONTRACTS

Generally

Contracts entered into by an Indian tribe and approved by the Bureau of Indian Affairs are generally subject to the same rules of construction as contracts between private parties. In construing an Indian timber sale contract, the Board of Indian Appeals will presume that the parties intended for all of its provisions to have meaning, and will, therefore, attempt to give effect to all of those provisions.

White Sands Forest Products, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 299 (Sept. 12, 1983) 90 I.D. 396

Formation and Validity

Generally

Recital in a lease agreement of a one dollar annual rental is, under the circumstances of the case, merely a formal recital and does not state the actual consideration for the leasing agreement intended by the parties. Acceptance of the nominal rental by the BIA office concerned did not, therefore, operate to waive the substantial breach of the lease caused by appellant's nonperformance.

Administrative Appeal of Mark Small v. Commissioner of Indian Affairs, 8 IBIA 18 (Mar. 10, 1980)

Menominee Tribal Enterprises, an organization characterized by the 1977 Menominee Constitution to be the principal business arm of the tribe, is an "Indian tribe or tribal council" within the meaning of 25 U.S.C. § 476 (1976) requiring that attorney contracts with Indian tribes must be approved by the Secretary. Since the Secretary approved a transitional scheme for reorganization of the tribal business organization in connection with the restoration of the Federal trust responsibility over the tribe, the Bureau of Indian Affairs is directed on remand to consider whether in this case Secretarial approval has not already been obtained of the attorney contracts which are the subject of this appeal.

Menominee Tribal Enterprises v. Acting Deputy Comm'r of Indian Affairs, 9 IBIA 141 (Dec. 22, 1981)

DEVELOPMENT

The tender of rent by the lessee of Indian trust property and the acceptance of that tender by the Bureau of Indian Affairs on behalf of the Indian lessor does not bind the lessor to a waiver of a breach of the lease.

Downtown Properties, Inc. v. Deputy Ass't Secretary--Indian Affairs (Operations), 13 IBIA 62 (Dec. 27, 1984)

FORESTRY

Timber Sales Contract

Generally

Contracts entered into by an Indian tribe and approved by the Bureau of Indian Affairs are generally subject to the same rules of construction as contracts between private parties. In construing an Indian timber sale contract, the Board of Indian Appeals will

INDIAN LANDS--Continued

FORESTRY--Continued

Timber Sales Contract--Continued

Generally--Continued

presume that the parties intended for all of its provisions to have meaning, and will, therefore, attempt to give effect to all of those provisions.

The Board of Indian Appeals finds that the particular Indian timber sale contract before it imposes separate obligations upon the purchaser to meet a minimum annual cutting requirement and to make a minimum annual payment.

White Sands Forest Products, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 299 (Sept. 12, 1983) 90 I.D. 396

Breach and Damages

The mitigation of damages resulting from the breach of an Indian timber sale contract is ordinarily best accomplished through a resale of the remaining timber on terms approximating those of the original contract.

Decisions made by officials of the Bureau of Indian Affairs as supervisors of Indian leases will be upheld when they are reasonable and based upon substantial evidence in the record. Where the Board finds that BIA has calculated damages improperly or in violation of contractual or regulatory requirements, the agency's action will be set aside.

Standard Provision B6.12 of the standard Bureau of Indian Affairs Indian timber sale contract applies when a cutting deficiency incurred in one contract term is cured by cutting during a subsequent term or terms.

In calculating damages for breach of an Indian timber sale contract, it is reasonable to apportion the amount of timber required to be cut evenly over the term or terms during which logging was to have occurred.

In calculating damages for anticipatory breach of an Indian timber sale contract, it is proper to determine market value at the time or times set for performance through the date of trial.

Expenses incurred in the expectation that an Indian timber sale contract might be breached are not recoverable.

Expenses incurred in order to resell timber remaining after the breach of an Indian timber sale contract are recoverable.

Recovery of reasonable administrative costs incurred by the Bureau of Indian Affairs as a direct result of the breach of an Indian timber sale contract will be allowed.

The language of Standard Provision B2.7 of the standard Bureau of Indian Affairs Indian timber sale contract, to the effect that "any costs or expenses" incurred because of a breach of contract are recoverable, will be interpreted in accordance with the general rules governing the determination of damages unless it is shown that all parties accepted a broader interpretation of the language.

Walch Logging Co., Inc., Dant & Russell, Inc. v. Assistant Area Director (Economic Development), Portland Area Office, Bureau of Indian Affairs, 11 IBIA 85 (Mar. 18, 1983) 90 I.D. 88

INDIAN LANDS--Continued

FORESTRY--Continued

Timber Sales Contract--Continued

Breach and Damages--Continued

The Board of Indian Appeals finds that the particular Indian timber sale contract before it imposes separate obligations upon the purchaser to meet a minimum annual cutting requirement and to make a minimum annual payment.

Under the circumstances of this case, provision B6.12 of the standard Bureau of Indian Affairs timber contract does not apply to the calculation of liquidated damages resulting from failure to make the minimum annual payment required by the negotiated sections of the contract and does not provide a right to "cure" the failure to make the full payment.

White Sands Forest Products, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 299 (Sept. 12, 1983) 90 I.D. 396

GRAZING

Generally

The Bureau's decision to increase grazing fees for the fourth year of the permit period is not inconsistent with the general regulatory provisions of 25 CFR Part 151, which are incorporated by reference in the permit.

The plain wording of the grazing permit does not convey the stipulation that new fees may be pronounced by Aug. 1, 1979, but not thereafter. As there is no legal requirement that permittees be given prior notice of grazing fee increases, it is not unreasonable to conclude that the Aug. 1 date cited in the permit refers merely to a goal or objective for the completion of fee reevaluations.

The appellant association and members thereof have not been denied substantive due process through the readjustment of a grazing permit which specifically provides for readjustment. Appellant's procedural due process rights are secured through the opportunity to appeal the Area Director's action to the Commissioner and the Board of Indian Appeals pursuant to the provisions of 25 CFR Part 2 and 43 CFR 4.350-4.369.

Administrative Appeal of Fort Berthold Land and Livestock Ass'n v. Area Director, Aberdeen Area Office, Bureau of Indian Affairs, 8 IBIA 90 (June 6, 1980) 87 I.D. 201

Appeals

The appellant association and members thereof have not been denied substantive due process through the readjustment of a grazing permit which specifically provides for readjustment. Appellant's procedural due process rights are secured through the opportunity to appeal the Area Director's action to the Commissioner and the Board of Indian Appeals pursuant to the provisions of 25 CFR Part 2 and 43 CFR 4.350-4.369.

Administrative Appeal of Fort Berthold Land and Livestock Ass'n v. Area Director, Aberdeen Area Office, Bureau of Indian Affairs, 8 IBIA 90 (June 6, 1980) 87 I.D. 201

INDIAN LANDS--Continued

GRAZING--Continued

Rental Rates

The Bureau's decision to increase grazing fees for the fourth year of the permit period is not inconsistent with the general regulatory provisions of 25 CFR Part 151, which are incorporated by reference in the permit.

The plain wording of the grazing permit does not convey the stipulation that new fees may be pronounced by Aug. 1, 1979, but not thereafter. As there is no legal requirement that permittees be given prior notice of grazing fee increases, it is not unreasonable to conclude that the Aug. 1 date cited in the permit refers merely to a goal or objective for the completion of fee reevaluations.

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Administrative Appeal of Fort Berthold Land and Livestock Ass'n v. Area Director, Aberdeen Area Office, Bureau of Indian Affairs, 8 IBIA 90 (June 6, 1980) 87 I.D. 201

In ascertaining the reasonableness of a rental rate increase for grazing lands permitted under authority of 25 CFR Part 151, it was error for the Administrative Law Judge to conclude that "fair annual return" to which Indian landowners are entitled under the regulations is "something different and less than fair market value."

The independent market survey utilized by the Bureau of Indian Affairs in justifying an increase in grazing rental rates on the Fort Berthold Reservation cannot be regarded as invalid on grounds that off-reservation transactions were included in the survey.

In reviewing action of the Bureau of Indian Affairs in raising grazing rental rates, the Board of Indian Appeals should overturn the action only if it is found to be unreasonable. As long as the Bureau's action is supported in law and by substantial evidence, it would be an inappropriate intrusion into the Bureau's function for the Board to substitute its judgment for the agency's.

Fort Berthold Land and Livestock Ass'n v. Area Director, Aberdeen Area Office, Bureau of Indian Affairs, 8 IBIA 230 (Feb. 20, 1981) 88 I.D. 315

LEASES AND PERMITS

Generally

Calculating the percentage increase in fee simple land values on or near the Indian reservation where leased trust property is located is, under the circumstances of this case, an acceptable method for determining the appropriate increase in rental rate.

Robert B. Wooding v. Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 158 (Jan. 26, 1982)

INDIAN LANDS--Continued

LEASES AND PERMITS--Continued

Generally--Continued

It is error for the Bureau of Indian Affairs to lease land in the estate of a deceased Indian under 25 CFR 162.2(a)(3) on the grounds that the heirs of the estate are "undetermined" when an Administrative Law Judge has accepted a compromise settlement of the estate entered into by all possible heirs and meeting the requirements of 43 CFR 4.207(a).

Estate of Eugene E. Trust v. Acting Aberdeen Area Director, Bureau of Indian Affairs, 11 IBIA 203 (May 27, 1983)

The Board of Indian Appeals will apply the law of the state in which real property held in trust for an Indian lessor is located in determining whether prepaid rent may be retained by the lessor when a lease was canceled because of the lessee's violations.

Clayton J. Wray v. Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 146 (Jan. 27, 1984) 91 I.D. 43

Arbitration

In the absence of extenuating circumstances, the Board of Indian Appeals will uphold an arbitration clause in a lease involving Indian trust land.

Cancellation of a lease of Indian trust land is improper if arbitration procedures required by the lease have not been followed.

Racquet Drive Estates, Inc. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 184 (May 24, 1983) 90 I.D. 243

Grazing

Allocation

Under 25 CFR 151.10, the tribe establishes procedures and priorities for allocation of tribal, tribally controlled Government, and individual lands.

Under Blackfeet Tribal Resolution 9-79, an Indian grazing her own livestock is a higher priority user of land than an Indian grazing non-Indian-owned livestock.

Under Blackfeet Tribal Resolution 9-79, an Indian grazing her own livestock is entitled to an allocation of land equal to the number of the herd plus 25 percent, up to a maximum of 500 head per year, and can cause the cancellation of all or part of a grazing lease which is not used for the grazing of Indian-owned livestock.

Daniel Conway v. Acting Area Director, Billings Area Office, Bureau of Indian Affairs, 10 IBIA 25 (July 16, 1982) 89 I.D. 382

Revocation or Cancellation

Under Blackfeet Tribal Resolution 9-79, an Indian grazing her own livestock is entitled to an allocation of land equal to the number of the herd plus 25 percent, up to a maximum of 500 head per year, and can cause the cancellation of all or part of a grazing lease which is not used for the grazing of Indian-owned livestock.

Daniel Conway v. Acting Area Director, Billings Area Office, Bureau of Indian Affairs, 10 IBIA 25 (July 16, 1982) 89 I.D. 382

INDIAN LANDS--Continued

LEASES AND PERMITS--Continued

Long-term Business/Agriculture

Generally

Recital in a lease agreement of a one dollar annual rental is, under the circumstances of the case, merely a formal recital and does not state the actual consideration for the leasing agreement intended by the parties. Acceptance of the nominal rental by the BIA office concerned did not, therefore, operate to waive the substantial breach of the lease caused by appellant's nonperformance.

Administrative Appeal of Mark Small v. Commissioner of Indian Affairs, 8 IBIA 18 (Mar. 10, 1980)

Cancellation

Where tribe leased lands to operator of a post and pole plant for the declared purpose that he conduct a business on tribal lands, and the attendant circumstances of the negotiation for the lease establish the tribe sought to use the leasing agreement to foster business on the reservation and lower tribal unemployment thereby, the failure and subsequent termination of the business venture provided cause for cancellation of the lease pursuant to 25 CFR 131.14.

Administrative Appeal of Mark Small v. Commissioner of Indian Affairs, 8 IBIA 18 (Mar. 10, 1980)

Where a business lease between tribe and automobile dealer contains a cancellation clause providing for alternative remedies in case of breach of the agreement by lessee, use of the phrase "and/or" in reference to the various alternatives cannot reasonably be construed to be a delegation to the tribe of Secretarial authority to cancel the lease in the event of breach of the lease by the lessee. Nor does the existence of alternative remedies in the lease constitute Secretarial consent that the tribe undertake to administer the lease without agency participation contrary to Departmental regulations.

Where Departmental regulations at 25 CFR Part 131 are incorporated by reference as part of the lease, those regulations are to be applied in the administration of the lease as though fully set out in the written lease agreement. The regulations incorporated into the lease become binding upon the parties. The agency may not ignore nor act contrary to the provisions of the incorporated regulations which require Secretarial consent to cancellation of the lease, subject to certain specified due process requirements set out in the regulations.

A collateral attempt by a tribal court to cancel appellant's lease by entry of a declaratory judgment that appellant "materially breached the lease" is ineffective to result in cancellation since the judgment goes beyond the subject matter jurisdiction of the court to enforce.

Administrative Appeal of Marlin D. Kuykendall v. Phoenix Area Director, Bureau of Indian Affairs, and Yavapai-Prescott Tribe, 8 IBIA 76 (June 2, 1980) 87 I.D. 189

Failure to raise question concerning delivery of water to leased lands at early stages of appeal, together with circumstances surrounding the issue sought to be raised which indicate the question was not seriously urged by appellant in dealings with

INDIAN LANDS--Continued

LEASES AND PERMITS--Continued

Long-term Business/Agriculture--Continued

Cancellation--Continued

the tribal lessor, require a finding that alleged failure to supply water to the leased lands in a certain fashion was not a default by the lessor that would excuse payment of rent.

Where lease contains several provisions concerning notice to be given in case of default, the provisions of Departmental regulation incorporated into the lease which govern due process requirements for giving notice of default are controlling. Since appellant received the benefit of the notice provisions of both 25 CFR 131.14 and the default clause at paragraph 27 of the lease, he was not damaged by an omission of some of the language of paragraph 27 from the notice of default sent him by the tribe.

John W. Dale v. Commissioner of Indian Affairs, 8 IBIA 158 (Oct. 15, 1980)

The Bureau of Indian Affairs is not required to give the lessee of Indian trust land a reasonable time in which to cure a breach of the lease when it has determined in accordance with 25 CFR 162.14 that the breach cannot be cured.

Downtown Properties, Inc. v. Deputy Ass't Secretary--Indian Affairs (Operations), 13 IBIA 62 (Dec. 27, 1984)

Rentals

Calculating the percentage increase in fee simple land values on or near the Indian reservation where leased trust property is located in, under the circumstances of this case, an acceptable method for determining the appropriate increase in rental rate.

Robert B. Wooding v. Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 158 (Jan. 26, 1982)

Court's decision in Byrd v. Andrus, No. C-79-229 (E.D. Wash. 1981), rev'g Byrd v. Commissioner, 7 IBIA 142 (1979), held controlling where contested leases at issue in pending case and Byrd were prepared by the same persons and are identical in pertinent provisions except for the stated percentage of limitation upon increase or decrease. Under the circumstances of this case, a 25 percent limitation upon future rental adjustments was imposed under the terms of the lease agreement negotiated with the agency.

Robert Seaburg v. Commissioner of Indian Affairs, 11 IBIA 6 (Dec. 6, 1982)

Whether the acceptance of rent by an Indian lessor after a default in specific provisions of a lease constitutes a waiver of those defaults is a question of the lessor's intent, which is determined on the basis of the facts of the particular case.

Downtown Properties, Inc. v. Deputy Ass't Secretary--Indian Affairs (Operations), 13 IBIA 62 (Dec. 27, 1984)

INDIAN LANDS--Continued

LEASES AND PERMITS--Continued

Long-term Business/Agriculture--Continued

Waiver

The tender of rent by the lessee of Indian trust property and the acceptance of that tender by the Bureau of Indian Affairs on behalf of the Indian lessor does not bind the lessor to a waiver of a breach of the lease.

Whether the acceptance of rent by an Indian lessor after a default in specific provisions of a lease constitutes a waiver of those defaults is a question of the lessor's intent, which is determined on the basis of the facts of the particular case.

Downtown Properties, Inc. v. Deputy Ass't Secretary--Indian Affairs (Operations), 13 IBIA 62 (Dec. 27, 1984)

Minerals

Where coal leases for Indian lands state that the applicable royalty rate is to be based on gross realization, which is further defined as the gross sales price at the mining site without any deduction therefrom of overhead sales costs or any other business expense, this royalty base includes the amount of the reclamation fee imposed by the Surface Mining Control and Reclamation Act of 1977 where the selling price is increased by that amount or where the seller is reimbursed for that amount by the buyer.

The rulemaking procedures in 5 U.S.C. § 553 (1976) do not apply to administrative interpretations which conclude that the amount of the reclamation fee imposed by the Surface Mining Control and Reclamation Act of 1977 is to be included as part of the royalty base under Indian coal leases.

Peabody Coal Co., 53 IBLA 261 (Mar. 23, 1981)

Where coal leases for Indian lands state that the applicable royalty rate is to be based on gross realization, which is defined as the gross sales price at the mining site without any deduction of overhead sales costs or any other business expense, gross realization includes the amounts of the reclamation fee imposed by the Surface Mining Control and Reclamation Act, the tax imposed by the Black Lung Benefits Revenue Act of 1977, and the Arizona State mining tax, since the selling price is increased by these amounts and the seller is reimbursed for that amount by the buyer.

It is proper to deduct the amount of fixed minimum royalty from the gross sales price of coal before calculating royalty due, where an amount representing the higher, percentage-based royalty is added instead, since the latter entirely replaces the former.

Where a coal purchase agreement provides that the purchase price of coal from the holder of an Indian lease shall be reduced by an amount reflecting the percentage of variation from an agreed minimum heat value of coal, and where the adjustment also reduces the purchase price by an amount reflecting the costs of transporting noncalorific material, this adjustment is properly allowed to reduce the gross realization and, as a result, the royalty due to Indian tribes which own the coal, because the low heat value of the coal is intrinsic to the material being "sold" by the tribes, and because the value of the material sold is reduced by the amount spent by the ultimate purchaser of the coal to transport low heat value coal.

Owing to its fiduciary obligation to protect the interests of the Indian tribes, the Department, through officials of the Geological Survey who supervise tribal mineral lease accounts, has the authority to impose late payment charges where equity requires them. Late

INDIAN LANDS--Continued

LEASES AND PERMITS--Continued

Minerals--Continued

payment charges are not penalties; rather, they represent the time value of money owed to the tribes, but not paid. Accordingly, they may be imposed even where the lessee files a bona fide appeal of the underlying royalty determination. The lessee is protected from overpayment where the late payment charges are recalculated after final Departmental administrative review to correspond to the amount of royalty ultimately found to be due.

Peabody Coal Co., Hopi Indian Tribe, 72 IBLA 337 (Apr. 29, 1983)

Although an application for a mining lease may result from exploration under a mineral prospecting permit, the application does not seek a continuation of existing rights within the meaning of 5 U.S.C. § 558(c) (1976).

The expiration of a mineral prospecting permit does not affect the right of the permittee to receive a mining lease for which timely application was made. The term of the prospecting permit is not extended by the filing of an application for a mining lease.

Idaho Mining Corp. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBLA 249 (July 29, 1981) 90 I.D. 329

Where the Office of Surface Mining Reclamation and Enforcement issued a notice of violation charging a violation of regulations in 30 CFR Part 211 (1980) at a surface coal mining operation on Indian land, the notice was properly vacated since the scope provision of those regulations, 30 CFR 211.1(a), specifically excluded from the coverage of 30 CFR Part 211 operations on Indian land.

Peabody Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 79 IBLA 14 (Feb. 3, 1984)

Oil and Gas

A Geological Survey Area Supervisor is acting within the authority granted to him by applicable provisions of Indian oil and gas leases and Indian and Federal royalty regulations when he decides to adopt the greater of either 1) actual sales prices of production from the leased lands or 2) a substitute price computed by him which is reasonably based on sales prices from all production from other similar tribal leases in the area, as the "value" of gas produced on these leases, and when he directs lessees to compute royalty based on the greater of the two values so calculated.

Where the Area Supervisor assembles data concerning sales from all Jicarilla tribal leases for a particular year and determines the median sales price, his use of this figure as a minimum floor price by which to determine value will be affirmed, as this decision is within the latitude afforded him, and this price is reasonably based on transactions indicative of the actual value of the production in the area at that time.

A lessee's obligation to pay royalty based on an accurate determination of the current value of production is not mitigated by its having committed by long-term contract to sell this product at a price below this value.

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to

INDIAN LANDS--Continued

LEASES AND PERMITS--Continued

Oil and Gas--Continued

post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of the payment subsequently.

The Area Supervisor has the authority to require a lessee to determine the value of the lease product by both the "BTU" and "net-realization" methods and may require the lessee to adopt as value whichever result is higher as the basis for computation of royalty for natural gas.

Where a United States district court has ordered a lessee to adopt a dual accounting method of determining value and has ordered the Department to require this dual accounting from the lessee, the question of the propriety of the Area Supervisor's order doing so is apparently res judicata, the only question being whether the order is the court's final action.

Under controlling provisions, an Area Supervisor has the discretion to establish a cost-of-manufacture allowance for use in the net-realization method of determining value for royalty purposes. Where this allowance is well based on the actual amounts needed to process out by-products of the crude gas, it will be upheld in the absence of a clear showing that it is erroneous.

Superon Energy Corp., et al., 46 IBLA 181 (Mar. 21, 1980)

The Commissioner, Bureau of Indian Affairs, properly required the publication of a notice to offer for sale oil and gas leases on Navajo allotment lands pursuant to 25 CFR 172.4 after disapproval of leases negotiated with Indian allottees.

Mesa Petroleum Co., 47 IBLA 66 (Apr. 18, 1980)

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of payment subsequently.

An appellant who challenges a determination by the Geological Survey as to the value of gas or other hydrocarbons produced from a Federal oil and gas lease must show not merely that the methodology utilized by Geological Survey is susceptible to error; it must show that error did, in fact, occur.

An Area Supervisor's order which requires that royalty be based on either the price specified in the order or the amount actually received, whichever is greater, comports with all regulatory requirements as to definitiveness and finality.

Superon Energy Corp., Atlantic Richfield Co., 55 IBLA 318 (June 26, 1981)

Sec. 2 of the 1938 Tribal Mineral Leasing Act, codified at 25 U.S.C. § 396b (1976), requires advertisement for competitive bids prior to leasing of unallotted tribal lands for oil and gas development where the leasing tribe is not organized under the

INDIAN LANDS--Continued

LEASES AND PERMITS--Continued

Oil and Gas--Continued

provisions of the Indian Reorganization Act of June 18, 1934.

Navajo Resources, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 10 IBIA 72 (Aug. 25, 1982)
89 I.D. 412

Rental Rates

Rental increase based upon calculated increase in value of leased Indian trust land was properly assessed under terms of a written lease permitting rental adjustment at 5-year intervals.

Gregory Snelson v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 10 IBIA 57 (July 30, 1982)

Revocation or Cancellation

A Departmental official may change a decision regarding cancellation of a lease of Indian lands as long as the reason for the change is clearly set forth in order to show that the departure from the prior administrative position is not arbitrary or capricious.

A business lease on Indian lands may not be canceled on the grounds that the business was not continuously open when the lease does not require the business to operate for a specified period.

A business lease on Indian lands may not be canceled on the grounds that the leasehold was also being used for residential purposes when the lease does not specifically prohibit this use and it is shown that the business requires continual protection against vandalism and robbery and the residence does not interfere with the operation of the business.

Isaac and Katherine Bonaparte v. Comm'r of Indian Affairs, 9 IBIA 115 (Nov. 6, 1981)

The Secretary of the Interior has authority to cancel a lease of Indian trust land and to review administratively a decision of a subordinate official that such a lease should be canceled.

Departmental regulations in 25 CFR Part 2 and 43 CFR Part 4, Subpart D, ensure that due process is accorded to all parties to a lease of Indian trust land before such a lease is canceled.

Cancellation of a lease of Indian trust land is improper if arbitration procedures required by the lease have not been followed.

Racquet Drive Estates, Inc. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 184 (May 24, 1983)
90 I.D. 243

Cancellation procedures established in a prospecting permit of Indian trust land are not applicable when the permit expires by its own terms.

Idaho Mining Corp. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 249 (July 29, 1983)
90 I.D. 329

INDIAN LANDS--Continued

LEASES AND PERMITS--Continued

Revocation or Cancellation--Continued

It is improper for the Bureau of Indian Affairs to reinstate a canceled lease of Indian trust lands when the lessee fails to show, after an opportunity for curing defaults, that the defaults have been cured or that they will be cured in the immediate future.

San Day IV v. Area Director, Navajo Area Office, Bureau of Indian Affairs & Window Rock Mall, Ltd. v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 9 (Oct. 6, 1983)

A decision of the Bureau of Indian Affairs that cancels a lease of Indian trust lands generally involves an interpretation of the lease provisions, relevant Federal regulations governing cancellation procedures, and applicable Federal, state, and tribal case and statutory law. Such a decision cannot properly be characterized under 25 CFR 2.19 as solely discretionary.

Clayton J. Gray v. Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 106 (Jan. 27, 1984) 91 I.D. 43

Secretarial Approval

Regardless of expectations existing at the time a prospecting permit covering trust lands is approved, by approving the permit the Secretary does not relinquish his responsibility to review any subsequent mining lease application in order to determine whether the proposed lease is in the best interest of the Indians involved.

The Bureau of Indian Affairs properly disapproved a mining lease application when the applicant had failed, without explanation, to comply with a significant provision of its prospecting permit.

Idaho Mining Corp. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 249 (July 29, 1983) 90 I.D. 329

Violation

Generally

Where BIA office notified appellant lessee of default in performance and sought, on several occasions, to obtain his performance or relinquishment of leased lands, notice requirements of 25 CFR Part 2 were substantially met, since appellant had actual notice of subsequent lease termination.

Administrative Appeal of Mark Small v. Commissioner of Indian Affairs, 8 IBIA 18 (Mar. 10, 1980)

MINING LEASES

Generally

Where coal leases for Indian lands state that the applicable royalty rate is to be based on gross realization, which is further defined as the gross sales price at the mining site without any deduction therefrom of overhead sales costs or any other business expense, this royalty base includes the amount of the reclamation fee imposed by the Surface Mining Control and Reclamation Act of 1977 where the selling price is

INDIAN LANDS--Continued

MINING LEASES--Continued

Generally--Continued

increased by that amount or where the seller is reimbursed for that amount by the buyer.

The rulemaking procedures in 5 U.S.C. § 553 (1976) do not apply to administrative interpretations which conclude that the amount of the reclamation fee imposed by the Surface Mining Control and Reclamation Act of 1977 is to be included as part of the royalty base under Indian coal leases.

Peabody Coal Co., 53 IBLA 261 (Mar. 23, 1981)

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Owing to its fiduciary obligation to protect the interests of the Indian tribes, the Department, through officials of the Geological Survey who supervise tribal mineral lease accounts, has the authority to impose late payment charges where equity requires them. Late payment charges are not penalties; rather, they represent the time value of money owed to the tribes, but not paid. Accordingly, they may be imposed even where the lessee files a bona fide appeal of the underlying royalty determination. The lessee is protected from overpayment where the late payment charges are recalculated after final Departmental administrative review to correspond to the amount of royalty ultimately found to be due.

Peabody Coal Co., Hopi Indian Tribe, 72 IBLA 337 (Apr. 29, 1983)

Royalties

Adjustment of royalty is not required where there is no lease provision or applicable regulation either permitting or requiring an adjustment.

Mobil Oil Corp., 78 IBLA 107 (Dec. 20, 1983)

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INDIAN LANDS--Continued

OIL AND GAS LEASING

Generally

A Geological Survey Area Supervisor is acting within the authority granted to him by applicable provisions of Indian oil and gas leases and Indian and Federal royalty regulations when he decides to adopt the greater of either 1) actual sales prices of production from the leased lands or 2) a substitute price computed by him which is reasonably based on sales prices from all production from other similar tribal leases in the area, as the "value" of gas produced on these leases, and when he directs lessees to compute royalty based on the greater of the two values so calculated.

Where the Area Supervisor assembles data concerning sales from all Jicarilla tribal leases for a particular year and determines the median sales price, his use of this figure as a minimum floor price by which to determine value will be affirmed, as this decision is within the latitude afforded him, and this price is reasonably based on transactions indicative of the actual value of the production in the area at that time.

A lessee's obligation to pay royalty based on an accurate determination of the current value of production is not mitigated by its having committed by long-term contract to sell this product at a price below this value.

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of the payment subsequently.

The Area Supervisor has the authority to require a lessee to determine the value of the lease product by both the "BTU" and "net-realization" methods and may require the lessee to adopt as value whichever result is higher as the basis for computation of royalty for natural gas.

Where a United States district court has ordered a lessee to adopt a dual accounting method of determining value and has ordered the Department to require this dual accounting from the lessee, the question of the propriety of the Area Supervisor's order doing so is apparently res judicata, the only question being whether the order is the court's final action.

Under controlling provisions, an Area Supervisor has the discretion to establish a cost-of-manufacture allowance for use in the net-realization method of determining value for royalty purposes. Where this allowance is well based on the actual amounts needed to process out by-products of the crude gas, it will be upheld in the absence of a clear showing that it is erroneous.

Supron Energy Corp. et al., 46 IBLA 181 (Mar. 21, 1980)

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of payment subsequently.

An appellant who challenges a determination by the Geological Survey as to the value of gas or other

INDIAN LANDS--Continued

OIL AND GAS LEASING--Continued

Generally--Continued

hydrocarbons produced from a Federal oil and gas lease must show not merely that the methodology utilized by Geological Survey is susceptible to error; it must show that error did, in fact, occur.

An Area Supervisor's order which requires that royalty be based on either the price specified in the order or the amount actually received, whichever is greater, comports with all regulatory requirements as to definitiveness and finality.

Supron Energy Corp., Atlantic Richfield Co., 55 IBLA 318 (June 26, 1981)

Allotted Lands

The Commissioner, Bureau of Indian Affairs, properly required the publication of a notice to offer for sale oil and gas leases on Navajo allotment lands pursuant to 25 CFR 172.4 after disapproval of leases negotiated with Indian allottees.

Mesa Petroleum Co., 47 IBLA 66 (Apr. 18, 1980)

PATENT IN FEE

Generally

Under 25 CFR Part 121 the issuance to qualified applicants of fee patent title to trust allotments is a discretionary act of the Secretary. Thus, where both an applicant for issuance of a fee patent to trust lands and the tribe of which he is a member have addressed policy arguments to the Secretary to move his discretion regarding termination of an allotment's trust status, it is error to refuse to decide the issue presented on its merits.

Gila River Indian Community v. Commissioner of Indian Affairs and Henry Martinez, Jr., 8 IBIA 150 (Aug. 18, 1980)

Jurisdiction

The Federal trust responsibility over allotted land or any fractional share thereof is extinguished as to that interest immediately upon its acquisition by a non-Indian. The ministerial issuance of a fee patent serves only a recordkeeping function and is without legal significance in respect to dissolution of the Department's role as trustee.

The Department of the Interior owes no fiduciary duties of any kind to a non-Indian who has acquired an interest in allotted trust land.

Estate of Dana A. Knight, 9 IBIA 82 (Oct. 22, 1981)
88 I.D. 987

While the Federal trust responsibility over allotted land is extinguished when ownership of the land is acquired by a non-Indian, an erroneous heirship determination involving an interest in trust lands passing to a non-Indian does not prevent correction of Department records when a fee patent has not yet been issued. Departmental regulations enable the Department to correct its records to reflect the factual circumstances of the case and to correct discovery of legal

INDIAN LANDS--Continued

PATENT IN FEE--Continued

Jurisdiction--Continued

error while the probate of a trust estate is still pending within the Department.

Estate of Bernita Elizabeth Stamp Payton, 9 IBIA 200 (Mar. 22, 1982)

The Department of the Interior has no authority to hold land in Indian trust status for non-Indians. When non-Indians acquire Indian trust land through inheritance or devise, fee patent title should normally be transferred immediately to such individuals pursuant to 25 CFR 152.6.

Estate of Eugene R. Trust v. Acting Aberdeen Area Director, Bureau of Indian Affairs, 11 IBIA 203 (May 27, 1983)

RESTRICTED ALLOTMENT

Under Departmental and judicial precedents, the Secretary of the Interior has the authority to give retroactive approval to the conveyance of Indian trust or restricted land despite the fact that the Indian grantor has died before approval is given.

The Secretary or his delegate has the authority to approve a conveyance of Indian trust or restricted land after the death of the Indian grantor if the Secretary is satisfied that the consideration for the conveyance was adequate; the grantor received the consideration; and there was no fraud, overreaching, or other illegality in the procurement of the conveyance.

Wesley Wishkeno et al. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 21 (Dec. 30, 1982) 89 I.D. 655

The repeal of 43 U.S.C. § 733 (1970) (formerly 48 U.S.C. § 355a (1952)) by sec. 703(a) of the Federal Land Policy and Management Act of 1976 was intended to have future effect and not to alter rights or restrictions that had accrued under the provisions of the Alaska Native Townsite Act.

There is no indication of congressional intention that the restrictions upon land acquired under the Alaska Native Townsite Act be terminated upon a gift of that land from one Alaska Native to another.

Juanita Holsheimer v. Assistant Secretary for Indian Affairs, 11 IBIA 155 (Apr. 14, 1983) 90 I.D. 165

Land interests held in Indian trust status by the Department of the Interior are not subject to setoff, levy, and/or execution on the basis of a state court decision.

Estate of Alice Mae Sagge, 12 IBIA 281 (June 25, 1984)

The Secretary or his delegate has the authority to approve a conveyance of Indian trust or restricted land after the death of the Indian grantor if the Secretary is satisfied that the consideration for the conveyance was adequate; the grantor received the consideration; and there was no fraud, overreaching, or other illegality in the procurement of the conveyance.

Terese L. Garrett v. Ass't Secretary for Indian Affairs, 13 IBIA 8 (Aug. 21, 1984) 91 I.D. 262

INDIAN LANDS--Continued

RIGHTS-OF-WAY

In plain and unambiguous regulations codified at 25 CFR Part 169, the Secretary of the Interior has required tribal consent for any right-of-way across tribal land, not just those sought under 25 U.S.C. §§ 323-328 (1976).

Article IX, paragraph 6, of the Treaty with the Navajo, June 1, 1868 (15 Stat. 667), in which the tribe agreed not to oppose "the construction of railroads, wagonroads, mail stations, or other works of utility or necessity which may be ordered or permitted by the laws of the United States," may not be interpreted as bestowing tribal consent to all applications for rights-of-way across the Navajo Indian Reservation.

Transwestern Pipeline Co. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 49 (Oct. 28, 1983) 90 I.D. 474

TRIBAL LANDS

Tribal land may not be alienated unless authorized by Congress. A tribal member's request to exchange land for tribal land on the Fort Peck Reservation acquired under the Submarginal Land Act of 1975, 89 Stat. 577, was properly denied by the Bureau of Indian Affairs in the absence of statutory authority permitting the exchange of such submarginal lands.

Alfred Manning v. Commissioner of Indian Affairs, 9 IBIA 36 (July 10, 1981)

Sec. 2 of the 1938 Tribal Mineral Leasing Act, codified at 25 U.S.C. § 396b (1976), requires advertisement for competitive bids prior to leasing of unallotted tribal lands for oil and gas development where the leasing tribe is not organized under the provisions of the Indian Reorganization Act of June 18, 1934.

Navajo Resources, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 10 IBIA 72 (Aug. 25, 1982) 89 I.D. 412

TRIBAL RIGHTS IN ALLOTTED LANDS

The original power to determine membership, including adoption, is in the tribe. After approval of an individual for membership, a tribe retains the power to disenroll provided it follows provisions for termination of enrollment contained in its membership ordinance.

The Administrative Law Judge acted properly in relying on one of two dates stipulated to by the parties regarding a valuation date for the acquisition of land under the Nez Perce Inheritance Act.

Neither the Administrative Law Judge nor the Board is bound by the Bureau of Indian Affairs' report and findings contained therein. Instead consideration will be given to the complete record in arriving at a determination as to fair market value.

Estate of Antoine (Ke Wappe) Hill, 8 IBIA 121 (July 21, 1980)

Where record indicates husband, who would otherwise have received trust property of deceased wife located on Yakima Reservation, did not timely receive notice of tribal determination to purchase inherited trust interest and where the notice and the appraisal relied upon by tribe for the valuation set out in the notice did not conform to requirements of Departmental regulation, a hearing on valuation is required although

the time during which a demand for hearing should have been made had expired.

Estate of Angeline LaBelle Solis, 8 IBIA 312 (May 29, 1981)

TRUST PATENT

A "trust patent" cannot be canceled administratively without providing notice and opportunity for a hearing, and any purported cancellation which is not premised on due process is without effect and void.

Irene Mitchell Pallin, Edward E. Mitchell, Jr., 80 IBLA 383 (May 14, 1984)

INDIAN PROBATE
(See also Appeals, Bureau of Indian Affairs, Hearings, Indian Lands, Indian Tribes, Rules of Practice--if included in this Index.)

ADMINISTRATIVE LAW JUDGE

An Administrative Law Judge in an Indian probate proceeding is generally not required to anticipate or discover additional legal arguments or evidence that might be beneficial to an individual's case.

When an individual participating in a Departmental Indian probate proceeding is not represented by counsel, the Federal trust responsibility, which is shared by the Administrative Law Judge conducting the proceeding, requires that the Administrative Law Judge ensure that manifest injustice is not committed, or if committed, is corrected.

The Administrative Law Judge conducting an Indian probate proceeding is required to ensure that all claims against the decedent's trust estate are legally allowable before approving them for payment.

Estate of Wesley Emmett Anton, 12 IBIA 139 (Jan. 23, 1984)

ADMINISTRATIVE PROCEDURE (See also HEARING, REHEARING--if included in this Index.)

Applicability to Indian Probate

The Administrative Procedure Act, which is applicable to proceedings in Indian probate, requires that the factfinder develop a sufficient record to support his findings and conclusions. Where the record fails to support inconsistent findings by the factfinder below concerning periods of incompetence of the decedent prior to execution of a will found to be valid, the Interior Board of Indian Appeals will, on appeal, limit the conclusions of law to conclusions which are based upon the record. The Board finds that the factfinder's assertion that decedent was "confused" prior to the execution of her valid will in 1977 is not supported by the record developed at hearing, nor is a finding that influence was exerted upon her at times not relevant to the probate proceeding based upon evidence of record.

Estate of Catalina Clifford, 9 IBIA 165 (Jan. 29, 1982)

One who participated in an adoption proceeding has no standing to object that some other person was deprived of his or her constitutional rights.

Where the jurisdictional invalidity of an Indian adoption granted by an officer of the Bureau of Indian Affairs appears on the face of the record, the judgment is open to attack, direct or collateral, at any time.

The Supreme Court's ruling in Fisher v. District Court of the Sixteenth Judicial District of Montana, 424 U.S. 382 (1976), makes it clear that 25 U.S.C. § 372a (1976) is not a statute which bestows authority to grant adoptions. The Act of July 8, 1940, simply provides that the Secretary of the Interior may rely on adoptions legally consummated under other specific authority in the course of performing the probate functions conferred on him by Congress.

Estate of Victor Young Bear, 8 IBIA 130 (July 24, 1980) 87 I.D. 311

The Act of July 8, 1940, 54 Stat. 746 (25 U.S.C. § 372a (1976)) gave limited authority to agency superintendents over the adoption of Indian children. Evaluated in light of its legislative history, the Act must be read as allowing superintendents to validate adoptions agreed to in writing by Indian parties as well as Indian custom adoptions.

The Act of Mar. 3, 1931, 46 Stat. 1494, relating to the adoption of Indian children on the Crow Reservation in Montana, vested the superintendent of the Crow Agency with adoption authority which served as a model in the draftsmanship of the Act of July 8, 1940.

Estate of Victor Young Bear (Supp.), 8 IBIA 254 (Mar. 26, 1981) 88 I.D. 410

Proof of adoption in Indian probate proceedings under the jurisdiction of the Department of the Interior is governed by Federal statute as expressed in 25 U.S.C. § 372a (1976).

Estate of Mary Martin Mateas Andrew Cave, 9 IBIA 196 (Mar. 15, 1982)

The Board has consistently followed the rule that the status of an individual is determined by the law of the jurisdiction having the most significant contacts with the individual or in which the relationship at issue was created. Laws governing the status of an individual must be distinguished from laws governing inheritance.

Estate of Richard Doyle Two Bulls, 11 IBIA 77 (Mar. 15, 1983)

An adoption is not normally considered a testamentary act and is not subject to the rules governing the execution of testamentary instruments. An otherwise proper adoption decree showing that the requirements of the jurisdiction rendering it were met will be recognized.

Estate of James Harry Pekah, 11 IBIA 237 (July 6, 1983)

INDIAN PROBATE--Continued

ADOPTION (See also CHILDREN, ADOPTED--if included in this Index.)--Continued

Crow Tribe

The Act of Mar. 3, 1931, 46 Stat. 1494, relating to the adoption of Indian children on the Crow Reservation in Montana, vested the superintendent of the Crow Agency with adoption authority which served as a model in the draftsmanship of the Act of July 8, 1940.

Estate of Victor Young Bear (Supp.), 8 IBIA 254 (Mar. 26, 1981) 88 I.D. 410

Unless an estate was being probated when the Act was passed, under the Crow Adoption Act of Mar. 3, 1931, 46 Stat. 1494, an individual may not be recognized as an adopted child of a deceased member of the Crow Tribe of Montana unless the adoption was by a judgment or decree of a state court, or was a written adoption approved by the Superintendent of the Crow Agency and recorded in a book kept by him for that purpose.

Estate of Alice M. Whitman Rides Pretty Harden, 12 IBIA 203 (Mar. 21, 1984)

APPEAL (See also PLEADING, RECONSIDERATION--if included in this Index.)

Generally

The burden of proving that the initial decision in the probate of a deceased Indian's trust estate was erroneous is on the person challenging the decision.

Estate of Verona Gean Kitchell, 12 IBIA 258 (May 31, 1984)

Administrative Law Judge as Trier of Facts

The weight and credibility of evidence are matters properly considered by an Administrative Law Judge in the first instance. His findings, when in accord with the preponderance of the substantial and probative evidence adduced, will not be disturbed.

Where there is sufficient evidence to support the findings and the testimony is conflicting, the determination of witness credibility and the findings of fact of the Administrative Law Judge will not be disturbed because only he had the opportunity to hear and observe witnesses.

Estate of Aqaakt Tungnuitet (Willie Sampson), 8 IBIA 1 (Jan. 31, 1980)

Dismissal

Under 43 CFR 4.320 (1981), service of a copy of a notice of appeal on all interested parties is not a jurisdictional requirement, and an appeal will not be dismissed for failure of service when interested parties have received actual notice of the pendency of the appeal.

Estate of Vilas Florence First Youngbear, 10 IBIA 3 (June 4, 1982) 89 I.D. 291

INDIAN PROBATE--Continued

APPEAL (See also PLEADING, RECONSIDERATION--if included in this Index.)--Continued

Matters Considered on Appeal

Ordinarily the Board of Indian Appeals will not consider an issue raised for the first time on appeal. However, the Board has held that jurisdiction is a fundamental question and will be considered on appeal whether or not it was previously raised. This same reasoning will be applied whether it is the Department's jurisdiction that is being challenged or the jurisdiction of another judicial or quasi-judicial body upon whose decision the Department has relied.

Estate of James Harry Pekah, 11 IBIA 237 (July 6, 1983)

Standing to Appeal

Failure to file timely appeal in conformity to Departmental regulations precludes appellant from obtaining review of Administrative Law Judge's initial decision as well as collateral orders.

Estate of George Swift Bird, 10 IBIA 63 (Aug. 16, 1982)

A party to an Indian probate proceeding may file a notice of appeal with the Board of Indian Appeals under 43 CFR 4.320 from an order denying rehearing even though the petition for rehearing before the Administrative Law Judge was filed by another party.

Estate of James Harry Pekah, 11 IBIA 237 (July 6, 1983)

ATTORNEYS AT LAW

Fees

Attorneys fees are allowable as a charge against the administration of the estate based upon the record showing that work expended, complexity of issues presented and situation of successful party justified the fee billed in accordance with Departmental regulation.

Estate of Howard Good Elk (or Pacer), 9 IBIA 38 (July 20, 1981)

Under 43 CFR 4.281, an Administrative Law Judge or the Board of Indian Appeals is an authorized representative of the Secretary within the meaning of 25 CFR 115.9 to approve the disbursement of trust funds from an Individual Indian Money account for the payment of attorney fees arising from representation of an Indian client in a Departmental probate proceeding.

In re Attorney Fees Request of Costa E. Dagg, 12 IBIA 132 (Jan. 23, 1984) 91 I.D. 39

In considering a petition for the award of attorney fees in an Indian probate proceeding, the Board will examine the itemized list of services provided to the client to determine whether each item is allowable.

In re Attorney Fees Request of Joanne Foster & In re Attorney Fees Request of P. J. Sferra, 12 IBIA 172 (Feb. 10, 1984)

INDIAN PROBATE--Continued

CHILDREN, ADOPTED (See also ADOPTION, INHERITING--if included in this Index.)

Right to Inherit

Generally

The inheritance rights of an adopted child are determined by the law of the state in which trust real property is located.

Estate of Richard Doyle Two Bulls, 11 IBIA 77 (Mar. 15, 1983)

CHILDREN, ILLEGITIMATE (See also INHERITING--if included in this Index.)

Generally

The Administrative Law Judge held a full and complete hearing on the issue of decedent's possible paternity of Stephanie Young Bear and his finding that she was conceived by decedent through criminal intercourse with his purported daughter by adoption was supported by a preponderance of the evidence.

Estate of Victor Young Bear, 8 IBIA 130 (July 24, 1980) 87 I.D. 311

The status of an Indian child as illegitimate and the required proof of paternity are questions of Federal law.

Larry E. Ruff v. Area Director, Portland Area Office, Bureau of Indian Affairs, 11 IBIA 267 (Aug. 8, 1983)

Estate of James Howling Crane, Sr., 12 IBIA 209 (Mar. 22, 1984)

Right to Inherit

Acts of Congress Controlling

The right of an illegitimate daughter to inherit from the trust estate of her Indian father is controlled by the provisions of 25 U.S.C. § 371 (1976) notwithstanding the inconsistent provisions of any state statute. Under 25 U.S.C. § 371 the illegitimate daughter of an Indian beneficiary of trust lands is entitled to share in his estate in the same manner as his legitimate children.

Estate of Willis Attocknie, 9 IBIA 249 (Apr. 8, 1982) 89 I.D. 193

Child from Father

Under 25 U.S.C. § 371 (1976), an otherwise illegitimate child can inherit from the person shown to be her father.

Estate of Robert R. Monroe, 9 IBIA 67 (Sept. 3, 1981)

Under 25 U.S.C. § 371 (1976), an illegitimate Indian child is entitled to inherit from the person shown to be his father.

Estate of Richard Doyle Two Bulls, 11 IBIA 77 (Mar. 15, 1983)

Estate of James Howling Crane, Sr., 12 IBIA 209 (Mar. 22, 1984)

INDIAN PROBATE--Continued

CLAIM AGAINST ESTATE (See also DIVORCE, LIEN, LIMITATION Index.)

Generally

The Board is not limited in its scope of review of an Administrative Law Judge's disposition of claims and may exercise the inherent authority of the Secretary to correct a manifest injustice or clear error where appropriate.

The amount of a claim which must be paid from trust assets is as crucial a decision as whether such claim should be paid at all. It would therefore be improper for the Administrative Law Judge to allow the agency superintendent to determine the amount of an approved claim which must be paid a general creditor based on future documentation of the creditor's exhaustion of an Indian decedent's non-trust assets.

Estate of John Joseph Kipp, 8 IBIA 30 (Mar. 14, 1980) 87 I.D. 98

Allowable Items

The Administrative Law Judge conducting an Indian probate proceeding is required to ensure that all claims against the decedent's trust estate are legally allowable before approving them for payment.

Estate of Wesley Bennett Anton, 12 IBIA 139 (Jan. 23, 1984)

Proof of Claim

It would defeat the intent of Congress, which has formulated strict rules for the Secretary to follow in the management of trust property, for claims arising from alleged agreements affecting trust realty to be allowed on the basis of mere parol evidence. The potential for fraud would otherwise be too great.

Estate of John Joseph Kipp, 8 IBIA 30 (Mar. 14, 1980) 87 I.D. 98

Failure by unsecured tribal creditor to appear at probate hearing coupled with filing by the tribe of an incomplete statement of account upon which the creditor's claim was based permitted the probate Administrative Law Judge to disallow the tribe's claim.

Estate of Elmer A. Olney, 8 IBIA 166 (Oct. 23, 1980)

The mere assertion by a Government agency that its records show that it has a claim against an Indian decedent's trust estate is insufficient to prove entitlement to the claimed amount.

Estate of Wesley Bennett Anton, 12 IBIA 139 (Jan. 23, 1984)

Source of Funds for Payment

While the Department's regulations do not explicitly recite that trust assets may be utilized for the payment of general creditors' claims only after all other sources of compensation have been exhausted, this limitation is implicit in both the Department's regulatory plan for the payment of claims and in the nature of the trust relationship between the Secretary and Indian heirs of allotted lands. Any trustee, let alone the Secretary, would be derelict who generally commits

INDIAN PROBATE--Continued

CLAIM AGAINST ESTATE (See also DIVORCE, LIEN, LIMITATION Index.)--Continued

Source of Funds for Payment--Continued

trust funds to pay debts legally compensable from other sources.

Estate of John Joseph Kipp, 8 IBIA 30 (Mar. 14, 1980) 87 I.D. 98

Under 43 CFR 4.252, land remaining in Indian trust status after inheritance is liable for the payment of claims against the estate of the decedent only to the extent of income from its use. Trust funds held by the decedent or accrued to the estate at the time of death can be applied against claims regardless of whether that money will remain in trust after inheritance.

Estate of Eugene B. Trust v. Acting Aberdeen Area Director, Bureau of Indian Affairs, 11 IBIA 203 (May 27, 1983)

Timely Filing

Generally

In accordance with 43 CFR 4.250, all claims against the estate of a deceased Indian held by creditors chargeable with notice of the hearing under 43 CFR 4.211(c) shall be filed prior to the conclusion of the first probate hearing and if they are not so filed, they shall be forever barred.

Estate of John Joseph Kipp, 8 IBIA 30 (Mar. 14, 1980) 87 I.D. 98

COMPROMISE SETTLEMENTS

The Board of Indian Appeals will accept a proposed settlement agreement when it appears that the requirements of 43 CFR 4.207 have been met.

Estate of Dennis Gail Bearye, 11 IBIA 135 (Mar. 28, 1983)

The acceptance by an Administrative Law Judge of a compromise settlement meeting the requirements of 43 CFR 4.207(a) constitutes a final determination of the heirs of a deceased Indian.

Estate of Eugene B. Trust v. Acting Aberdeen Area Director, Bureau of Indian Affairs, 11 IBIA 203 (May 27, 1983)

DETERMINATION OF HEIRS BY WAIVER OR AGREEMENT

The acceptance by an Administrative Law Judge of a compromise settlement meeting the requirements of 43 CFR 4.207(a) constitutes a final determination of the heirs of a deceased Indian.

It is error for the Bureau of Indian Affairs to lease land in the estate of a deceased Indian under 25 CFR 162.2(a)(3) on the grounds that the heirs of the estate are "undetermined" when an Administrative Law Judge has accepted a compromise settlement of the estate entered into by all possible heirs and meeting the requirements of 43 CFR 4.207(a).

Estate of Eugene B. Trust v. Acting Aberdeen Area Director, Bureau of Indian Affairs, 11 IBIA 203 (May 27, 1983)

INDIAN PROBATE--Continued

DIVORCE (See also CLAIM AGAINST ESTATE--if included in this Index.)

Generally

The Board has consistently followed the rule that the status of an individual is determined by the law of the jurisdiction having the most significant contacts with the individual or in which the relationship at issue was created. Laws governing the status of an individual must be distinguished from laws governing inheritance.

Estate of Richard Doyle Two Bulls, 11 IBIA 77 (Mar. 15, 1983)

Indian Custom

The Cheyenne-Arapaho Indian Tribe of Oklahoma discontinued recognizing Indian custom marriages and divorces by adoption of an ordinance approved by the Secretary of the Interior on Feb. 1, 1940. The right to designate the customs that are to be given recognition in regulating matters that affect tribal internal and social relations rests with each tribe as an incident of its sovereignty, and tribal ordinances or decrees regarding such customs are honored by the Department in its probate of Indian estates.

Estate of Mark Turtle, Sr., 8 IBIA 272 (Apr. 15, 1981)

Estate of Thomas Elvard Lumpmouth, 8 IBIA 275 (Apr. 15, 1981)

Where no evidence was received at probate hearing to show the customs of any Indian tribe concerning regulation of the domestic relations of members of the tribe, a ruling by an Indian probate Administrative Law Judge that he could officially notice the existence of divorce by Yakima tribal custom was error. Since no evidence was offered to show that decedent, who was of Nez Perce and Yakima ancestry, and appellee, of Alaskan Native descent, lived in tribal relations under the jurisdiction of the Yakima tribe, it was error to conclude they were nonetheless married in accordance with Yakima customary law.

Estate of Matthew Cook, 9 IBIA 52 (July 29, 1981) 88 I.D. 676

ESCHEAT

The Act of Nov. 24, 1942, 56 Stat. 1022 (25 U.S.C. § 373b (1976)) is not ambiguous. It plainly states that where, as here, a public domain allotment exceeding a value of $2,000 lies adjacent to an Indian community and may be advantageously used for Indian purposes, such allotment shall be held in trust by the United States for such Indians as Congress (not the Secretary of the Interior) may designate, where the owner of the allotment dies intestate without heirs eligible to inherit such allotment.

Estate of Jesse J. Jones, 8 IBIA 205 (Dec. 8, 1980) 87 I.D. 601

EVIDENCE

Generally

The Administrative Law Judge held a full and complete hearing on the issue of decedent's possible paternity of Stephanie Young Bear and his finding that

INDIAN PROBATE--Continued

EVIDENCE--Continued

Generally--Continued

she was conceived by decedent through criminal intercourse with his purported daughter by adoption was supported by a preponderance of the evidence.

Estate of Victor Young Bear, 8 IBIA 130 (July 24, 1980) 87 I.D. 311

The burden of proving that the initial decision in the probate of a deceased Indian's trust estate was incorrect is on the person seeking reopening.

Estate of Jason Crane, 12 IBIA 165 (Feb. 3, 1984)

Insufficiency of

Where testimony at hearing established that testatrix was aged, had poor eyesight, and had lost the power of speech following a stroke, the testimony was insufficient to establish that she lacked testamentary capacity or had made her will under the undue influence of another, where the witnesses to the will testified she knew objects of her bounty, the extent of her property, and the distribution she desired to make of her trust property.

Estate of Jane Echivaudah, a.k.a. Anna Chahcenah, 9 IBIA 112 (Oct. 30, 1981)

At a hearing ordered upon a petition for reopening an estate to permit evidence to be taken to rebut an initial determination of heirship, the burden of establishing that the initial order was in error is upon the petitioners. Proof that decedent was survived by a son offered by the mother of the child and supported by a State birth certificate and the judicial admission of decedent that the child was his son was not overcome by statements of other relatives of decedent that decedent had denied paternity and conducted himself as though he were childless.

Estate of Robert M. Morin, 9 IBIA 188 (Mar. 5, 1982)

Where appellant children sought to overturn finding that appellee was a daughter of decedent, which finding was based in part upon a birth certificate showing decedent to be appellee's father and upon testimony of a relative of the mother concerning the circumstances of appellee's birth, the offered testimony of another man that he instead could possibly have been the father, which was vague and uncorroborated by other evidence, was insufficient to support reversal of prior findings concerning heirship.

Estate of Willis Attocknie, 9 IBIA 249 (Apr. 8, 1982) 89 I.D. 193

The testimony of decedent's wife and legitimate children that they were unaware of the existence of an illegitimate child until after decedent's death was insufficient to support reversal of finding of paternity based in part upon census records and upon the testimony of appellee's mother.

Estate of Harry M. Johnson, 10 IBIA 1 (June 3, 1982)

INDIAN PROBATE--Continued

EVIDENCE--Continued

Insufficiency of--Continued

Reopening of estate closed for 66 years was properly denied where there was no evidence offered to show probable error in the determination of heirs made by the examiner in 1915.

Estate of Katie Ross Stephens, 10 IBIA 9 (June 4, 1982)

Reopening of estate closed for 45 years was properly denied where the petition to reopen and record of prior proceedings taken together established petitioner lacked evidence to show error in the determination of heirs made by the examiner in 1937.

Estate of Frank Pare, 10 IBIA 61 (July 30, 1982)

The burden of proving that the initial decision in the probate of a deceased Indian's trust estate was incorrect is on the person seeking reopening.

Estate of Joseph Wyatt, 11 IBIA 244 (July 15, 1983)

Estate of Wilma Florence First Youngman, 12 IBIA 219 (Apr. 4, 1984)

Estate of Fred Redstone, Sr., 13 IBIA 44 (Nov. 7, 1984)

Estate of Pearl Appenzey Marquerah, 13 IBIA 49 (Nov. 27, 1984)

Newly Discovered Evidence

An Administrative Law Judge may properly deny a petition for rehearing based upon newly discovered evidence which is the same in nature as that previously considered and if heard would be merely cumulative of evidence already presented.

Estate of Aapaki Tungnuitat (Willie Sampson), 8 IBIA 1 (Jan. 31, 1980)

Proof of Marriage

Under Montana law, the burden of proving that a relationship illicit in its inception changed into a lawful common law marriage is on the person asserting the validity of the marriage. Where there is proof showing a couple entered into a valid common law marriage following the divorce of one of the parties, the Board will find a marriage.

Estate of Richard Doyle Two Bulls, 11 IBIA 77 (Mar. 15, 1983)

GUARDIAN AD LITEM

Generally

When a party in interest was a minor at the time of the probate proceeding at issue, he cannot deny notice of said proceedings when notice was given to a guardian ad litem on his behalf and the guardian ad litem appointed by the Examiner of Inheritance, now Administrative Law Judge, appeared at the hearing on his behalf and was present at every stage of the hearing.

Estate of Katie Crossguns, 10 IBIA 141 (Oct. 14, 1982)

GUARDIAN AD LITEM--Continued

Generally--Continued

Under 43 CFR 4.242(h), a petition to reopen a closed Indian trust estate must be filed by a person who had no notice of the original hearing. Notice to and active representation by the guardian ad litem of a minor constitutes notice to the minor.

Estate of Eugene Patrick Dupuis, 11 IBIA 11 (Dec. 28, 1982)

Departmental regulations requiring that a guardian ad litem be appointed for a minor or for an incompetent person in an Indian probate proceeding are intended to ensure that the interests of such a party are fully represented at the hearing.

Estate of Jason Crane, 12 IBIA 165 (Feb. 3, 1984)

HEARING (See also ADMINISTRATIVE PROCEDURE, REHEARING--if included in this Index.)

Generally

Notice of a hearing is not defective when notice was sent to the appellant at his last known address more than a month before the hearing, the letter was not returned, testimony of other individuals attending the hearing showed that appellant knew of the hearing, and appellant's notice of appeal shows on its face that he knew of the hearing.

Estate of Andrew Jackson, 12 IBIA 39 (Oct. 18, 1983)

Full and Complete

When a party to an Indian probate proceeding appears without an attorney, the Administrative Law Judge has a duty not to be a mere umpire, but to see that all relevant facts are developed.

Where a party to an Indian probate proceeding was not represented by counsel and was obviously unprepared for proper presentation of testimony and ignorant of significance of the facts, the Administrative Law Judge had the duty to see that all relevant facts and circumstances, both favorable and unfavorable to the parties, were brought out.

Estate of Cecelia Hummingbird French, 8 IBIA 102 (June 20, 1980)

The Administrative Law Judge held a full and complete hearing on the issue of decedent's possible paternity of Stephanie Young Bear and his finding that she was conceived by decedent through criminal intercourse with his purported daughter by adoption was supported by a preponderance of the evidence.

Estate of Victor Young Bear, 8 IBIA 130 (July 24, 1980) 87 I.D. 311

Although unorthodox methods of conducting hearings in Indian probate proceedings are not encouraged, when circumstances beyond the control of the parties or Judge necessitate unusual procedures, the Administrative Law Judge bears an additional responsibility to ensure that all parties are fully heard and that the Department's trust responsibility is properly discharged.

Estate of Jesse Pavaty, 12 IBIA 277 (June 11, 1984)

HEARING (See also ADMINISTRATIVE PROCEDURE, REHEARING--if included in this Index.)--Continued

Notice

The failure of an Administrative Law Judge to give proper notice of an Indian probate hearing will be held to excuse a party's failure to attend the hearing and to present evidence.

Estate of Richard Evans Walker, 12 IBIA 44 (Oct. 28, 1983)

INDIAN REORGANIZATION ACT of June 18, 1934 (Wheeler-Howard Act) (25 U.S.C. §§ 461-486)

Construction of Section 8

Jurisdiction of Indian tribe over Quinault Reservation where estate trust property was located being material to a decision concerning the eligibility of a devisee to take property under an Indian will, it was error to hold that the General Allotment Act conferred jurisdiction over the reservation upon the tribes of persons allotted on the reservation without regard to the historical development of the reservation and the actual implementation of the treaty rights of the tribes concerned. The record demonstrates that since acceptance of the Indian Reorganization Act of 1934 (IRA) the Quinault Tribe exercised exclusive jurisdiction over the Quinault Reservation, and that the Quileute Tribe (one of the tribes whose hereditary members accepted Quinault allotments) had earlier elected to forego any treaty rights it may have claimed in the Quinault Reservation in order to retain its ancestral village at LaPush. The record establishes jurisdiction over the Quinault Reservation to be in the Quinault Tribe, an IRA tribe.

Sec. 4 of the Indian Reorganization Act of 1934 prior to amendment in 1980 did not permit devises of trust property found on reservations subject to the Act to persons who were neither heirs of the decedent allottee nor members of the tribe having jurisdiction over the reservation where the trust land is located. Thus, since appellee was neither a member of the Quinault Tribe nor an heir of decedent, he was barred from taking trust property on the Quinault Reservation under the decedent's will.

Estate of Joseph Villenni, 8 IBIA 295 (May 28, 1981) 88 I.D. 561

INHERITING (See also CHILDREN, ADOPTED; CHILDREN, ILLEGITIMATE; WILLS--if included in this Index.)

Generally

The Board has consistently followed the rule that the status of an individual is determined by the law of the jurisdiction having the most significant contacts with the individual or in which the relationship at issue was created. Laws governing the status of an individual must be distinguished from laws governing inheritance.

Estate of Richard Doyle Two Bulls, 11 IBIA 77 (Mar. 15, 1983)

It is manifest error to include in the chain of title to Indian trust land the name of an individual who was not alive to inherit.

Estate of James Large, 12 IBIA 224 (Apr. 12, 1984) 91 I.D. 185

INDIAN PROBATE--Continued

INHERITING (See also CHILDREN, ADOPTED; CHILDREN, ILLEGITIMATE; WILLS--if included in this Index.) --Continued

Non-Indian

The Department of the Interior has no authority to hold land in Indian trust status for non-Indians. When non-Indians acquire Indian trust land through inheritance or devise, fee patent title should normally be transferred immediately to such individuals pursuant to 25 CFR 152.6.

Estate of Eugene R. Trust v. Acting Aberdeen Area Director, Bureau of Indian Affairs, 11 IBIA 203 (May 27, 1983)

INTERLOCUTORY APPEALS

Administrative Law Judges (Indian Probate) have authority under 43 CFR 4.28 to certify interlocutory questions to the Board of Indian Appeals.

Estate of James Largo, 12 IBIA 224 (Apr. 12, 1984) 91 I.D. 185

In order to conserve judicial resources, to expedite final resolution of cases, and to prevent the cost and delay of successive appeals, interlocutory appeals should be reserved for those extraordinary circumstances where prompt appellate consideration is essential, as, for example, in those situations in which the decision by the Administrative Law Judge threatens a party with immediate and serious irreparable harm which, as a practical matter, cannot be redressed on appeal. In those cases in which any error in the interlocutory decision, as well as any other error that might be alleged, can be considered and corrected on appeal, an interlocutory appeal is generally not appropriate.

Estate of Neal Kay Manuel, 13 IBIA 58 (Dec. 27, 1984)

KLAMATH TRIBE

While it is true that the Klamath Termination Act, Aug. 13, 1954, 68 Stat. 718, 25 U.S.C. §§ 564-564x (1976), rendered inapplicable to Klamath tribal members the Secretary's usual jurisdiction over Indian heirship determinations as set forth in 25 U.S.C. §§ 372-373 (1976) (see 25 U.S.C. § 564h), Congress, by the more recent Act of Oct. 1, 1965, 79 Stat. 897, 25 U.S.C. §§ 565-565g (1976), specifically empowered the Secretary of the Interior to determine the rightful heirs of deceased Klamath enrollees entitled to a share of judgment funds payable from the United States for the limited purpose of seeing that such funds are distributed to the heir or heirs so determined.

The Secretary has no statutory authority to pay creditors' claims against estates of deceased Klamath Indians out of judgment funds distributable by the Secretary under the Act of Oct. 1, 1965, 79 Stat. 897.

Gertrude E. Sherman v. Acting Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 25 (June 29, 1981) 88 I.D. 619

Although the Klamath Termination Act of Aug. 13, 1954, 68 Stat. 718, 25 U.S.C. §§ 564-564x (1976), rendered the Secretary's usual probate jurisdiction inapplicable to Klamath Indians, the Act of Oct. 1, 1965, 79 Stat. 897, 25 U.S.C. §§ 565-565g (1976), gave the Secretary limited jurisdiction to determine the

INDIAN PROBATE--Continued

KLAMATH TRIBE--Continued

heirs of deceased Klamath enrollees pursuant to his duty to distribute judgment funds.

Ivonne Weiser et al. v. Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 76 (Sept. 29, 1981)

Under 25 U.S.C. § 565a (1976) the share of judgment funds due to a deceased enrollee of the Klamath Tribe passes by operation of Federal law to the decedent's heir or heirs as determined by the Secretary.

Melody Ann Wright and Karleen McKenzie, Guardian Ad Litem v. Acting Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 147 (Jan. 7, 1982)

Under 25 U.S.C. § 565a (1976) the share of judgment funds of a deceased enrolled member of the Klamath Tribe passes by operation of Federal law to the decedent's heirs as determined by the Secretary. Where transcripts of testimony by appellant and her mother appearing in the record on appeal indicate that appellant has little prospect for ultimate success in the event that an evidentiary hearing which she seeks were to be held by the Department to inquire into her claimed relationship to decedent, the decision of the Area Director which correctly states the law to be applied to the facts shown of record will be affirmed.

Tonia Marie Connady Wiggs Holcombe v. Portland Area Director, Bureau of Indian Affairs, 9 IBIA 192 (Mar. 9, 1982)

LIMITATION OF ACTIONS (See also CLAIM AGAINST ESTATE--if included in this Index.)

In accordance with Department practice, the Board will consider four factors in ascertaining whether its quasi-judicial decisions may be applied retroactively: (1) the nature of the reliance placed upon the prior applications of law by the parties; (2) the harm or prejudice to those who relied upon previous principles of law; (3) the purpose of the law in light of public policy; and (4) the harm to the administration of justice and public purpose.

Estate of Nellie Brown, 11 IBIA 1 (Nov. 30, 1982)

MARRIAGE

Generally

The Cheyenne-Arapaho Indian Tribe of Oklahoma discontinued recognizing Indian custom marriages and divorces by adoption of an ordinance approved by the Secretary of the Interior on Feb. 1, 1940. The right to designate the customs that are to be given recognition in regulating matters that affect tribal internal and social relations rests with each tribe as an incident of its sovereignty, and tribal ordinances or decrees regarding such customs are honored by the Department in its probate of Indian estates.

Estate of Mark Turtle, Sr., 8 IBIA 272 (Apr. 15, 1981)

Estate of Thomas Elward Longmouth, 8 IBIA 275 (Apr. 15, 1981)

INDIAN PROBATE--Continued

MARRIAGE--Continued

Generally--Continued

The Board has consistently followed the rule that the status of an individual is determined by the law of the jurisdiction having the most significant contacts with the individual or in which the relationship at issue was created. Laws governing the status of an individual must be distinguished from laws governing inheritance.

Estate of Richard Doyle Two Bulls, 11 IBIA 77 (Mar. 15, 1983)

The status of an individual is determined by the law of the jurisdiction having the most significant contacts with the individual or in which the relationship at issue was created.

Estate of Wilma Florence First Youngman, 12 IBIA 219 (Apr. 4, 1984)

Common Law

Under Montana law, the burden of proving that a relationship illicit in its inception changed into a lawful common law marriage is on the person asserting the validity of the marriage. Where there is proof showing a couple entered into a valid common law marriage following the divorce of one of the parties, the Board will find a marriage.

Estate of Richard Doyle Two Bulls, 11 IBIA 77 (Mar. 15, 1983)

Common Law and Indian Custom Distinguished

A holding that decedent and appellee were married by operation of tribal custom based upon a conclusion that the birth of nine children to the couple required a finding they were married was erroneous where the record affirmatively showed decedent was married to another woman at the time of his cohabitation with appellee.

Estate of Matthew Cook, 9 IBIA 52 (July 29, 1981)
88 I.D. 676

Proof of Marriage

A common-law marriage must be established by the one alleging such a marriage.

Estate of Wilma Florence First Youngman, 12 IBIA 219 (Apr. 4, 1984)

NEZ PERCE TRIBE

Generally

The original power to determine membership, including adoption, is in the tribe. After approval of an individual for membership, a tribe retains the power to disenroll provided it follows provisions for termination of enrollment contained in its membership ordinance.

The Administrative Law Judge acted properly in relying on one of two dates stipulated to by the

INDIAN PROBATE--Continued

NEZ PERCE TRIBE--Continued

Generally--Continued

parties regarding a valuation date for the acquisition of land under the Nez Perce Inheritance Act.

Estate of Antoine (Ke Nepel) Hill, 8 IBIA 121 (July 21, 1980)

Valuation Reports

Neither the Administrative Law Judge nor the Board is bound by the Bureau of Indian Affairs' report and findings contained therein. Instead consideration will be given to the complete record in arriving at a determination as to fair market value.

Estate of Antoine (Ke Nepel) Hill, 8 IBIA 121 (July 21, 1980)

NONRESTRICTED PROPERTY

The Department of the Interior has no authority to probate non-trust assets held by an Indian at the time of death. A finding, made in the context of a Departmental probate proceeding, that the will of an Indian holding non-trust assets is a valid testamentary instrument, cannot operate to transfer non-trust property. Such property must be probated through the appropriate state or tribal court.

Estates of Edwin (Edward) J. Scarborough & Nora Scarborough Brigmon, 11 IBIA 179 (May 10, 1983)

NOTICE OF HEARING

Generally

When a party in interest was a minor at the time of the probate proceeding at issue, he cannot deny notice of said proceedings when notice was given to a guardian ad litem on his behalf and the guardian ad litem appointed by the Examiner of Inheritance, now Administrative Law Judge, appeared at the hearing on his behalf and was present at every stage of the hearing.

Estate of Katie Crossguns, 10 IBIA 141 (Oct. 14, 1982)

Under 43 CFR 4.242(h), a petition to reopen a closed Indian trust estate must be filed by a person who had no notice of the original hearing. Notice to and active representation by the guardian ad litem of a minor constitutes notice to the minor.

Estate of Eugene Patrick Dupuis, 11 IBIA 11 (Dec. 28, 1982)

Jurisdictional

A party who has received actual notice of a probate hearing lacks standing to file a petition to reopen.

Estate of Katie Crossguns, 10 IBIA 141 (Oct. 14, 1982)

INDIAN PROBATE--Continued

REHEARING (See also ADMINISTRATIVE PROCEDURE, HEARING--if included in this Index.)

Generally

A showing by creditor Indian tribe made in conformity to 43 CFR 4.241(c) that its creditor's claim was facially timely and valid and that there were unusual circumstances surrounding the presentation of the claim entitles the petitioner tribe to consideration on the merits of its argument for rehearing pursuant to 43 CFR 4.241(c).

Estate of Elmer A. Olney, 8 IBIA 166 (Oct. 23, 1980)

A petition for rehearing deficient under provisions of 43 CFR 4.241 in that it was not made under oath and did not state grounds upon which it was based was properly denied by the Administrative Law Judge. The petition for rehearing which failed to conform to regulatory requirements and also failed to show probable error, was properly denied.

Estate of John Bear Shield, 9 IBIA 1 (June 5, 1981)

An appellant who attended the original Indian probate hearing into a decedent's estate, raised no objection to decedent's will at that hearing, and fails to present to the Administrative Law Judge or to the Board of Indian Appeals any substantiation for later objections or explanation for the lack of such substantiation has not shown adequate grounds for rehearing under 43 CFR 4.241.

Estate of Andrew Jackson, 12 IBIA 39 (Oct. 18, 1983)

Rehearings in Indian probate proceedings are intended to allow consideration of alleged errors made by the Administrative Law Judge and to permit the introduction of evidence that could not, with diligent effort, have been discovered prior to the original hearing. They are not a means for presenting evidence and arguments that were known at the time of the original hearing but simply not introduced.

Estate of Alice Mae Sasse, 12 IBIA 281 (June 25, 1984)

Estate of Benjamin Kent, Sr. (Don Navanovar), 13 IBIA 21 (Aug. 29, 1984)

REOPENING

Generally

An estate closed for 50 years will not be reopened except in extraordinary circumstances to correct a manifest injustice.

Estate of John (Pete) Pixley and Emma Pixley, 8 IBIA 70 (Apr. 15, 1980)

A petition to reopen estate closed nearly 30 years ago was properly denied under authority of 43 CFR 4.242(h) where petitioner had actual notice of the hearing to probate will now alleged to be invalid and improperly construed.

Estate of Rebecca B. Coe, 8 IBIA 164 (Oct. 22, 1980)

INDIAN PROBATE--Continued

REOPENING--Continued

Generally--Continued

Where appellant niece of decedent petitioned to reopen estate to offer proof of inconsistent statements by decedent's former wife concerning the paternity of appellee who had earlier been found to be a surviving child of decedent's marriage to appellee's mother, the petition was insufficient to support an order to reopen since, assuming the offered evidence to have been admitted, it would not have changed the result in the heirship determination.

Estate of Howard Good Elk (or Pacer), 9 IBIA 38 (July 20, 1981)

Where appellant, brother of decedent, petitioned to reopen in conjunction with petition of another interested party and conditioned his appeal from the order denying reopening upon the same grounds as the other party, his appeal must succeed or fail for the same reasons as the appeal of the principal appellant. Since the co-appellant was unable to establish that the offered proof which was the basis of her petition would change the result of the decision below, reopening is not justified under existing Departmental regulations.

Estate of Howard Good Elk (or Pacer), 9 IBIA 41 (July 20, 1981)

A petition to reopen an Indian estate and its supporting documentation must, to be favorably considered, present some legal theory under which the petitioner might be able to make a claim against the estate and any facts required to support that theory.

Estate of Mary Martin Matoes Andrew Cave, 9 IBIA 196 (Mar. 15, 1982)

When reopening is denied by the Administrative Law Judge, a person seeking reopening should offer the evidence that would be presented at an evidentiary hearing to the Board of Indian Appeals which shall then decide, based upon that evidence, whether a sufficient showing was made to mandate reopening.

Reopening is granted for the purpose of preventing a miscarriage of justice based upon a showing that the evidence presented at the original hearing was incorrect, incomplete, or otherwise inadequate.

Estate of Miles Florence Fleet Youngman, 10 IBIA 3 (June 4, 1982) 89 I.D. 291

Reopening of estate closed for 66 years was properly denied where there was no evidence offered to show probable error in the determination of heirs made by the examiner in 1915.

Estate of Katie Rose Stephens, 10 IBIA 9 (June 4, 1982)

Reopening of estate closed for 45 years was properly denied where the petition to reopen and record of prior proceedings taken together established petitioner lacked evidence to show error in the determination of heirs made by the examiner in 1937.

Estate of Frank Pays, 10 IBIA 61 (July 30, 1982)

INDIAN PROBATE--Continued

REOPENING--Continued

Generally--Continued

A petition to reopen the probate of an Indian trust estate must, to be favorably considered, present some legal theory and the factual basis set out in supporting documentation to support the claimed relief.

Estate of Clara Whitehip, 10 IBIA 107 (Sept. 20, 1982)

The Board has frequently held that petitions to reopen closed estates require compelling proof that delay in requesting relief has not been occasioned by lack of diligence on the part of the petitioning parties.

Estate of Katie Crowsgun, 10 IBIA 141 (Oct. 14, 1982)

The Board has consistently held that petitions to reopen estates which have been closed for more than 3 years require compelling proof that the delay in requesting relief has not been occasioned by lack of diligence on the part of the petitioning parties.

Estate of Nellie Brown, 11 IBIA 1 (Nov. 30, 1982)

Under the provisions of 43 CFR 4.242(h), the burden of proving entitlement to reopening in Indian probate proceedings lies with the petitioner.

Estates of Edwin (Edward) J. Scarborough & Nora Scarborough Brigmon, 11 IBIA 179 (May 10, 1983)

Estate of Louise Amiotte Leitar, 12 IBIA 229 (Apr. 30, 1984)

Reopening of closed Indian probate proceedings is granted to allow the Department to investigate whether allegations, raised by a person who did not have knowledge of the original hearing and has diligently pursued the case since learning of potential rights, support the conclusion that the prior determination constitutes a manifest injustice that can be administratively corrected.

The Board of Indian Appeals has consistently held that petitions to reopen closed Indian trust estates require compelling proof that delay in requesting relief was not occasioned by lack of diligence on the part of the petitioning party.

The burden of proving that the initial decision in the probate of a deceased Indian's trust estate was incorrect is on the person seeking reopening.

Estate of Joseph Pratt, 11 IBIA 244 (July 15, 1983)

The timely filing of a notice of appeal from an order denying reopening of an Indian decedent's estate is a jurisdictional prerequisite.

Estate of Ralph James (Elgar) Hall, 12 IBIA 62 (Nov. 10, 1983)

An Administrative Law Judge has authority under 43 CFR 4.242(h) to reopen an Indian probate estate that has been closed for more than 3 years.

The Board of Indian Appeals has consistently held that petitions to reopen closed Indian trust estates require compelling proof that delay in requesting

INDIAN PROBATE--Continued

REOPENING--Continued

Generally--Continued

relief was not occasioned by lack of diligence on the part of the petitioning party.

The burden of proving that the initial decision in the probate of a deceased Indian's trust estate was incorrect is on the person seeking reopening.

Estate of Jason Crane, 12 IBIA 165 (Feb. 3, 1984)

The failure of the Bureau of Indian Affairs to seek reopening of a closed Indian probate estate when it has information indicating some likelihood that a probate decision is incorrect is manifest error.

Estate of John Isaza Antonio, 12 IBIA 177 (Feb. 29, 1984)

The burden of proving that the initial decision in the probate of a deceased Indian's trust estate was incorrect is on the person seeking reopening.

Estate of Nina Florence First Tounsend, 12 IBIA 219 (Apr. 4, 1984)

Estate of Fred Redstone, Sr., 13 IBIA 44 (Nov. 7, 1984)

Estate of Pearl Agopsowy Wanquoyah, 13 IBIA 49 (Nov. 27, 1984)

When reopening of a closed Indian estate is sought for the sole purpose of determining the appellant's nationality or Indian status, and no alteration in the distribution of the decedent's estate is sought, reopening will be allowed under 43 CFR 4.206 without regard to the restrictions set forth in 43 CFR 4.242 and in previous decisions of the Board of Indian Appeals interpreting that regulation.

Estate of Edward (Agopetah) Bert, 12 IBIA 253 (May 22, 1984) 91 I.D. 235

Standing to Petition for Reopening

The regulatory entitlement to seek reopening of an estate closed for more than 3 years has been consistently interpreted by the Department as precluding petitions which are patently dilatory. It has thus been held that a petition to reopen an estate under authority of 43 CFR 4.242(h) must be filed within a reasonable time ater the petitioner knew or should have known of the facts or law upon which such petition is based. In this case, it was not error for the Administrative Law Judge to deny appellant's petition for reopening for lack of timeliness where she waited 11 years after final departmental approval of her mother's will to challenge a specific devise made thereunder.

Estate of Josephine Bright Fowler, 8 IBIA 201 (Dec. 3, 1980)

Where agency superintendent charged with administration of Indian trust estate petitioned to reopen estate to correct erroneous heirship determination 4 years after a final order of distribution had been made, reopening was properly ordered pursuant to 43 CFR 4.242 where the record affirmatively showed the initial heirship determination was erroneous.

INDIAN PROBATE--Continued

REOPENING--Continued

Standing to Petition for Reopening--Continued

the 4-year delay in discovery of the error was explained, and correction of the error was administratively feasible.

Estate of Walter George and Minnie Racehorse George Snipe, 9 IBIA 20 (June 12, 1981)

Because the Department's regulations authorize the reopening of estates closed for more than 3 years, a petition filed pursuant to 43 CFR 4.242(h) cannot be summarily dismissed for untimeliness.

A party who has received actual notice of a probate hearing lacks standing to file a petition to reopen.

Estate of Katie Crossguns, 10 IBIA 141 (Oct. 14, 1982)

Under 43 CFR 4.242(h), a petition to reopen a closed Indian trust estate must be filed by a person who had no notice of the original hearing. Notice to and active representation by the guardian ad litem of a minor constitutes notice to the minor.

Estate of Eugene Patrick Dupuis, 11 IBIA 11 (Dec. 28, 1982)

The Superintendent is a proper party to seek reopening of a closed Indian estate under 43 CFR 4.242.

Estate of Helen Ward Willey, 11 IBIA 43 (Jan. 31, 1983)

A person who participated in the original probate proceeding lacks standing to petition to reopen the estate.

Estates of Edwin (Edward) J. Scarborough & Nora Scarborough Brignone, 11 IBIA 179 (May 10, 1983)

An adult who participated in the original probate hearing into a deceased Indian's estate lacks standing to petition for reopening.

Estate of Julia Tiovah, 11 IBIA 211 (June 8, 1983)

Waiver of Time Limitation

Where agency superintendent charged with administration of Indian trust estate petitioned to reopen estate to correct erroneous heirship determination 4 years after a final order of distribution had been made, reopening was properly ordered pursuant to 43 CFR 4.242 where the record affirmatively showed the initial heirship determination was erroneous, the 4-year delay in discovery of the error was explained, and correction of the error was administratively feasible.

Estate of Walter George and Minnie Racehorse George Snipe, 9 IBIA 20 (June 12, 1981)

INDIAN PROBATE--Continued

REPRESENTATION

The fact that an individual participating in a Departmental Indian probate proceeding is not represented by counsel does not entitle him to special rights not enjoyed by individuals who are so represented.

When an individual participating in a Departmental Indian probate proceeding is not represented by counsel, the Federal trust responsibility, which is shared by the Administrative Law Judge conducting the proceeding, requires that the Administrative Law Judge ensure that manifest injustice is not committed, or if committed, is corrected.

Estate of Wesley Emmett Anton, 12 IBIA 139 (Jan. 23, 1984)

SECRETARY'S AUTHORITY

Generally

The Department of the Interior has no authority to probate non-trust assets held by an Indian at the time of death. A finding, made in the context of a Departmental probate proceeding, that the will of an Indian holding non-trust assets is a valid testamentary instrument, cannot operate to transfer non-trust property. Such property must be probated through the appropriate state or tribal court.

Estates of Edwin (Edward) J. Scarborough & Nora Scarborough Brignone, 11 IBIA 179 (May 10, 1983)

The Secretary of the Interior, pursuant to the statutory duty to determine the heirs of deceased Indians for whom the United States holds property in trust, has the power to determine whether a state court had jurisdiction to enter a decree apparently affecting the determination of heirs and to disregard such a state court decree under appropriate circumstances.

Estate of James Perry Pekah, 11 IBIA 237 (July 6, 1983)

The Department of the Interior is not bound by state court decisions in determining the heirs of a deceased Indian, but rather has the authority and responsibility to make an independent determination of the decedent's heirs. A state court decision may present persuasive evidence of heirship.

Estate of James Howling Crane, Sr., 12 IBIA 209 (Mar. 22, 1984)

SETTLEMENT (See also FAMILY ALLOWANCE AND SETTLEMENT--if included in this Index.)

The last will and testament of a deceased Indian may be modified by an agreement of the devisees in the form of a settlement of issues raised by or because of the will, if the modification is approved by an Administrative Law Judge or the Board of Indian Appeals on behalf of the Secretary of the Interior.

Estate of Stella Yalandry Williams, 13 IBIA 35 (Oct. 26, 1984)

INDIAN PROBATE--Continued

STATE LAW

Generally

Under Oklahoma law, if the decedent shall have been married more than once, the spouse at the time of death shall inherit of the property not acquired during coverture with such spouse only an equal part with each of the living children of decedent.

Estate of Cecelia Hummingbird French, 8 IBIA 102 (June 20, 1980)

It is not a proper function of the Board of Indian Appeals to determine whether a state law is in violation of the United States Constitution.

Estate of Nellie Brown, 11 IBIA 1 (Nov. 30, 1982)

The Department of the Interior has no authority to probate non-trust assets held by an Indian at the time of death. A finding, made in the context of a Departmental probate proceeding, that the will of an Indian holding non-trust assets is a valid testamentary instrument, cannot operate to transfer non-trust property. Such property must be probated through the appropriate state or tribal court.

Estates of Edwin (Edward) J. Scarborough & Nora Scarborough Brignone, 11 IBIA 179 (May 10, 1983)

The Secretary of the Interior, pursuant to the statutory duty to determine the heirs of deceased Indians for whom the United States holds property in trust, has the power to determine whether a state court had jurisdiction to enter a decree apparently affecting the determination of heirs and to disregard such a state court decree under appropriate circumstances.

Estate of James Verner Pokah, 11 IBIA 237 (July 6, 1983)

The Department of the Interior is not bound by state court decisions in determining the heirs of a deceased Indian, but rather has the authority and responsibility to make an independent determination of the decedent's heirs. A state court decision may present persuasive evidence of heirship.

Estate of James Howling Crane, Sr., 12 IBIA 209 (Mar. 22, 1984)

Applicability to Indian Probate, Intestate Estates

The Administrative Law Judge correctly chose to apply North Dakota law to determine intestate succession in Indian probate of trust lands pursuant to 25 U.S.C. § 348 (1976) where Indian decedent left non-Indian spouse and seven surviving children as heirs of her estate consisting of real property located on a reservation within North Dakota.

Estate of Malena B. Long, 8 IBIA 115 (July 10, 1980)

The right of an illegitimate daughter to inherit from the trust estate of her Indian father is controlled by the provisions of 25 U.S.C. § 371 (1976) notwithstanding the inconsistent provisions of any state statute. Under 25 U.S.C. § 371 the illegitimate daughter of an Indian beneficiary of trust lands is

STATE LAW--Continued

Applicability to Indian Probate, Intestate Estates --Continued

entitled to share in his estate in the same manner as his legitimate children.

Estate of Willis Attocknie, 9 IBIA 249 (Apr. 8, 1982) 89 I.D. 193

Applicability to Indian Probate, Testate

The Administrative Law Judge correctly ruled that the determination of the identity of all a decedent's heirs is unnecessary in a case where there is found to be a valid will disposing of the testator's entire estate.

Estate of Frank (Francis) Keahtigh, 9 IBIA 190 (Mar. 9, 1982)

TRIBAL PURCHASE OF INTEREST IN DECEDENT'S ESTATE

Where record indicates husband, who would otherwise have received trust property of deceased wife located on Yakima Reservation, did not timely receive notice of tribal determination to purchase inherited trust interest and where the notice and the appraisal relied upon by tribe for the valuation set out in the notice did not conform to requirements of Departmental regulation, a hearing on valuation is required although the time during which a demand for hearing should have been made had expired.

Estate of Angeline LaBelle Solis, 8 IBIA 312 (May 29, 1981)

WILLS (See also CONTRACT TO MAKE WILL, INHERITING-- if included in this Index.)

Generally

The Administrative Procedure Act, which is applicable to proceedings in Indian probate, requires that the factfinder develop a sufficient record to support his findings and conclusions. Where the record fails to support inconsistent findings by the factfinder below concerning periods of incompetence of the decedent prior to execution of a will found to be valid, the Interior Board of Indian Appeals will, on appeal, limit the conclusions of law to conclusions which are based upon the record. The Board finds that the factfinder's assertion that decedent was "confused" prior to the execution of her valid will in 1977 is not supported by the record developed at hearing, nor is a finding that influence was exerted upon her at times not relevant to the probate proceeding based upon evidence of record.

Estate of Catalina Clifford, 9 IBIA 165 (Jan. 29, 1982)

43 CFR 4.260(b) does not require that all Indian wills be submitted to the agency superintendent and examined by the Office of the Solicitor.

Estate of Carrie Standing Maddon Miller, 10 IBIA 128 (Oct. 5, 1982)

INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)--Continued

Alterations and Erasures

Alterations in an Indian will do not in and of themselves void the will when the meaning of the will is not changed. If a will contains unattested changes, the changes will be disregarded and the instrument admitted to probate when the original intention of the testator can be ascertained.

Estate of Grace Dion Antelope Horse Ring, 12 IBIA 232 (Apr. 30, 1984)

Children, Disinheritance of

Indian testator's statement that he was a single man having no children was not proof of an insane delusion so as to invalidate his Indian will where decedent had often denied paternity of appellant children and refused support and where the witnesses to the will agreed that testator was competent, knew the nature and extent of his property, and had dictated the terms of the will according to his own expressed desires.

Estate of William Mason Coltee, 9 IBIA 43 (July 27, 1981)

Construction of

Jurisdiction of Indian tribe over Quinault Reservation where estate trust property was located being material to a decision concerning the eligibility of a devisee to take property under an Indian will, it was error to hold that the General Allotment Act conferred jurisdiction over the reservation upon the tribes of persons allotted on the reservation without regard to the historical development of the reservation and the actual implementation of the treaty rights of the tribes concerned. The record demonstrates that since acceptance of the Indian Reorganization Act of 1934 (IRA) the Quinault Tribe exercised exclusive jurisdiction over the Quinault Reservation, and that the Quileute Tribe (one of the tribes whose hereditary members accepted Quinault allotments) had earlier elected to forego any treaty rights it may have claimed in the Quinault Reservation in order to retain its ancestral village at LaPush. The record establishes jurisdiction over the Quinault Reservation to be in the Quinault Tribe, an IRA tribe.

Sec. 4 of the Indian Reorganization Act of 1934 prior to amendment in 1980 did not permit devises of trust property found on reservations subject to the Act to persons who were neither heirs of the decedent allottee nor members of the tribe having jurisdiction over the reservation where the trust land is located. Thus, since appellee was neither a member of the Quinault Tribe nor an heir of decedent, he was barred from taking trust property on the Quinault Reservation under the decedent's will.

Estate of Joseph Willessi, 8 IBIA 295 (May 28, 1981)
88 I.D. 561

Disapproval of Will

Under the Supreme Court's holding in Tooahnippah v. Hickel, 397 U.S. 598 (1970), the Department may not revoke or rewrite an otherwise valid will disposing of Indian trust or restricted property that reflects a rational testamentary scheme simply because the disposition does not comport with the deciding official's conception of equity and fairness.

Estate of Ronald Richard Saubel, 9 IBIA 94 (Oct. 28, 1981)
88 I.D. 993

INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)--Continued

Disapproval of Will--Continued

An Indian will that evidences a rational testamentary scheme will not be disapproved.

Estate of Aaron (Allen) Ramsey, 11 IBIA 16 (Dec. 28, 1982)

Without some physical act by the testator expressly changing or revoking an Indian will, the Department is without authority to disapprove the will on the grounds that the testator intended to or did revoke the will.

The Department does not have the authority to disapprove a technically valid Indian will that evidences a rational testamentary scheme even though that scheme appears inequitable to an outsider.

Estate of Helen Ward Willer, 11 IBIA 43 (Jan. 31, 1983)

In determining whether an Indian will presents a testamentary scheme that is so unnatural or so lacking in rationality that it must be disapproved, the Department is bound by the holding of the Supreme Court in Tooahnippah v. Hickel, 397 U.S. 598 (1970).

Estate of Verena Gean Kitchell, 12 IBIA 258 (May 31, 1984)

Execution

Attesting witnesses' testimony that decedent while a patient at Wolf Point Hospital in 1965 executed will prepared by a typist at Hoxall Building was not rebutted by proof that a funded legal services agency did not begin operation in Wolf Point until 1967. The uncontradicted testimony of the attesting witnesses, which was not internally inconsistent or incredible could not, under the circumstances, be disregarded by the Administrative Law Judge.

Estate of Charles Hall, Sr., 8 IBIA 53 (Mar. 28, 1980)

Failure to Mention Child

A Bureau of Indian Affairs instruction to will drafters which requires children to be mentioned in wills prepared by the agency is merely an administrative guide, and is not binding upon a testator who wishes to ignore the instruction or disinherit his children.

Estate of William Mason Coltee, 9 IBIA 43 (July 27, 1981)

The failure of decedent's will to provide for two after-born children is insufficient to render the dispositive scheme irrational.

Estate of Ronald Richard Saubel, 9 IBIA 94 (Oct. 28, 1981)
88 I.D. 993

INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)--Continued

Holographic Will

A holographic will that is not attested by two disinterested witnesses is not valid.

Estate of Julia Tigrah, 11 IBIA 211 (June 8, 1983)

Mistake of Fact or Law

Indian testator's statement that he was a single man having no children was not proof of an insane delusion so as to invalidate his Indian will where decedent had often denied paternity of appellant children and refused support and where the witnesses to the will agreed that testator was competent, knew the nature and extent of his property, and had dictated the terms of the will according to his own expressed desires.

Estate of William Mason Coltee, 9 IBIA 43 (July 27, 1981)

Option to Purchase Real Property

An Indian testator may create an option to purchase trust real property by will.

Estate of Thomas Hall, Sr., 10 IBIA 17 (June 28, 1982) 89 I.D. 361

Proof of Will

Testimony by two attesting witnesses to decedent's will concerning time, place and manner of execution proved will in conformity to Departmental regulations notwithstanding that will was not in the form prescribed by regulations for "self-proved will," where will offered for probate complied with all other technical requirements of Indian wills.

Estate of Charles Hall, Sr., 8 IBIA 53 (Mar. 28, 1980)

Publication

There is no requirement in 43 CFR 4.260 that the testatrix publish her will by declaring to the witnesses that it is her last will and testament or that she be the person who requests the witnesses to sign.

Estate of Carrie Standing Haddon Miller, 10 IBIA 128 (Oct. 5, 1982)

Revocation

Without some physical act by the testator expressly changing or revoking an Indian will, the Department is without authority to disapprove the will on the grounds that the testator intended to or did revoke the will.

Estate of Helen Ward Miller, 11 IBIA 43 (Jan. 31, 1983)

Estate of Grace Dion Antelope Horse Ring, 12 IBIA 232 (Apr. 30, 1984)

INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)--Continued

Self-proved Wills

Testimony by two attesting witnesses to decedent's will concerning time, place and manner of execution proved will in conformity to Departmental regulations notwithstanding that will was not in the form prescribed by regulations for "self-proved will," where will offered for probate complied with all other technical requirements of Indian wills.

Estate of Charles Hall, Sr., 8 IBIA 53 (Mar. 28, 1980)

State Law

Applicability to Indian Probate

The execution of an Indian will is controlled by 25 U.S.C. § 373 (1976) and regulations published in 43 CFR 4.260-.262, not by state law.

Estate of Carrie Standing Haddon Miller, 10 IBIA 128 (Oct. 5, 1982)

Testamentary Capacity

Generally

The burden of proof as to testamentary incapacity in Indian probate proceedings is on those contesting the will.

The fact that one is aged, eccentric and occasionally forgetful or confused does not render such person incompetent to make a will.

Estate of Agnes Tunpquitat (Millie Sampson), 8 IBIA 1 (Jan. 31, 1980)

Where testimony at hearing established that testatrix was aged, had poor eyesight, and had lost the power of speech following a stroke, the testimony was insufficient to establish that she lacked testamentary capacity or had made her will under the undue influence of another, where the witnesses to the will testified she knew objects of her bounty, the extent of her property, and the distribution she desired to make of her trust property.

Estate of Jane Kchivaudah, a.k.a. Jane Chabsenah, 9 IBIA 112 (Oct. 30, 1981)

The burden of proving lack of testamentary capacity is on those contesting the will.

Estate of Carrie Standing Haddon Miller, 10 IBIA 128 (Oct. 5, 1982)

The burden of proof as to testamentary incapacity in Indian probate proceedings is on those contesting the will.

To invalidate an Indian will for lack of testamentary capacity, the evidence must show that the decedent did not know the natural objects of his bounty, the extent of his property, or the desired distribution of that property. Furthermore, the evidence must show that this condition existed at the time of the execution of the will.

Estate of Samuel Tsoodle, 11 IBIA 163 (Apr. 14, 1983)

INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)--Continued

Testamentary Capacity--Continued

Generally--Continued

The burden of proof as to testamentary incapacity or undue influence in Indian probate proceedings is on those contesting the will.

To invalidate an Indian will for lack of testamentary capacity, the evidence must show that the decedent did not know the natural objects of his bounty, the extent of his property, or the desired distribution of that property. Furthermore, the evidence must show that this condition existed at the time of the execution of the will.

Estate of Evelyn Westwolf Mooney Bear Walker Bonnin, 12 IBIA 215 (Mar. 27, 1984)

The burden of proof as to testamentary incapacity in Indian probate proceedings is on those contesting the will.

Estate of Grace Dion Antelope Horse Ring, 12 IBIA 232 (Apr. 30, 1984)

The burden of proof as to testamentary incapacity in Indian probate proceedings is on those contesting the will.

An allegation that an Indian decedent took medication for a mental condition is insufficient to support a finding of lack of testamentary capacity.

Estate of Ella Durand, 12 IBIA 238 (May 16, 1984)

The burden of proof as to testamentary incapacity or undue influence in Indian probate proceedings is on those contesting the will.

Estate of Verona Goss Mitchell, 12 IBIA 258 (May 31, 1984)

Alcohol

Evidence tending to show that decedent was given to periodic excessive drinking which affected a chronic heart ailment is insufficient to show that his competence to execute a valid will was affected, where testimony of witnesses establishes he was otherwise competent to manage his affairs, was a prudent money manager and concerned about the devolution of his trust property.

Estate of William Mason Cultee, 9 IBIA 43 (July 27, 1981)

Witnesses' Testimony

Where the agency clerk to whom decedent dictated her will had known the decedent and her family since the clerk was 10 years old, and the clerk's testimony established that the testatrix knew the nature and extent of her property, remembered and discussed the personal situations of each of her children, and had made a testamentary plan by which she wished to distribute her property, the fact that one of her children benefited more than any of the others did not tend to show the decedent lacked testamentary capacity, nor was the testamentary plan unreasonable.

Where the witnesses to an Indian will were nurses at the hospital where decedent spent her last illness

INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)--Continued

Testamentary Capacity--Continued

Witnesses' Testimony--Continued

and testified that they had observed her conduct as a patient and her behavior with her family and felt her to be competent and able to understand what she was doing when she made a will, the reluctance of decedent's attending physician to commit himself to an opinion concerning the ability of decedent to understand "legal documents" did not tend to contradict the nurses' testimony that decedent was competent to make a will, nor did it indicate that decedent lacked testamentary capacity.

Estate of Leona Hunts Along Hale, 8 IBIA 8 (Feb. 20, 1980) 87 I.D. 64

Attesting witnesses' testimony that decedent while a patient at Wolf Point Hospital in 1965 executed will prepared by a typist at Hoxall Building was not rebutted by proof that a funded legal services agency did not begin operation in Wolf Point until 1967. The uncontradicted testimony of the attesting witnesses, which was not internally inconsistent or incredible could not, under the circumstances, be disregarded by the Administrative Law Judge.

Estate of Charles Hall, Sr., 8 IBIA 53 (Mar. 28, 1980)

Where testimony by the attesting witnesses established that decedent, although illiterate, arranged for the making of her own will, knew the nature and extent of her property, and discussed her testamentary plan in detail with the witnesses while dictating the will, the fact that her will deviated from the statutory plan for intestate succession and thereby disinherited one of her nephews did not tend to show either lack of capacity by the testatrix or the exercise of undue influence by another person.

Estate of Victoria S. Bear, 8 IBIA 117 (July 15, 1980)

Where the agency attorney who prepared decedent's will testified he took special notice of decedent's appearance and behavior because he knew decedent was dying, his uncontradicted observations concerning decedent, together with testimony concerning the circumstances of the will execution from the witnesses to the will and the interpreters present indicate decedent was competent to make a will and was not acting under duress. The fact that decedent's cousins were each left $1 under the will, while the bulk of the estate was devised to a nonrelative was not, under the circumstances, an indication that undue influence was sought to be exerted upon decedent by the principal beneficiary of his will.

Where decedent's cousins, his nearest relatives, contested his will claiming decedent was the victim of undue influence practiced by the principal beneficiary of his will, their testimony that, at unspecified times prior to executing his will, decedent complained that others, including the principal beneficiary, wanted his trust property, was, under the circumstances, insufficient to show that an attempt was made to exert undue influence upon decedent. Moreover, there was no showing that decedent was susceptible to influence by anyone, nor was there proof of circumstances surrounding the will execution to suggest the will of decedent

INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)--Continued

Testamentary Capacity--Continued

Witnesses' Testimony--Continued

was coerced. In the absence of a showing of the successful imposition of the will of another for that of the testator, his will was properly approved.

Estate of Homer James Medicinebird, 8 IBIA 289 (May 21, 1981)

Evidence tending to show that decedent was given to periodic excessive drinking which affected a chronic heart ailment is insufficient to show that his competence to execute a valid will was affected, where testimony of witnesses establishes he was otherwise competent to manage his affairs, was a prudent money manager and concerned about the devolution of his trust property.

Estate of Willian Mason Coltee, 9 IBIA 43 (July 27, 1981)

Where the agency clerk to whom decedent dictated her will had known the decedent and her family since youth and the clerk's testimony established that the testatrix knew the nature and extent of her property, remembered and directed devises of trust property to each of her surviving children, and had made a testamentary plan by which she wished to distribute her property, the fact that one of her children ultimately benefited more than any of the others did not tend to show the decedent lacked testamentary capacity, nor was the testamentary plan unreasonable under the circumstances.

Where the witnesses to an Indian will were agency clerks who were acquainted through prior business dealings with decedent and testified they knew her to be the competent manager of a farm composed largely of trust lands which she was instrumental in acquiring through land purchases, exchanges, and leases which she arranged, the testimony of a group of treating physicians concerning the effect of two amputations upon decedent's overall health did not tend to contradict the witnesses' testimony that decedent was competent to make a will, nor did the fact that decedent had become an invalid indicate that she lacked competence to make a will.

Estate of Catalina Clifford, 9 IBIA 165 (Jan. 29, 1982)

Undue Influence

In order to vitiate a will, there must be something more than mere influence. There must have been undue influence at the time of the testamentary act which interfered with the free will of the testator and prevented the exercise of judgment and choice.

Mere opportunity to unduly influence and suspicion thereof is insufficient to invalidate a will.

Estate of Agnakt Yunpuqitat (Millie Sampson), 8 IBIA 1 (Jan. 31, 1980)

Where the direct, uncontradicted, and consistent testimony of the attesting witnesses established that decedent was competent and there was no showing of an attempt by anyone to influence him to make a will, it was error to presume fraud based upon suspicion that one of the subscribing witnesses harbored a personal

INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)--Continued

Undue Influence--Continued

desire to achieve the result reached by the testamentary plan of the will.

Estate of Charles Hall, Sr., 8 IBIA 53 (Mar. 28, 1980)

Evidence tending to show that appellee attempted to control decedent's drinking habits, provided him with a place to stay, and gave him some assistance in dealings with the Bureau of Indian Affairs is insufficient to establish an attempt by appellee to exert undue influence upon decedent in order to obtain a devise of his trust property. An inference of undue influence is not available to persons contesting Indian wills; to establish undue influence in Indian probate matters, the misconduct sought to be established must be proved.

Estate of Willian Mason Coltee, 9 IBIA 43 (July 27, 1981)

Where testimony at hearing established that testatrix was aged, had poor eyesight, and had lost the power of speech following a stroke, the testimony was insufficient to establish that she lacked testamentary capacity or had made her will under the undue influence of another, where the witnesses to the will testified she knew objects of her bounty, the extent of her property, and the distribution she desired to make of her trust property.

Estate of Jane Kchivaqdah, a.k.a. Jane Chahsquah, 9 IBIA 112 (Oct. 30, 1981)

To invalidate an Indian will because of undue influence upon a testator, it must be shown: (1) that he was susceptible of being dominated by another; (2) that the person allegedly influencing him in the execution of the will was capable of controlling his mind and actions; (3) that such person did exert influence upon the decedent of a nature calculated to induce or coerce him to make a will contrary to his own desires; and (4) that the will is contrary to the decedent's own desires.

Estate of Carrie Standing Haddon Miller, 10 IBIA 128 (Oct. 5, 1982)

Estate of Grace Dion Antelope Horse Ring, 12 IBIA 232 (Apr. 30, 1984)

When the evidence does not show that influence was exerted on the testator at the time of the execution of the will or that the will was contrary to the testator's wishes, undue influence in the execution of the will cannot be found.

Under the circumstances of this case, the written statement of the scrivener of an Indian will concerning whether the testator was acting under undue influence, made at the time of the execution of the will, shall be given great weight in determining the testator's state of mind.

Estate of Samuel Twoodle, 11 IBIA 163 (Apr. 14, 1983)

INDIAN PROBATE--Continued

WILLS (See also CONTRACT TO MAKE WILL, INHERITING--if included in this Index.)--Continued

Undue Influence--Continued

The burden of proof as to testamentary incapacity or undue influence in Indian probate proceedings is on those contesting the will.

To invalidate an Indian will because of undue influence upon a testator, it must be shown: (1) that he was susceptible of being dominated by another; (2) that the person allegedly influencing him in the execution of the will was capable of controlling his mind and actions; (3) that such person did exert influence upon the decedent of a nature calculated to induce or coerce him to make a will contrary to his own desires; and (4) that the will is contrary to the decedent's own desires.

Estate of Evelyn Westwolf Rooney Bear Walker Rooney, 12 IBIA 215 (Mar. 27, 1984)

Estate of Verona Dean Mitchell, 12 IBIA 258 (May 31, 1984)

Unnatural Will

A Bureau of Indian Affairs instruction to will drafters which requires children to be mentioned in wills prepared by the agency is merely an administrative guide, and is not binding upon a testator who wishes to ignore the instruction or disinherit his children.

Estate of William Mason Cultee, 9 IBIA 43 (July 27, 1981)

A will is not unnatural even when it leaves only a life estate to testatrix's son when the testamentary scheme is a reasonable response to the desires of the testatrix.

Estate of Carrie Standing Haddon Miller, 10 IBIA 128 (Oct. 5, 1982)

Witnessed, Attesting

There is no requirement that the witness of an Indian will must be a longstanding and/or intimate acquaintance of the decedent.

Estate of Ella Dorand, 12 IBIA 238 (May 16, 1984)

WITNESSES

Observation by Administrative Law Judge

Where testimony is conflicting, the factual findings of the Administrative Law Judge will not be disturbed on appeal because he had the opportunity to observe and hear the witnesses.

Estate of Grace Akeen, a.k.a. Grace Akins, 10 IBIA 14 (June 23, 1982)

Estate of Joshua Stone Arrow, 10 IBIA 104 (Sept. 28, 1982)

INDIAN PROBATE--Continued

WITNESSES--Continued

Observation by Administrative Law Judge--Continued

Where testimony is conflicting, the Board normally will not disturb a decision based upon findings as to credibility when the Administrative Law Judge had an opportunity to hear the witnesses and to observe their demeanor.

Estate of Nilma Florence First Youngbear, 12 IBIA 219 (Apr. 4, 1984)

INDIAN REORGANIZATION ACT
(See also Wheeler-Howard Act--if included in this Index.)

In light of the unique history of land ownership and Federal-Indian relations on the Quinault Reservation, any Quinault allottee living on June 1, 1934, should be entitled to receive other trust land on the reservation by gift deed in accordance with the provisions of secs. 5 and 19 of the Indian Reorganization Act (25 U.S.C. §§ 465 and 479 (1976)).

Walter S. Brown v. Commissioner of Indian Affairs, 8 IBIA 183 (Oct. 28, 1980) 87 I.D. 507

Examination of the history, purpose, wording, and structure of the IRA leads to the conclusion that Congress intended to impose a specific trust responsibility on the Secretary of the Interior and the Bureau of Indian Affairs with respect to tribes organized under the Act.

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

INDIAN TRIBES
(See also Appeals, Indian Probate--if included in this Index.)

GENERALLY

Tribal land may not be alienated unless authorized by Congress. A tribal member's request to exchange land for tribal land on the Fort Peck Reservation acquired under the Submarginal Land Act of 1975, 89 Stat. 577, was properly denied by the Bureau of Indian Affairs in the absence of statutory authority permitting the exchange of such submarginal lands.

Alfred Manning v. Commissioner of Indian Affairs, 9 IBIA 36 (July 10, 1981)

ALASKAN GROUPS

The provisions of the Alaska Native Claims Settlement Act defining the class of persons entitled to share in benefits under the Act are not ambiguous so as to require reference to the legislative history to determine whether persons becoming United States

INDIAN TRIBES--Continued

ALASKAN GROUPS--Continued

citizens after Dec. 18, 1971, the effective date of the Act, are entitled to be enrolled.

United States v. Ainge Marion Bowen (Edenshaw) and Phyllis Josephine Kimball, 8 IBIA 218 (Feb. 12, 1981) 88 I.D. 261

The provisions of the Alaska Native Claims Settlement Act specifically exclude members of the Metlakatla Tribe of the Annette Islands Reserve from benefits under the Act. Where appellant and her children periodically resided at Metlakatla, accepted benefits from the Metlakatla Tribe as tribal members, were enrolled members since 1968, and did not initiate efforts to terminate tribal membership until 1978, appellants were enrolled members of Metlakatla within the meaning of the Alaska Native Claims Settlement Act and were properly excluded from enrollment under the Act.

Corinne Mae Howell & Her Minor Children, Gary Arnold Howell, Richard Dewayne Howell, and Darcy Lynn Howell v. United States, 9 IBIA 3 (June 11, 1981) 88 I.D. 575

Exclusion of appellant members of the Metlakatla Community from benefits under provisions of the Alaska Native Claims Settlement Act held not to be precluded by a contrary result reached in a prior Administrative Law Judge's decision in a similar case. The determination by the agency factfinder in the separate but similar situation is not binding upon the Board of Indian Appeals, which renders final decision for the Department in disenrollment appeals referred on appeal to the Board.

Corinne Mae Howell & Her Minor Children Gary Arnold Howell, Richard Dewayne Howell, and Darcy Lynn Howell v. United States, 9 IBIA 70 (Sept. 9, 1981) 88 I.D. 822

CONSTITUTION, BYLAWS AND ORDINANCES

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

CREDIT ACTIVITIES

Where notice of decision by Area Director approving tribal debt collection through use of assignments of income is not shown to have been received by appellant, failure to make timely appeal from the decision will not be inferred.

Where Departmental regulation at 25 CFR 104.9 permits payment from individual trust accounts following Departmental approval, payments from the account of appellant are not barred by Montana or tribal laws establishing limitations against enforcement of stale claims.

Where only one of a series of assignments of income executed by appellant in favor of the Blackfeet Tribe in 1944, 1947, 1949, and 1950 shows Departmental approval of the loan transaction described, the remaining assignments are subject to examination for compliance with the regulatory requirements. The assignment

CREDIT ACTIVITIES--Continued

documents upon which the tribe relies to collect the claimed delinquent account must be shown to conform to the requirements of 25 CFR 104.9.

Administrative Appeal of Leo B. Kennerly, Sr., v. Billings Area Director, Bureau of Indian Affairs, 8 IBIA 106 (July 8, 1980)

DEPARTMENT REGULATIONS

Where notice of decision by Area Director approving tribal debt collection through use of assignments of income is not shown to have been received by appellant, failure to make timely appeal from the decision will not be inferred.

Where Departmental regulation at 25 CFR 104.9 permits payment from individual trust accounts following Departmental approval, payments from the account of appellant are not barred by Montana or tribal laws establishing limitations against enforcement of stale claims.

Where only one of a series of assignments of income executed by appellant in favor of the Blackfeet Tribe in 1944, 1947, 1949, and 1950 shows Departmental approval of the loan transaction described, the remaining assignments are subject to examination for compliance with the regulatory requirements. The assignment documents upon which the tribe relies to collect the claimed delinquent account must be shown to conform to the requirements of 25 CFR 104.9.

Administrative Appeal of Leo B. Kennerly, Sr., v. Billings Area Director, Bureau of Indian Affairs, 8 IBIA 106 (July 8, 1980)

ELECTIONS

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

Following repeal of tribal law permitting appeal to the Department, appellant election candidate at Navajo tribal election held not entitled to appeal to the Secretary from adverse determination by tribal council.

Donald Donally v. Navajo Area Director, Bureau of Indian Affairs, & Navajo Tribe, 9 IBIA 284 (May 26, 1982) 89 I.D. 252

ENROLLMENT

The original power to determine membership, including adoption, is in the tribe. After approval of an individual for membership, a tribe retains the power to disenroll provided it follows provisions for termination of enrollment contained in its membership ordinance.

Estate of Antoine (Ke Napel) Hill, 8 IBIA 121 (July 21, 1980)

INDIAN TRIBES--Continued

FEDERAL RECOGNITION

Only those groups which have received Federal acknowledgement of their Indian tribal status constitute Indian tribes, for purposes of sec. 2 of the Bald Eagle Protection Act.

Indian Tribal Status under the Bald Eagle Protection Act, M-36934 (Feb. 26, 1981) 88 I.D. 338

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

HUNTING AND FISHING

Generally

The prohibitions of the Bald and Golden Eagle Protection Act and Migratory Bird Treaty Act are nondiscriminatory, reasonable and necessary conservation measures to which reserved Indian hunting rights are subject.

Application of Eagle Protection and Migratory Bird Treaty Acts to Reserved Indian Hunting Rights, M-36936 (June 15, 1981) 88 I.D. 586

Off Reservation

Under 25 CFR 249.3 an applicant for a Bureau of Indian Affairs fishing identification card must be a member of a tribe with Federally recognized treaty fishing rights.

Timothy Tarabochia v. Deputy Ass't Secretary--Indian Affairs (Operations), 12 IBIA 269 (June 6, 1984) 91 I.D. 243

JUDGMENT FUNDS

While it is true that the Klamath Termination Act, Aug. 13, 1954, 68 Stat. 718, 25 U.S.C. §§ 564-564x (1976), rendered inapplicable to Klamath tribal members the Secretary's usual jurisdiction over Indian heirship determinations as set forth in 25 U.S.C. §§ 372-373 (1976) (see 25 U.S.C. § 564h), Congress, by the more recent Act of Oct. 1, 1965, 79 Stat. 897, 25 U.S.C. §§ 565-565g (1976), specifically empowered the Secretary of the Interior to determine the rightful heirs of deceased Klamath enrollees entitled to a share of judgment funds payable from the United States for the limited purpose of seeing that such funds are distributed to the heir or heirs so determined.

Gertrude E. Sherman v. Acting Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 25 (June 29, 1981) 88 I.D. 619

INDIAN TRIBES--Continued

JUDGMENT FUNDS--Continued

Although the Klamath Termination Act of Aug. 13, 1954, 68 Stat. 718, 25 U.S.C. §§ 564-564x (1976), rendered the Secretary's usual probate jurisdiction inapplicable to Klamath Indians, the Act of Oct. 1, 1965, 79 Stat. 897, 25 U.S.C. §§ 565-565g (1976), gave the Secretary limited jurisdiction to determine the heirs of deceased Klamath enrollees pursuant to his duty to distribute judgment funds.

Ivonne Heiser et al. v. Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 76 (Sept. 29, 1981)

Under 25 U.S.C. § 565a (1976) the share of judgment funds due to a deceased enrollee of the Klamath Tribe passes by operation of Federal law to the decedent's heir or heirs as determined by the Secretary.

Melody Ann Wright and Karleen McKenzie, Guardian Ad Litem v. Acting Area Director, Portland Area Office, Bureau of Indian Affairs, 9 IBIA 147 (Jan. 7, 1982)

Under 25 U.S.C. § 565a (1976) the share of judgment funds of a deceased enrolled member of the Klamath Tribe passes by operation of Federal law to the decedent's heirs as determined by the Secretary. Where transcripts of testimony by appellant and her mother appearing in the record on appeal indicate that appellant has little prospect for ultimate success in the event that an evidentiary hearing which she seeks were to be held by the Department to inquire into her claimed relationship to decedent, the decision of the Area Director which correctly states the law to be applied to the facts shown of record will be affirmed.

Tonia Marie Cannady Wiman Holcombe v. Portland Area Director, Bureau of Indian Affairs, 9 IBIA 192 (Mar. 9, 1982)

JURISDICTION

Neither the Board of Indian Appeals nor the Department of the Interior has review authority over matters entrusted to state, Federal, or tribal courts.

Neither the Board of Indian Appeals nor the Department of the Interior is the proper forum for consideration of questions relating to nontrust property held by Indians.

Estate of Alice Mae Sasse, 12 IBIA 281 (June 25, 1984)

MEMBERSHIP

It is for the Indian tribe, not this Department, to determine composition of the tribe. In 1922 the Quinault Tribe did not recognize as members thereof any Indian of the reservation, but affiliate memberships were authorized for persons of one-quarter Quileute, Hoh, Chehalis, Chinook, or Cowlitz blood, under specified conditions.

Walter S. Brown v. Commissioner of Indian Affairs, 8 IBIA 183 (Oct. 28, 1980) 87 I.D. 507

When reopening of a closed Indian estate is sought for the sole purpose of determining the appellant's nationality or Indian status, and no alteration in the distribution of the decedent's estate is sought, reopening will be allowed under 43 CFR 4.206 without regard to the restrictions set forth in 43 CFR 4.242

INDIAN TRIBES--Continued

MEMBERSHIP--Continued

and in previous decisions of the Board of Indian Appeals interpreting that regulation.

Estate of Edward (Agopetah) Hart, 12 IBIA 253 (May 22, 1984) 91 I.D. 235

RESERVATION BOUNDARY

Sec. 7(c) of the Paiute Indian Tribe of Utah Restoration Act of 1980, 25 U.S.C. § 761 et seq. (Supp. IV 1980), contains the phrase "available public...lands" which must be construed as those lands administered by the BLM which are available for disposal; that is, lands which are not withdrawn, appropriated or reserved.

Proposed Paiute Restoration Plan, M-36944 (May 7, 1982) 89 I.D. 403

SOVEREIGN POWERS

The Cheyenne-Arapaho Indian Tribe of Oklahoma discontinued recognizing Indian custom marriages and divorces by adoption of an ordinance approved by the Secretary of the Interior on Feb. 1, 1940. The right to designate the customs that are to be given recognition in regulating matters that affect tribal internal and social relations rests with each tribe as an incident of its sovereignty, and tribal ordinances or decrees regarding such customs are honored by the Department in its probate of Indian estates.

Estate of Mark Turtle, Sr., 8 IBIA 272 (Apr. 15, 1981)

Estate of Thomas Elvard Lunsmouth, 8 IBIA 275 (Apr. 15, 1981)

TREATIES

Article II, paragraph 6, of the Treaty with the Navajo, June 1, 1868 (15 Stat. 667), in which the tribe agreed not to oppose "the construction of railroads, wagonroads, mail stations, or other works of utility or necessity which may be ordered or permitted by the laws of the United States," may not be interpreted as bestowing tribal consent to all applications for rights-of-way across the Navajo Indian Reservation.

Ambiguities in Federal treaties or statutes dealing with Indians must be resolved favorably to the Indians.

Transwestern Pipeline Co. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 49 (Oct. 28, 1983) 90 I.D. 474

INDIANS

GENERALLY

The fundamental principle of statutory construction that words are to be taken in their ordinary meaning unless they are technical terms or words of art is particularly applicable in the construction of statutes concerning Indians.

Juanita Helsheimer v. Assistant Secretary for Indian Affairs, 11 IBIA 155 (Apr. 14, 1983) 90 I.D. 165

INDIANS--Continued

GENERALLY--Continued

When an Indian tribe or member of an Indian tribe appears before the Board of Indian Appeals represented by a person not qualified to appear before the Department of the Interior under 43 CFR 4.1, the party will be informed that the unqualified person may not appear, but will not be penalized for choosing an unqualified representative. Once informed that the chosen representative is unqualified, the Indian party must choose a qualified representative or appear pro se in order for filings to be accepted.

Estate of Benjamin Kent, Sr. (Ben Navaboney), 13 IBIA 21 (Aug. 29, 1984)

ADOPTION

An adoption is not normally considered a testamentary act and is not subject to the rules governing the execution of testamentary instruments. An otherwise proper adoption decree showing that the requirements of the jurisdiction rendering it were met will be recognized.

Estate of Jonas Wokey Pokah, 11 IBIA 237 (July 6, 1983)

CITIZENSHIP

American Indians born in Canada have an aboriginal right to pass the boundary between Canada and the United States and to remain in the United States without compliance with any immigration law that would apply to any other alien.

Teresa L. Garrett v. Asst't Secretary for Indian Affairs, 13 IBIA 8 (Aug. 21, 1984) 91 I.D. 262

CIVIL RIGHTS

A complaint that transfer of funds from an IIM Account violates due process provisions of the Indian Civil Rights Act, 25 U.S.C. § 1302 (1976), lies outside the review authority of the Department of the Interior.

Clarence Runs After v. Aberdeen Area Director, Bureau of Indian Affairs, and Cheyenne River Sioux Tribe, 8 IBIA 170 (Oct. 27, 1980) 87 I.D. 501

CRIMINAL JURISDICTION

Six parcels of Bureau of Indian Affairs school land adjoining land held in trust for the Mississippi Band of Choctaw Indians are Indian country within the meaning of 18 U.S.C. § 1151(b) (1976).

Indian Country Status of Mississippi Choctaw School Lands, M-36933 (Jan. 19, 1981) 88 I.D. 333

DOMESTIC RELATIONS

The Cheyenne-Arapaho Indian Tribe of Oklahoma discontinued recognizing Indian custom marriages and divorces by adoption of an ordinance approved by the Secretary of the Interior on Feb. 1, 1940. The right to designate the customs that are to be given recognition in regulating matters that affect tribal internal and social relations rests with each tribe as an incident of its sovereignty, and tribal ordinances or decrees regarding such customs are honored by the Department in its probate of Indian estates.

Estate of Mark Turtle, Sr., 8 IBIA 272 (Apr. 15, 1981)

INDIANS--Continued

DOMESTIC RELATIONS--Continued

Estate of Thomas Elvard Lumpmouth, 8 IBIA 275 (Apr. 15, 1981)

EDUCATION

Unless or until the Office of Indian Education Programs promulgates regulations providing for administrative review of its decisions, the Office is adhering to the regulations in 25 CFR Part 2. These regulations include an appeal to the Board of Indian Appeals in those cases in which the decision being appealed is based on an interpretation of law.

Under 25 CFR 2.19, when a decision in an appeal is not issued by the Director of the Office of Indian Education Programs within 30 days from the expiration of the time for the filing of all pleadings, the Board of Indian Appeals acquires jurisdiction over the appeal.

Diane Zarr v. Acting Deputy Director, Office of Indian Education Programs, 11 IBIA 174 (Apr. 21, 1983) 90 I.D. 172

FISCAL AND FINANCIAL AFFAIRS

Under 25 U.S.C. § 410 (1976) and 25 CFR 104.9, the approval of the Secretary of the Interior is required before funds in an Individual Indian Money account derived from trust property may be applied against a debt owed by the individual Indian.

Nothing in the Federal Claims Collection Act of 1966, 31 U.S.C. §§ 951-953 (1976), and its implementing regulations in 4 CFR Chapter II repeals or overrides the authority of the Secretary of the Interior to approve or disapprove the use of funds in an Individual Indian Money account for the payment of debts of the Indian owner.

A decision not to honor a setoff request against an Individual Indian Money account for a debt owed to another agency of the Federal Government is not arbitrary, capricious, or an abuse of discretion when it is based on an examination of the funds potentially available for setoff, the basic necessities of the individual involved, and the interest of the United States in collecting judgment claims.

United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Celina Young Bear Mossette; and United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Geraldine Van Dyke, 9 IBIA 151 (Jan. 8, 1982) 89 I.D. 49

Under 25 CFR 104.9 the Bureau of Indian Affairs can require the holder of an Individual Indian Money account to submit a plan for disbursement of funds in the account upon a finding that the person, even though under no legal disability, needs assistance in managing his or her financial affairs.

An argument addressing the adequacy of an existing approved plan under 25 CFR 104.9 is properly raised to the appropriate officials of the Bureau of Indian Affairs in seeking a modification of the approved plan.

Garrett Connorichaah v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

INDIANS--Continued

FISCAL AND FINANCIAL AFFAIRS--Continued

An examination of the legislative history of 25 U.S.C. § 613 (1976) reveals that it was not intended to exempt per capita payments from being used by Indian minors to meet costs of foster home assistance or institutional care.

Under 25 CFR 104.4, disbursement from a minor's IIM account must be made in accordance with "the best interest of the minor." This regulation obligates BIA to make individualized determinations before disbursing funds for, among other things, the cost of custodial care.

Shoshone and Arapahoe Tribes v. Commissioner of Indian Affairs, 9 IBIA 263 (Apr. 16, 1982) 89 I.D. 200

Under 25 U.S.C. § 409a (1976), the funds used to purchase land to be held in trust in order to replace Indian trust or restricted lands taken for a public purpose or voluntarily sold by the Indian owner must be shown to have been derived from the prior taking or sale of such trust or restricted lands.

Dora Joyce Prieto v. Acting Area Director, Sacramento Area Office, Bureau of Indian Affairs, 11 IBIA 124 (Mar. 22, 1983)

The Board of Indian Appeals is without jurisdiction to grant a request for attorney's fees that is not supported by a properly approved contract or statutory basis therefor.

Edmond H. Burns & Mark Hammons v. Anadarko Area Director, Bureau of Indian Affairs (On Reconsideration), 11 IBIA 133 (Mar. 22, 1983)

Land interests held in Indian trust status by the Department of the Interior are not subject to setoff, levy, and/or execution on the basis of a state court decision.

Estate of Alice Mae Sasse, 12 IBIA 281 (June 25, 1984)

GUARDIANSHIP

The United States is charged with the responsibility of safeguarding, from both external and internal threats, the political existence of Indian tribes, including protecting and guaranteeing tribal self-government and "the political rights of Indians."

The United States is empowered to apply "all appropriate means" to fulfill its general trust obligations and in the course of doing so, is limited only by principles of trust law and relevant constitutional considerations.

Examination of the history, purpose, wording, and structure of the IRA leads to the conclusion that Congress intended to impose a specific trust responsibility on the Secretary of the Interior and the Bureau of Indian Affairs with respect to tribes organized under the Act.

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the

INDIANS--Continued

GUARDIANSHIP--Continued

circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

Under 25 CFR 104.4, disbursement from a minor's IIM account must be made in accordance with "the best interest of the minor." This regulation obligates BIA to make individualized determinations before disbursing funds for, among other things, the cost of custodial care.

Shoshone and Arapahoe Tribes v. Commissioner of Indian Affairs, 9 IBIA 263 (Apr. 16, 1982) 89 I.D. 200

HOUSING

Home Improvement Program Funds

Due process issues would be raised if the Bureau of Indian Affairs were to change an application for Housing Improvement Funds from category D, new housing, to category C, downpayment, without notice to the applicant.

Melvin Antone v. Ass't Secretary--Indian Affairs, 12 IBIA 186 (Mar. 2, 1984)

HUNTING AND FISHING

Indian hunting and fishing rights, created by treaty or otherwise, do not include the right to take species which have been listed as threatened or endangered pursuant to the Endangered Species Act of 1973.

Application of the Endangered Species Act to Native Americans with Treaty Hunting and Fishing Rights, M-36926 (Nov. 4, 1980) 87 I.D. 525

INDIAN CIVIL RIGHTS ACT OF 1968

A complaint that transfer of funds from an IIM account violates due process provisions of the Indian Civil Rights Act, 25 U.S.C. § 1302 (1976), lies outside the review authority of the Department of the Interior.

Clarence Runs After v. Aberdeen Area Director, Bureau of Indian Affairs, and Cheyenne River Sioux Tribe, 8 IBIA 170 (Oct. 27, 1980) 87 I.D. 501

INDIVIDUAL INDIAN MONEY ACCOUNTS

Under 25 U.S.C. § 410 (1976) and 25 CFR 104.9, the approval of the Secretary of the Interior is required before funds in an Individual Indian Money account derived from trust property may be applied against a debt owed by the individual Indian.

Nothing in the Federal Claims Collection Act of 1966, 31 U.S.C. §§ 951-953 (1976), and its implementing regulations in 4 CFR Chapter II repeals or overrides the authority of the Secretary of the Interior to approve or disapprove the use of funds in an Individual Indian Money account for the payment of debts of the Indian owner.

A decision not to honor a setoff request against an Individual Indian Money account for a debt owed to another agency of the Federal Government is not arbitrary, capricious, or an abuse of discretion when it is

INDIANS--Continued

INDIVIDUAL INDIAN MONEY ACCOUNTS--Continued

based on an examination of the funds potentially available for setoff, the basic necessities of the individual involved, and the interest of the United States in collecting judgment claims.

United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Celina Young Bear Bonnette; and United States v. Acting Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and Geraldine Van Dyke, 9 IBIA 151 (Jan. 8, 1982) 89 I.D. 49

Under 25 CFR 104.9 the Bureau of Indian Affairs can require the holder of an Individual Indian Money account to submit a plan for disbursement of funds in the account upon a finding that the person, even though under no legal disability, needs assistance in managing his or her financial affairs.

When a plan for disbursement of funds in an Individual Indian Money account has been approved, under 25 CFR 104.9 the Bureau of Indian Affairs is obligated to disburse funds in accordance with the provisions of that plan. The denial of a request to release all funds in violation of an approved plan is, therefore, neither arbitrary, capricious, nor an abuse of discretion.

An argument addressing the adequacy of an existing approved plan under 25 CFR 104.9 is properly raised to the appropriate officials of the Bureau of Indian Affairs in seeking a modification of the approved plan.

Garrett Coppovichpah v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

Under 25 CFR 104.4, disbursement from a minor's IIM account must be made in accordance with "the best interest of the minor." This regulation obligates BIA to make individualized determinations before disbursing funds for, among other things, the cost of custodial care.

Shoshone and Arapahoe Tribes v. Commissioner of Indian Affairs, 9 IBIA 263 (Apr. 16, 1982) 89 I.D. 200

LAW AND ORDER

Only reservations listed in 25 CFR 11.1(a) are governed by the law and order provisions codified in secs. 11.1 through 11.87 of 25 CFR Part 11. Because the Blackfeet Reservation is not listed thereunder, the Blackfeet Tribe may remove a tribal judge from its tribal court without regard to the procedural requirements found at 25 CFR 11.4.

The fact that judges of the Blackfeet Tribal Court, which is not a CFR court, are financed in part by Federal funds, does not render such judges subject to the law and order regulations found at 25 CFR 11.1(d) and 25 CFR 11.4. The Blackfeet Tribe has its own ordinance governing the removal of judges, which has been approved by the Secretary, and such ordinance is exclusively controlling in such matters.

Lenore Salois v. Area Director, Billings Area Office, 8 IBIA 283 (May 15, 1981)

INDIANS--Continued

NONRESTRICTED PROPERTY

Neither the Board of Indian Appeals nor the Department of the Interior is the proper forum for consideration of questions relating to nontrust property held by Indians.

Estate of Alice Bee Sagee, 12 IBIA 281 (June 25, 1984)

SOCIAL WELFARE

An examination of the legislative history of 25 U.S.C. § 613 (1976) reveals that it was not intended to exempt per capita payments from being used by Indian minors to meet costs of foster home assistance or institutional care.

Under 25 CFR 104.4, disbursement from a minor's IIM account must be made in accordance with "the best interest of the minor." This regulation obligates BIA to make individualized determinations before disbursing funds for, among other things, the cost of custodial care.

Shoshone and Arapahoe Tribes v. Commissioner of Indian Affairs, 9 IBIA 263 (Apr. 16, 1982) 89 I.D. 200

TRUSTS

The United States is charged with the responsibility of safeguarding, from both external and internal threats, the political existence of Indian tribes, including protecting and guaranteeing tribal self-government and "the political rights of Indians."

The United States is empowered to apply "all appropriate means" to fulfill its general trust obligations and in the course of doing so, is limited only by principles of trust law and relevant constitutional considerations.

Examination of the history, purpose, wording, and structure of the IRA leads to the conclusion that Congress intended to impose a specific trust responsibility on the Secretary of the Interior and the Bureau of Indian Affairs with respect to tribes organized under the Act.

The government-to-government relationships between the United States and Indian tribes organized under the IRA are governed by the trust responsibility established by the IRA and consequently are "subject to limitations inhering in * * * a guardianship and to pertinent constitutional restrictions." Under the circumstances of this case, the actions and decisions of the BIA comport with the requirements of law.

Roger St. Pierre and the Original Chippewa Cree of the Rocky Boy's Reservation v. Comm'r of Indian Affairs, 9 IBIA 203 (Mar. 30, 1982) 89 I.D. 132

WELFARE

Under 5 U.S.C. § 552(a)(1) (1976) and the Supreme Court's holding in Morton v. Ruiz, 415 U.S. 199 (1974), an individual may not be deprived of benefits solely on the basis of an eligibility standard published only in the BIA manual.

Under the system established in the BIA manual, custodial care is part of the general assistance program, and an individual must first be found eligible for general assistance before he or she can be considered for custodial care assistance.

INDIANS--Continued

WELFARE--Continued

Under the provisions of the BIA manual, an individual is eligible for custodial care assistance even though the necessary care may be provided in the individual's home.

When, due to age, infirmity, or physical or mental impairment, an individual requires any type or amount of assistance in daily living, that person qualifies for custodial care under the provisions of 66 BIAM 5.10A.

Under 66 BIAM 5.10D(2), any continuing care arrangements necessary for an individual who has been in a custodial care institution must be prepared before that individual is discharged from the institution.

The decision to terminate custodial care for an individual must be documented as based upon physical or mental improvement, or upon an initial erroneous determination of the individual's condition.

Matthew Allen v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 146 (Oct. 15, 1982) 89 I.D. 508

Wilbur Barton v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 173 (Oct. 15, 1982)

Henry W. Begay v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 189 (Oct. 15, 1982)

Johnny Begay v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 205 (Oct. 15, 1982)

Bessie Benally v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 221 (Oct. 15, 1982)

Arletta Bischoff v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 237 (Oct. 15, 1982)

Irving Clark v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 253 (Oct. 15, 1982)

Pearlene Darrie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 269 (Oct. 15, 1982)

Janet Gordon v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 285 (Oct. 15, 1982)

Leo Green v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 301 (Oct. 15, 1982)

Francis Harvey v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 318 (Oct. 15, 1982)

June James v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 334 (Oct. 15, 1982)

Thomas Kee v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 350 (Oct. 15, 1982)

Lester Kelwood v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 366 (Oct. 15, 1982)

Juanita Paddock v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 382 (Oct. 15, 1982)

Irma Shirley v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 399 (Oct. 15, 1982)

Charity Tsosie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 416 (Oct. 15, 1982)

Leo Willie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 432 (Oct. 15, 1982)

Francis Yazzie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 448 (Oct. 15, 1982)

INDIANS--Continued

WELFARE--Continued

An organization which received funding under the Indian Child Welfare Act during one fiscal year has no right to continued funding during a subsequent fiscal year. There is no analogy between the termination of welfare benefits without a hearing and the expiration of a grant under its own terms.

Native Americans for Community Action v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 214 (July 1, 1983) 90 I.D. 283

Because the list of specific types of assistance provided by the Bureau of Indian Affairs under the general assistance program is not a rule within the meaning of 5 U.S.C. § 551(4) (1976), the general assistance eligibility criteria published in 25 CFR Part 20 may be used in determining eligibility for custodial care assistance, even though Part 20 does not specifically indicate custodial care as a type of assistance available through the general assistance program.

Wilbur Barton v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 110 (Dec. 9, 1983) 90 I.D. 536

Matthew Allen v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 116 (Dec. 9, 1983)

Speculation or presumptions concerning an individual's circumstances are insufficient to support a finding under 25 CFR 20.21(a) that the individual is not eligible for receipt of general assistance from the Bureau of Indian Affairs on the grounds that his or her needs are met by other resources.

The requirement in 25 CFR 20.11(b), that a recipient of assistance from the Bureau of Indian Affairs report any change in circumstances, is an administrative procedure, not an eligibility requirement.

Individuals may not be deprived of custodial care benefits provided by the Bureau of Indian Affairs solely on the basis of eligibility requirements set forth only in the Bureau of Indian Affairs Manual.

The Board of Indian Appeals will not force individuals to accept assistance from the Bureau of Indian Affairs that they have not shown they desire.

Henry W. Begay v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 115 (Dec. 9, 1983) 90 I.D. 539

INTERVENTION

Intervention in proceedings before the Alaska Native Claims Appeal Board is in the discretion of the Board. 43 CFR 4.909(b).

The Board will not allow intervention following resolution of the issues on appeal.

Appeal of Bristol Bay Native Corp., 4 ANCAB 222 (May 6, 1980) 87 I.D. 164

LACHES

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of the payment subsequently.

LACHES--Continued

Supron Energy Corp. et al., 46 IBLA 181 (Mar. 21, 1980)

The defense of laches is not available against the Government in cases involving public lands. Even were laches determined to be an available defense, it would clearly be circumscribed by the same limitations surrounding the doctrine of estoppel.

United States v. Catlin Mohee et al., United States v. Exxon Corp. et al., United States v. Aldabella Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 248

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Frederick R. Larson v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

Simon A. Rife, 56 IBLA 378 (Aug. 3, 1981)

James M. Tibbals, Janet D. Tibbals, 58 IBLA 42 (Sept. 17, 1981)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Gerard C. Barrows, 71 IBLA 262 (Mar. 22, 1983)

Warren L. Jacobs, 71 IBLA 385 (Mar. 29, 1983)

Alyson A. Allison, James M. Allison III, 72 IBLA 333 (Apr. 29, 1983)

Lone Star Steel Co., 79 IBLA 345 (Mar. 22, 1984)

Viking Resources Corp., 80 IBLA 245 (Apr. 30, 1984)

Rogue River Outfitters Ass'n, 83 IBLA 151 (Oct. 10, 1984)

Where land has long been devoted to a particular public purpose such as inclusion in a forest reserve, laches may bar an application filed pursuant to the Transportation Act of 1940, 49 U.S.C. § 65(b) (1976).

Southern Pacific Transportation Co., R. E. Herndon, 54 IBLA 174 (Apr. 21, 1981)

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of payment subsequently.

Supron Energy Corp., Atlantic Richfield Co., 55 IBLA 318 (June 26, 1981)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost through lack of enforcement by some of its officers.

Clyde K. Kohhaas, 58 IBLA 268 (Oct. 8, 1981) 88 I.D. 915

Janet A. Hodgers, 58 IBLA 275 (Oct. 8, 1981)

LACHES--Continued

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert M. Myers, 63 IBLA 100 (Mar. 31, 1982)

Estoppel of the Government, especially where public lands are concerned, is a remedy applicable only to extraordinary circumstances. A sine qua non of estoppel of the Government is affirmative misconduct by an authorized agent or officer that results in a misrepresentation of fact upon which there is detrimental reliance. BLM's apparently innocent silence at the time mining claim documents were filed does not estop the Government from later declaring mining claims invalid for failure to file other required documents.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties, nor can reliance upon information or opinion of any officer, agent, or employee, or on records maintained by land offices, operate to vest any right not authorized by law.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

James H. W. Young, 69 IBLA 387 (Jan. 4, 1983)

Howard K. Davis, 70 IBLA 7 (Jan. 6, 1983)

J. Pat Kaufman, 71 IBLA 183 (Mar. 10, 1983)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers.

D. M. Yates, 70 IBLA 134 (Jan. 14, 1983)

30 CFR 250.49 authorizes Minerals Management Service to impose a late payment interest charge where royalty payments for offshore oil and gas leases are untimely or improper. The authority of the United States to enforce a public right or to protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Apoco Production Co., 78 IBLA 93 (Dec. 19, 1983)

LIEU SELECTIONS

The "grossly disparate value policy," under which the Department rejects States applications for lands in lieu of lands lost from their school grants by reason of settlements, etc., under 43 U.S.C. §§ 851, 852 (1976), where the value of the selected lands grossly exceeds the value of the lost base lands, is a lawful exercise of the Secretary's power and a valid ground to reject such an application. Accordingly, where the record indicates that the selected lands may be much more valuable than the base lands, the matter will be remanded to BLM for a determination of such values.

State of New Mexico (On Reconsideration), 50 IBLA 367 (Oct. 21, 1980)

An application for a quitclaim deed under sec. 6 of the Act of Apr. 28, 1930, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, is properly rejected because the Act of July 6, 1960, precludes the Department from utilizing the 1930 Act for that purpose.

Masonic Homes of California, 70 IBLA 46 (Jan. 10, 1983)

R. K. Herndon, 76 IBLA 353 (Oct. 24, 1983)

An application for a recordable disclaimer or a quitclaim deed of the Government's interest in a parcel of land in the Inyo National Forest under sec. 6 of the Act of Apr. 28, 1930, based upon a conveyance in 1900 to the United States of the parcel in anticipation of making a lieu selection under the Act of June 4, 1897, is properly rejected even though the lieu selection was never completed, because the Act of July 6, 1960, precludes the Department from utilizing the 1930 Act for that purpose and provides that title to the lands was quieted to the United States in 1961 as part of the national forest in which the lands are located.

The Federal Land Policy and Management Act of 1976 did not repeal the Act of July 6, 1960. Therefore, the provisions of the former do not provide authority to grant a disclaimer where doing so is contrary to the provisions of the latter. Further, the Federal Land Policy and Management Act of 1976 requires consultation with any affected agency prior to issuing a disclaimer. Where the Forest Service, which controls the surface of the affected lands within a national forest, expresses strong opposition to issuing a disclaimer, BLM's refusal to exercise the discretionary authority to do so is proper.

The legislative history of the Act of July 6, 1960, shows the Congress fully considered the constitutionality of the compensation provisions contained therein. The Department is bound to follow these provisions.

Soda Flat Co., Inc., 75 IBLA 388 (Sept. 2, 1983)

An application for a recordable disclaimer or quitclaim deed of the Government's interest in a parcel of land in the Sierra National Forest under sec. 6 of the Act of Apr. 28, 1930, which parcel was deeded to the Government in 1899 in contemplation of selecting another parcel in lieu thereof pursuant to the Act of June 4, 1897, is properly rejected even though the lieu selection never was consummated, because the Act of

LIEU SELECTIONS--Continued

July 6, 1960, repealed the Department's authority to do so and provided that title to the lands was quieted to the United States as part of the national forest in which the lands are located.

The legislative history of the Act of July 6, 1960, shows the Congress fully considered the constitutionality of the compensation provisions contained therein. The Department is bound to follow these provisions.

O. J. Shay et al., 75 IBLA 396 (Sept. 2, 1983)

Where the State of Oregon has selected indemnity lands pursuant to the Act of Feb. 28, 1891, ch. 384, 26 Stat. 796, for school sections within an unsurveyed township in the Siskiyou National Forest and thereafter a reprotraction or survey is run revealing new fractional townships within the area originally protracted, the State is entitled to indemnity lands for those new townships in accordance with the compact it entered with the United States by Act of Feb. 14, 1859.

A state selecting indemnity lands pursuant to the Act of Feb. 28, 1891, ch. 384, 26 Stat. 796, for unsurveyed school sections within a national forest shall be entitled to select indemnity lands to the extent of two sections for each of said townships in lieu of secs. 16 and 36 therein. Where a protraction on which the state relies to make its indemnity selections reveals that a fractional township is present, the state's entitlement to indemnity lands is calculated according to the pro rata rule set forth at 43 U.S.C. § 852 (1976).

Where a survey on which the state relies to make its indemnity selections pursuant to the Act of Feb. 28, 1891, reveals a fractional township with a school section in place, the state's entitlement should be in an amount equal to the acreage shown by the surveyed school section or in an amount determined by the pro rata rule at the election of the state.

Until a survey of public lands has been run and approved, the designated sections of a township are undefined and the lands are unidentified.

Where the State of Oregon makes an initial selection of indemnity lands pursuant to the Act of Feb. 28, 1891, ch. 384, 26 Stat. 796, for school sections within an unsurveyed fractional township in a national forest, it is not entitled to additional indemnity lands should a subsequent reprotraction or survey be made of the township.

State of Oregon et al., II, 80 IBLA 354 (May 10, 1984) 91 I.D. 212

Legislative history of the Act of July 6, 1960, clearly shows that Congress concluded that the Federal Government holds title to land relinquished to the Federal Government in anticipation of a forest lieu exchange, notwithstanding the failure to consummate the exchange.

An application for a recordable disclaimer of the Government's interest in a parcel of land in the Inyo National Forest pursuant to sec. 315 of the Act of Oct. 21, 1976, which parcel was deeded to the Government in 1899 in contemplation of selecting another parcel in lieu thereof pursuant to the Act of June 4, 1897, is properly rejected even though the lieu selection was never consummated, because the Act of July 6, 1960, quieted title to such land to the United States as part of the national forest in which the lands are located.

Andy D. Rutledge et al., 82 IBLA 89 (July 17, 1984)

LOWER COLORADO RIVER LAND USE

A determination by an Assistant Secretary of the Interior that the public need for the public land in the Lower Colorado River Land Use Area requires termination of residential permits issued for such land is not appealable to the Office of Hearings and Appeals.

Decisions by the Yuma District Office, Bureau of Land Management, not to renew residential permits in the Parker Strip Area, Lower Colorado River, consonant with a determination by an Assistant Secretary will be affirmed where it is not shown that any rights of the permittees under applicable regulations have been abridged.

Donald R. Pipe et al., 4 OHA 92 (Nov. 7, 1980)

A determination by an Assistant Secretary of the Interior that the increased potential for flooding of the public lands in the Lower Colorado River Land Use Area requires termination of residential permits issued for land in the flood plain is not appealable to the Office of Hearings and Appeals.

Decisions by the Yuma District Office, Bureau of Land Management, not to renew residential permits in the flood plain of the Lower Colorado River, consonant with a determination by an Assistant Secretary, will be affirmed where it is not shown that any rights of the permittees under applicable regulations have been abridged.

Clarence C. Ore et al., 4 OHA 125 (Feb. 24, 1981)

Mr. & Mrs. Adron J. Chastain, Mr. and Mrs. T. O. Davis, Sr., 4 OHA 134 (Mar. 24, 1981)

MATERIALS ACT

Where a State Highway District is denied renewal of a free use permit for a material site because a portion of the land has been enclosed within the boundary of a proposed wilderness study area, the decision will not be sustained absent a showing that the denial is supported by overriding considerations of public interest.

Shoshone Highway District #2, 45 IBLA 151 (Jan. 23, 1980)

While an Alaska Native village corporation, organized for profit under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (1976), does not qualify for a free-use exemption under the Materials Disposal Act of 1947, as amended, 30 U.S.C. § 601 (1976), it may apply to purchase sand and gravel under that Act and the mineral sales regulations at 43 CFR Part 3610.

Ukpeagvik Inupiat Corp., 68 IBLA 359 (Nov. 22, 1982)

The purchaser under a material sales contract who has paid for the right to mine and remove a quantity of scoria, but who has been unable to mine and remove a substantial part of the scoria purchased prior to expiration of the contract, may be entitled to a credit for the appraised value of the scoria purchased but not taken as limited by the pro rata share of the contract price. Where the purchaser remains ready, willing, and able to mine and remove the balance of the scoria purchased, the contract is properly extended or renewed to authorize removal of the balance of the scoria, subject to reappraisal of the value of the remaining scoria, in

MATERIALS ACT--Continued

the absence of a compelling countervailing public interest.

Mobil Oil Corp., 79 IBLA 76 (Feb. 16, 1984)

MILLSITES
(See also Mining Claims--if included in this Index.)

GENERALLY

An application for a millsite patent is properly rejected where the applicant can allege only past use of the millsite for mining or milling purposes pursuant to 30 U.S.C. § 42 (1976). An application for a millsite patent is properly rejected where use of the millsite within the terms of 30 U.S.C. § 42 (1976) depends upon the future discovery of minerals.

So long as the legal title to public lands remains in the United States, it has the power, after proper notice and upon adequate hearing, to determine whether a millsite claim is valid, and if it be found invalid, to declare it null and void.

An application for a millsite patent is properly rejected where the applicant's use and occupancy of the millsite at the time of application consists only of reclaiming the land.

United States of America v. Utah International, Inc., 45 IBLA 73 (Jan. 17, 1980)

A millsite claim located on lands which are segregated from mineral entry by a first-form reclamation withdrawal is null and void ab initio. The fact that the land may have been used previously as a millsite is irrelevant in the absence of a showing by the claimant that he is the direct successor to a valid millsite claim located prior to the withdrawal of the land.

R. Combest, 49 IBLA 56 (July 21, 1980)

Sec. 15 of the Act of May 10, 1872, 30 U.S.C. § 42 (1976), requires that a millsite be used or occupied distinctly and explicitly for mining or milling purposes. Where a cabin on a millsite is used for residential purposes and the use of the cabin for mining purposes is only incidental to its use as a residence, the millsite must be declared null and void.

United States v. Leon R. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

Under 43 CFR 3833.2-1(d), a millsite owner is not required to file a notice of intention to hold the site until Dec. 30 of the year following the year in which the owner files the notice of location for the site with BLM for recordation. A BLM decision declaring six millsite claims abandoned and void because notices of intention to hold, filed at the same time as the notices of location for the sites, are defective will be reversed.

Louis L. Osser, Jr., et al., 56 IBLA 30 (July 8, 1981)

A decision by the Bureau of Land Management that unpatented millsite claims are abandoned and void because no notice of intent to hold was filed with the recorded notice of location will be reversed. There is

MILLSITES--Continued

GENERALLY--Continued

no requirement either in the statute or regulations for such filing.

Ronald Cole, 56 IBLA 131 (July 16, 1981)

Cyprus Mines Corp., 56 IBLA 160 (July 20, 1981)

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Harlow H. Oberbillig, 57 IBLA 336 (Sept. 1, 1981)

Richard Holland, 74 IBLA 167 (July 12, 1983)

The failure to file a copy of a notice or certificate of location for a millsite as required by sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2 in the proper Bureau of Land Management office within the time period prescribed therein conclusively constitutes abandonment of the millsite by the owner.

Fletcher D. Fisher, 59 IBLA 150 (Oct. 26, 1981)

A valid millsite must be used or occupied for mining or milling purposes in conjunction with a mining claim and contain a quartz mill or reduction works. Where this does not exist, the millsite is properly declared invalid. A vague intention to use or occupy land embraced in a millsite claim for mining or milling purposes at some time in the future is not sufficient to comply with the requirements for obtaining a millsite.

Where a mining or millsite claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the mining claim was not supported at the date of the withdrawal by a discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

Sec. 15 of the Act of May 10, 1872, 30 U.S.C. § 42 (1976), requires that a millsite be used or occupied for mining or milling purposes. The use of improvements on millsites as a base for occasional sampling or testing activities on associated patented lode claims and the intent to use the millsites in the future, when and if market conditions are favorable, do not satisfy the statutory requirements.

United States v. Louis L. Osser, Jr., et al., 76 IBLA 59 (Sept. 21, 1983)

MILLSITES--Continued

GENERALLY--Continued

Where it is confirmed that a locator of a millsite claim had filed a formal abandonment of the millsite claim with the local county recorder's office, the original millsite location no longer is a valid millsite requiring annual filings of a notice of intention to hold the site under FLPMA, and BLM properly declared the claim invalid.

Matthews Scientific Corp., 76 IBLA 280 (Oct. 18, 1983)

DEPENDENT

Where a dependent millsite is allegedly operated only in connection with a lode mining claim which is invalid, it necessarily follows that the millsite is invalid.

United States v. Michael Kuretich et al., 54 IBLA 124 (Apr. 17, 1981)

Use of a millsite claim as a boat dock does not satisfy the requirements for a valid millsite claim. Even if such a use were qualifying, the lack of production shows that the site is not presently used for shipping ore, and an intent to use the land for millsite purposes in the future is not sufficient for a valid millsite claim. Furthermore, a millsite is properly declared to be invalid if it is used in connection with a mining claim that is held to be invalid.

United States v. Michael D. Beckley, Virginia B. Beckley, 66 IBLA 357 (Aug. 27, 1982)

DETERMINATION OF VALIDITY

An application for a millsite patent is properly rejected where the applicant can allege only past use of the millsite for mining or milling purposes pursuant to 30 U.S.C. § 42 (1976). An application for a millsite patent is properly rejected where use of the millsite within the terms of 30 U.S.C. § 42 (1976) depends upon the future discovery of minerals.

An application for a millsite patent is properly rejected where the applicant's use and occupancy of the millsite at the time of application consists only of reclaiming the land.

United States of America v. Utah International, Inc., 45 IBLA 73 (Jan. 17, 1980)

After the contestant has made a prima facie case of invalidity, the millsite claimant has the burden of establishing the validity of his claim by a preponderance of the evidence. Where a millsite is not presently used or occupied, the factors to be taken into account are (1) the condition of the mill; (2) potential sources of lode or placer material to be run through the mill; (3) marketing conditions; (4) cost of operation including labor and transportation; and (5) all factors that have a bearing upon the economic feasibility of a milling operation being conducted.

United States v. Robert Chambers, 47 IBLA 102 (Apr. 23, 1980)

MILLSITES--Continued

DETERMINATION OF VALIDITY--Continued

A mineral claimant who has not made a discovery of a valuable mineral deposit within the limits of his lode or placer mining claims is not the proprietor of a "vein, lode or placer" within the context of 30 U.S.C. § 42 (1976), and cannot establish any right to a millsite claim based on such unperfected mining locations.

United States v. Leon B. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

Where a millsite is located in conjunction with certain mining claims which are not producing, and the millsite has never been used or improved for any purpose associated with mining, the mere presence of water on the millsite which could be used for mining or milling in the event such activities should transpire is not sufficient to support a finding that the millsite claim is valid.

United States v. Lyle E. and Diane Campbell, 59 IBLA 261 (Oct. 29, 1981)

The owner of an unpatented millsite location situated within lands selected by a Native corporation under ANCSA is not denied any interests acquired under 30 U.S.C. § 42(b) notwithstanding that the provisions of § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c) establish a time limit within which steps must be taken to proceed to patent.

The terms of § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c) requiring that the owner of an unpatented millsite location must proceed to patent within a time limit is not in derogation of the general mining laws which contain no time limit within which a mining claimant needs to proceed to obtain patent.

When an unpatented millsite location is situated within lands selected and approved for conveyance under ANCSA, the possessory interest of the mining claimant is protected under provisions of § 22(c) and 43 CFR 2650.3-2 as a valid existing right notwithstanding that the Bureau of Land Management has not adjudicated the validity of such millsite prior to conveyance.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D. 293

Use of a millsite claim as a boat dock does not satisfy the requirements for a valid millsite claim. Even if such a use were qualifying, the lack of production shows that the site is not presently used for shipping ore, and an intent to use the land for millsite purposes in the future is not sufficient for a valid millsite claim. Furthermore, a millsite is properly declared to be invalid if it is used in connection with a mining claim that is held to be invalid.

United States v. Michael D. Beckley, Virginia B. Beckley, 66 IBLA 357 (Aug. 27, 1982)

A valid millsite must be used or occupied for mining or milling purposes in conjunction with a mining claim and contain a quartz mill or reduction works. Where this does not exist, the millsite is properly declared invalid. A vague intention to use or occupy land embraced in a millsite claim for mining or milling purposes at some time in the future is not sufficient to comply with the requirements for obtaining a millsite.

Where a mining or millsite claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of

MILLSITES--Continued

DETERMINATION OF VALIDITY--Continued

the withdrawal, as well as the date of the hearing. If the mining claim was not supported at the date of the withdrawal by a discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

Sec. 15 of the Act of May 10, 1872, 30 U.S.C. § 42 (1976), requires that a millsite be used or occupied for mining or milling purposes. The use of improvements on millsites as a base for occasional sampling or testing activities on associated patented lode claims and the intent to use the millsites in the future, when and if market conditions are favorable, do not satisfy the statutory requirements.

United States v. Louis L. Osser, Jr., et al., 76 IBLA 59 (Sept. 21, 1983)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

PATENTS

An application for a millsite patent is properly rejected where the applicant can allege only past use of the millsite for mining or milling purposes pursuant to 30 U.S.C. § 42 (1976). An application for a millsite patent is properly rejected where use of the millsite within the terms of 30 U.S.C. § 42 (1976) depends upon the future discovery of minerals.

So long as the legal title to public lands remains in the United States, it has the power, after proper notice and upon adequate hearing, to determine whether a millsite claim is valid, and if it be found invalid, to declare it null and void.

An application for a millsite patent is properly rejected where the applicant's use and occupancy of the millsite at the time of application consists only of reclaiming the land.

United States of America v. Utah International, Inc., 45 IBLA 73 (Jan. 17, 1980)

The terms of § 22(c) of ANCSA and regulations in 43 CFR 2650.3-2(c) requiring that the owner of an unpatented millsite location must proceed to patent within a time limit is not in derogation of the general mining

MILLSITES--Continued

PATENTS--Continued

laws which contain no time limit within which a mining claimant needs to proceed to obtain patent.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D. 293

MINERAL LANDS

GENERALLY

When the Bureau of Land Management has appraised the damages for a mineral trespass under 43 CFR Part 9230, an appraisal will be sustained in the absence of an offer of specific substantial evidence that it is incorrect.

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

There is no authority pursuant to which a pro rata or set-off formula can be read into 43 CFR 3503.3-1. Nor do the regulations require BLM to accept all tenders of rental against an anticipated unavailability of some or all of the lands included in a hardrock prospecting application, which may or may not materialize. In the event that some or all of the lands applied for are unavailable, the applicant's remedy is a refund of excess rental paid, and not a set-off against deficiencies.

Failure to remit the "full amount" of the first year's rental as defined at 43 CFR 3503.3-1(a), means failure to remit either a $20 minimum rental for 80 or fewer acres, or the amount computed for the total acreage if known, or the total acreage computed on the basis of 40 acres for each smallest subdivision of the acreage involved in the application. An application which is not accompanied by the full amount of advance rental is properly rejected.

The regulation pertaining to attorneys-in-fact, as it relates to corporate applicants, 43 CFR 3502.6-1(a)(3), calls for evidence that the individual who signs an application is also empowered to execute the instrument and bind the corporation. Where an existing file of corporate qualifications sets forth the names of individuals or corporate officers authorized to act for the corporation in mineral applications and leases, and the terms of such authority, the requirements of 43 CFR 3502.6 are fully satisfied by reference to such file. 43 CFR 3502.7-2.

Regarding curable defects in a hardrock prospecting permit application, 43 CFR 3511.2-4(b), priority exists as of the date of cure. Compliance with that regulation establishes priority for those lands not included in junior acceptable applications or otherwise unavailable for hardrock prospecting.

Duval Corp., Amax Exploration, Inc., 45 IBLA 355 (Feb. 7, 1980)

The purpose of 30 U.S.C. § 38 (1976) whereby a person or association may establish a right to patent lands which said person or association has held and worked for a period equal to the statute of limitations is to obviate proving formal compliance with requirements for locating a claim, but it does not dispense with proof of discovery.

United States v. Joseph B. and Alethe Henri, 46 IBLA 221 (Mar. 27, 1980)

MINERAL LANDS--Continued

GENERALLY--Continued

Where applicants for a preference right lease for hardrock minerals fail to present evidence showing the quantity and quality of the minerals discovered in the area covered by the prospecting permit, but rather present evidence showing only an extremely deep deposit of low value ore, which evidence is inadequate to show that they have made a discovery of a valuable mineral deposit, and they do not dispute the findings relied on by the Bureau of Land Management, their application is properly rejected.

John D. Archer, Elizabeth B. Archer, 47 IBLA 268 (May 13, 1980)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

An application for an exchange of land pursuant to sec. 206 of FLPMA requires first a determination that the public interest will be well served by the exchange and, second, that the total value of the Federal land does not exceed the value of the offered land by more than 25 percent. Where, during the pendency of an appeal from the rejection of a proposal to exchange oil shale lands, certain economic events occur which both diminish the advantage of the exchange to the public interest and increase the disparity in the relative values of the offered and selected lands, the decision will be affirmed without an evidentiary hearing on the previous evaluations of the two properties.

Superior Oil Co. (Appellant), Cleveland-Cliffs Iron Co., & Sohio Shale Oil Co. (Intervenors), 78 IBLA 60 (Dec. 16, 1983)

DETERMINATION OF CHARACTER OF

To establish the mineral character of lands, it must be shown that the known conditions are such as to engender the belief that the lands contain mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end. The mineral character of land may be established by inference without the exposure of the mineral deposit for which the land is supposed to be valuable. Lands containing mineral of such quantity and value as to warrant a prudent man in the expenditure of his time and money with a reasonable expectation of developing a paying mine are disposable only under the mining laws.

Edith Steyd, Beulah Roth, 50 IBLA 61 (Sept. 15, 1980)

MINERAL LANDS--Continued

DETERMINATION OF CHARACTER OF--Continued

A single discovery of mineral within a placer mining claim does not conclusively establish the mineral character of all the land included in the location. Whether the land embraced in the claim is mineral in character is an issue which remains open to investigation and determination by the Department until patent issues. The contestee must establish that each 10-acre tract within the entire claim is mineral in character, failing in which any nonmineral 10-acre tract is properly excluded from the patent application.

United States v. Cameron Catlin Bohne et al., United States v. Exxon Corp. et al., United States v. Aidabelle Brown et al. (Supp.), 51 IBLA 97 (Nov. 5, 1980) 87 I.D. 535

Where a Native allotment application filed in 1961 is rejected, more than 13 years after applicant has submitted acceptable evidence of his use and occupancy of the land for more than the required 5-year period set out in the appropriate statute, solely on the basis of a Geological Survey report in 1974 that the land was believed to be prospectively valuable for phosphate, the decision rejecting the application will be set aside and the matter remanded to BLM to proceed to issuance of patent as land must be considered to be nonmineral in character absent a showing that minerals are present in such quantities and such qualities as would induce a person of ordinary prudence to expend time and money with a reasonable prospect of success in developing a paying mine thereon.

Heirs of Simon Panoak, 55 IBLA 305 (June 25, 1981)

The filing of a phosphate prospecting permit application creates no vested rights in the applicant, and the application must be rejected if the land described therein is determined to be within a known phosphate leasing area subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the phosphate bed underlying the applied for land, which finding requires competitive leasing of the land.

It is unnecessary to demonstrate the workability of a mineral deposit by an actual physical examination of the deposit in the land sought by means of drilling or actual exploratory work on the ground. Competent evidence to establish the fact that exploration is unnecessary to determine the existence or workability of a phosphate deposit may consist of proof of the existence of minerals in adjacent lands and of geological and other surrounding external conditions.

Christian F. Nurer, 57 IBLA 333 (Sept. 1, 1981)

To establish the mineral character of railroad grant lands under the Act of July 1, 1862, 12 Stat. 489 as amended by the Act of July 2, 1864, 13 Stat. 356, it must be shown that known conditions--which may include geological conditions, discoveries of minerals in adjacent land, and other observable external conditions upon which prudent and experienced men are known to be accustomed to act--are such as reasonably to engender the belief that the land contains mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

One will not be considered an innocent purchaser for value under sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1976), when the evidence presented at a hearing supports a finding that the lands in question were of known mineral character on the date of the original sale by the railroad, and the purchaser should have known at the time of purchase

MINERAL LANDS--Continued

DETERMINATION OF CHARACTER OF--Continued

that such lands were excepted from the grant to the railroad.

United States v. Southern Pacific Transportation Co. & Donald K. Lee, 66 IBLA 191 (Aug. 13, 1982)

Where 10-acre portions of oil shale placer mining claims cover lands from which erosion has removed the Parachute Creek member (the principal body of rich oil shale), there is no geological basis to infer the presence of rich oil shale, and such portions of the claims are properly determined to be nonmineral in character.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end. A finding that land is mineral in character may be based wholly on inferential evidence.

United States v. Cecil Bell et al., 68 IBLA 367 (Nov. 22, 1982)

Lands are known to be valuable for mineral when known conditions are such as reasonably to engender the belief that the lands contain mineral of such quality and in such quantity as would render its extraction profitable and justify expenditures to that end.

Billy Morry, 72 IBLA 13 (Apr. 4, 1983)

A previous determination by the Department of the Interior in a proceeding different from a mining claim contest that land was mineral in character is not evidence of a discovery of a valuable mineral deposit in a mining contest.

United States v. Lee H. Rice, Goldie E. Rice, 73 IBLA 128 (May 23, 1983)

The filing of a phosphate prospecting permit application creates no vested rights in the applicant, and the application must be rejected if the land described therein is determined to be within a known phosphate leasing area subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the phosphate bed underlying the applied for land, which finding requires competitive leasing of the land.

Christian F. Burer, 75 IBLA 232 (Aug. 23, 1983)

A conveyance for public lands carries with it an implied affirmation of every necessary prerequisite. After the Secretary of the Interior has decided that any particular land is not mineral in character and has approved conveyance thereof on that basis, the transfer of title is not vitiated by the subsequent discovery of minerals.

George Antunovich, John E. Curran, 76 IBLA 301 (Oct. 19, 1983) 90 I.D. 464

MINERAL LANDS--Continued

DETERMINATION OF CHARACTER OF--Continued

In determining whether each 10-acre part of a placer claim is mineral in character, the claim must be subdivided to create square 10-acre parcels, to the extent possible, regardless whether the claim, as laid out on the ground, conforms to the system of public land surveys.

Where the evidence submitted by a Government mineral examiner supports the conclusion that a 10-acre parcel of land in a placer location is not mineral in character, the burden devolves to the mineral claimant to overcome this showing by a preponderance of the evidence, failing in which that portion shall be declared invalid.

United States v. Robert E. Lara (On Reconsideration), 80 IBLA 215 (Apr. 30, 1984)

BLM must reject a phosphate prospecting permit application filed pursuant to sec. 9(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 211(b) (1982), where the land is determined to be within a known phosphate leasing area.

An applicant for a phosphate prospecting permit under sec. 9(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 211(b) (1982), acquires no vested right to a permit by virtue of an inordinate delay in adjudication of the application, even where a permit might have issued when the application was originally filed.

In rejecting a phosphate prospecting permit application because the land is within a known phosphate leasing area, and thus no longer subject to issuance of a permit, BLM may rely on proof of the existence or workability of minerals in adjacent lands and geological and other surrounding external conditions, and need not engage in drilling or other exploratory work on the ground.

In rejecting a phosphate prospecting permit application, BLM may properly consider a recommendation of the Forest Service that issuance of a permit would not be in the public interest. However, ultimate rejection must be supported by facts of record and a reasoned explanation.

Elizabeth B. Archer et al., 82 IBLA 14 (July 5, 1984)

LEASES

The grant of an oil and gas permit under the Mineral Leasing Act, 30 U.S.C. § 181 (1976), prior to the location of a mining claim in 1929 precludes, as long as the permit is in force, the appropriation of land therein included under the mining laws.

United States v. Ernest Higbee et al., 52 IBLA 83 (Jan. 9, 1981)

The filing of a phosphate prospecting permit application creates no vested rights in the applicant and the application must be rejected if the land described therein is determined by Geological Survey to be within a known phosphate leasing area and to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the underlying phosphate bed, which finding requires competitive leasing of the land.

J. R. Simplot Co., 58 IBLA 305 (Oct. 14, 1981)

John D. Archer et al., 75 IBLA 128 (Aug. 15, 1983)

Earth Sciences, Inc., 80 IBLA 28 (Mar. 28, 1984)

MINERAL LANDS--Continued

LEASES--Continued

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

A decision to reject an application for a mineral lease within the Lake Mead National Recreation Area will be sustained in the absence of a showing that the authorized officer acted unreasonably in rejecting the lease for reasons relating to the protection of environmental and cultural values.

Edward Seggerson, Jr., 67 IBLA 189 (Sept. 22, 1982)

Bureau of Land Management properly rejects combination prospecting permit/mineral lease applications for lands within the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area that are not open to mineral leasing under 43 CFR 3566.2-2.

David Britton, 74 IBLA 271 (July 25, 1983)

Bureau of Land Management properly rejects combination prospecting permit/mineral lease applications for lands within the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area that are not open to mineral leasing under 43 CFR 3566.2-2.

An application to acquire mineral rights in public lands does not create a property right in the applicant.

Steve D. Mayberry, Mehrle Jennings, Mark Jennings, 82 IBLA 339 (Sept. 12, 1984)

MINERAL RESERVATION

Interpretations of the mineral reservation in patents issued by the United States under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), must be consistent with the established rule that land grants are to be construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it.

In determining whether scoria is included in a mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), the interpretation of the reservation must take into account the intended use for which the land was conveyed and those uses which the Government intended to reserve.

A patent of land under the Stock-Raising Homestead Act, 43 U.S.C. § 291 (1970), was not generally intended to give the grantee the right to use the land for mineral development, but mineral development was to proceed only under the mineral laws.

The mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 291 (1970), includes mineral substances which can be taken from the soil and which have a separate value, including those marketable minerals found at or near the surface, and which have no rare or exceptional character, regardless of whether they are subject to disposition under 30 U.S.C. § 601 (1976) or other existing statutory authority.

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), contemplates that the Department of the Interior retains continuing jurisdiction

MINERAL LANDS--Continued

MINERAL RESERVATION--Continued

and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 3602.1 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Under the Stock-Raising Homestead Act, 43 U.S.C. §§ 291-301 (1970), there is no equitable basis for excluding valuable deposits of scoria from the scope of a Federal mineral reservation although the Government has successfully contended in other cases that common or surface minerals are not included in mineral reservations to the United States, because the rules of construction of private conveyances differ from those which govern Federal grants, and because 30 U.S.C. § 54 (1976) provides compensation for damage to surface owners' crops, improvements and grazing values.

Scoria which is valuable for surfacing roads is a mineral reserved to the United States in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

A patent issued pursuant to the Homestead Act of May 20, 1862, 43 U.S.C. § 161 (1976), reserving to the United States all coal under the Act of June 22, 1910 (36 Stat. 583) and sodium under the Act of July 17, 1914 (38 Stat. 509) in the lands described by such patent, cannot be construed as reserving to the United States other minerals, such as oil and gas, which are not specifically reserved therein.

Circular 1021, July 21, 1925, instructed the land offices to impress upon a nonmineral application a reservation of those minerals for which the land had been embraced in applications for permit or lease.

Lee R. Williamson, 48 IBLA 329 (July 3, 1980)

Where land is conveyed pursuant to the Stock Raising Homestead Act, 43 U.S.C. § 299 (1976), reserving to the United States all minerals therein, and thereafter the land is reconveyed to the United States, it is error for BLM to reject an offer to lease for oil and gas on the basis that the United States does not own the minerals therein.

A decision to reject a noncompetitive oil and gas lease offer on the grounds that the United States does not own the oil and gas interest will be vacated where the record shows that the subject lands were patented by the State of Utah after passage of secs. 5575x and 5575x1, Ch. 107, Laws of Utah (May 12, 1919), requiring the State to reserve all coal and minerals in lands thereafter conveyed, but where the record is silent as to whether an application to purchase had been approved by the State of Utah prior to passage of secs. 5575x and 5575x1 on May 12, 1919.

Douglas H. Willson et al., 52 IBLA 390 (Feb. 24, 1981)

The effect of a notation on a document stating that in a conveyance to the State of Wyoming "all petroleum" was reserved to the United States is overcome by evidence of more authoritative records establishing that petroleum was not reserved, and that such a reservation would have been contrary to the statute which conditioned the conveyance under the prevailing circumstances, so that an oil and gas lease offer for the purported reserved petroleum was properly rejected.

Charles H. Whitlock, 57 IBLA 252 (Aug. 28, 1981)

MINERAL LANDS--Continued

MINERAL RESERVATION--Continued

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976), contemplates that the Department of the Interior retains continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976).

The mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 291 (1976), includes mineral substances which can be taken from the soil and which have a separate value, including those marketable minerals found at or near the surface, and which have no rare or exceptional character, regardless of whether they are subject to disposition under 30 U.S.C. § 601 (1976) or other existing statutory authority.

Scoria which is valuable for surfacing roads is a mineral reserved to the United States in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976). However, in a case where scoria is used no differently from common earth, the record must demonstrate that the deposit of scoria has commercial value independent of such use.

Texaco, Inc., 59 IBLA 155 (Oct. 26, 1981)

BLM's decision to dismiss a protest by the holder of the surface estate in lands patented under the Stock-Raising Homestead Act against the sufficiency of the amount of a bond, put up by the claimant of mineral interests in these lands to cover damages to the surface estate from the claimant's mining and exploration activities, will be vacated and remanded for readjudication, where the record is devoid of facts of record to support this decision.

Soderberg Rawhide Ranch Co., 63 IBLA 260 (Apr. 19, 1982)

A waiver of mineral rights pursuant to 30 U.S.C. §§ 121-123 (1976) is properly required where there is a finding that land within a reclamation homestead entry is valuable for one of the minerals specified in that Act prior to the submission of reclamation final proof and other compliance with the law, even though ordinary homestead final proof was accepted many years before. Where the entryman or his successor in interest executed the waiver rather than appeal the decision requiring it, the waiver is binding on all successors in interest.

Vincent Barnard, 66 IBLA 100 (Aug. 4, 1982)

A reservation of "all minerals" in a patent of public lands pursuant to sec. 8 of the Taylor Grazing Act of June 28, 1934, as amended, 43 U.S.C.A. § 315g (repealed 1976), reserves to the United States geothermal resources underlying the patented lands. The reserved geothermal resources are subject to leasing only under the Geothermal Steam Act, 30 U.S.C. §§ 1001-1025 (1976).

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D. 496

MINERAL LANDS--Continued

MINERAL RESERVATION--Continued

The removal of sand and gravel for commercial purposes from land patented under the Stock-Raising Homestead Act, as amended, 43 U.S.C. § 291 (1970), constitutes a trespass since such sand and gravel has been reserved under the Act.

Brayne-Tankersley (Trust), 76 IBLA 48 (Sept. 19, 1983)

A decision approving a bond filed by a locator of mining claims for reserved minerals on land patented under the Stock-Raising Homestead Act will be affirmed in the absence of a showing that the amount of the bond is inadequate to cover damage to crops, improvements, and the value of the land for grazing purposes.

Robert N. Michael et ux., 79 IBLA 255 (Mar. 5, 1984)

BLM has the jurisdiction to determine whether the terms of a mineral reservation in a deed to the United States has operated to vest title to the mineral estate in the United States by virtue of a failure to comply with an annual production requirement found in the reservation. However, where the record indicates that BLM has not fully considered whether production within a production unit which includes the reserved land serves to extend the reservation, the case will be remanded to BLM for consideration of that question.

Doris A. Slaaten et al., 81 IBLA 282 (June 12, 1984)

NONMINERAL ENTRIES

A patent issued pursuant to the Homestead Act of May 20, 1862, 43 U.S.C. § 161 (1976), reserving to the United States all coal under the Act of June 22, 1910 (36 Stat. 583) and sodium under the Act of July 17, 1914 (38 Stat. 509) in the lands described by such patent, cannot be construed as reserving to the United States other minerals, such as oil and gas, which are not specifically reserved therein.

Circular 1021, July 21, 1925, instructed the land offices to impress upon a nonmineral application a reservation of those minerals for which the land had been embraced in applications for permit or lease.

Lee E. Williamson, 48 IBLA 329 (July 3, 1980)

A waiver of mineral rights pursuant to 30 U.S.C. §§ 121-123 (1976) is properly required where there is a finding that land within a reclamation homestead entry is valuable for one of the minerals specified in that Act prior to the submission of reclamation final proof and other compliance with the law, even though ordinary homestead final proof was accepted many years before. Where the entryman or his successor in interest executed the waiver rather than appeal the decision requiring it, the waiver is binding on all successors in interest.

Vincent Barnard, 66 IBLA 100 (Aug. 4, 1982)

Lands are known to be valuable for mineral when known conditions are such as reasonably to engender the belief that the lands contain mineral of such quality and in such quantity as would render its extraction profitable and justify expenditures to that end.

Billy Morry, 72 IBLA 13 (Apr. 4, 1983)

MINERAL LANDS--Continued

NONMINERAL ENTRIES--Continued

Bureau of Land Management properly rejects a desert land entry as to land within a material site because such land is known to contain minerals and mineral lands are excluded from desert land entry.

Norma L. McBride, 73 IBLA 165 (May 24, 1983)

PROSPECTING PERMITS

A hardrock prospecting permit application is properly rejected where the deed conveying the subject lands to the United States expressly excepts therefrom all minerals and rights thereunder outstanding of record in third parties.

Exxon Corp., 45 IBLA 260 (Feb. 4, 1980)

There is no authority pursuant to which a pro rata or set-off formula can be read into 43 CFR 3503.3-1. Nor do the regulations require BLM to accept all tenders of rental against an anticipated unavailability of some or all of the lands included in a hardrock prospecting application, which may or may not materialize. In the event that some or all of the lands applied for are unavailable, the applicant's remedy is a refund of excess rental paid, and not a set-off against deficiencies.

Failure to remit the "full amount" of the first year's rental as defined at 43 CFR 3503.3-1(a), means failure to remit either a $20 minimum rental for 80 or fewer acres, or the amount computed for the total acreage if known, or the total acreage computed on the basis of 40 acres for each smallest subdivision of the acreage involved in the application. An application which is not accompanied by the full amount of advance rental is properly rejected.

The regulation pertaining to attorneys-in-fact, as it relates to corporate applicants, 43 CFR 3502.6-1(a)(3), calls for evidence that the individual who signs an application is also empowered to execute the instrument and bind the corporation. Where an existing file of corporate qualifications sets forth the names of individuals or corporate officers authorized to act for the corporation in mineral applications and leases, and the terms of such authority, the requirements of 43 CFR 3502.6 are fully satisfied by reference to such file. 43 CFR 3502.7-2.

Regarding curable defects in a hardrock prospecting permit application, 43 CFR 3511.2-4(b), priority exists as of the date of cure. Compliance with that regulation establishes priority for those lands not included in junior acceptable applications or otherwise unavailable for hardrock prospecting.

Duval Corp., Asax Exploration, Inc., 45 IBLA 355 (Feb. 7, 1980)

A hardrock prospecting permit erroneously issued for lands already subject to such a permit must be canceled to the extent of conflict.

Reliance on incomplete records maintained by Federal land offices cannot confer upon a hardrock prospecting permittee any rights in derogation of a prior permittee.

ASAPCO, Inc., 47 IBLA 14 (Apr. 11, 1980)

MINERAL LANDS--Continued

PROSPECTING PERMITS--Continued

BLM properly applied the regulations set forth in 43 CFR Subparts 3520-21, effective May 7, 1976, to preference right lease applications pending on the effective date of such regulations.

BLM properly excluded from an applicant's demonstrated reserves of trona those reserves which the applicant, by stipulation in the prospecting permit, had agreed would not be subject to mining or recovery operations.

An exchange application tendered pursuant to 43 CFR Subpart 3526 is properly rejected by BLM where a preference right lease applicant has not demonstrated to the Secretary that he has a preference right to a lease.

A hearing is properly ordered pursuant to 43 CFR 3521.1-1(j) where a preference right lease application for trona is rejected and the applicant has alleged in his application facts sufficient to show that he is entitled to a lease. At the hearing, the permittee shall have both the burden of going forward and the burden of proof, and must show by a preponderance of the evidence that he has discovered a valuable deposit of trona and that the land is chiefly valuable therefor.

John S. Gold, Eugene T. Simons, 48 IBLA 106 (May 30, 1980)

Where a prospecting permit applicant is required to furnish evidence of its qualifications to hold the permit, proper reference to its corporate qualifications statement on file in any Bureau of Land Management office fully satisfies the requirements of 43 CFR 3502.1-3.

Where, under 43 CFR 3502.7, evidence of qualifications to hold a prospecting permit must be submitted simultaneously with other application materials and such evidence is not submitted with the application, the application is deficient, the filing is ineffective, and no priority attaches. However, where an applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3502.7 is satisfied, an effective filing occurs, and priority attaches on the date of the cure.

Leon F. Scully, Jr., Eileen Scully, 50 IBLA 19 (Sept. 9, 1980)

Where on appeal an application for a hardrock prospecting permit for acquired lands in a national forest has been amended as to the lands and minerals concerned, the application may be remanded to Bureau of Land Management for review and referral to the Forest Service for metes and bounds description of any additional areas recommended for exclusion.

Evelyn Eyrand, 50 IBLA 377 (Oct. 21, 1980)

Lands acquired by the Forest Service pursuant to the General Exchange Act of 1922 and the Federal Land Policy and Management Act of 1976 have the status of public lands and are not subject to uranium prospecting permits under the Mineral Leasing Act for Acquired Lands, but such lands are subject to location and entry under the general mining law and to leasing under the Mineral Leasing Act of 1920.

Wyoming Fuel Co., 52 IBLA 302 (Feb. 10, 1981)

MINERAL LANDS--Continued

PROSPECTING PERMITS--Continued

An applicant for a prospecting permit on acquired forest lands must execute any special stipulations required by the Department of Agriculture as a condition precedent to the issuance of the permit, or suffer rejection of the offer.

John W. Jewell, 53 IBLA 179 (Mar. 16, 1981)

The Secretary of the Interior has no authority to approve a hardrock mineral prospecting permit application for lands in the Nantahala National Forest which were originally acquired by the Tennessee Valley Authority and later transferred to the jurisdiction of the Forest Service, Department of Agriculture, by interagency agreement.

Joseph E. Worthington, 54 IBLA 162 (Apr. 21, 1981)

Where, pursuant to 43 CFR Part 3510, BLM grants a 2-year permit for hardrock mineral prospecting on certain acquired national forest lands with the concurrence of the Forest Service and Geological Survey, and thereafter fails to approve the permittee's operating plan during the term of the permit and a 2-year extension, the permit will be considered to have been suspended during that period and the permittee granted a 2-year term for prospecting with the right to apply for an extension as provided by the regulations.

Leroy Pedersen, 56 IBLA 86 (July 15, 1981)
88 I.D. 646

The filing of a phosphate prospecting permit application creates no vested rights in the applicant and the application must be rejected if the land described therein is determined by Geological Survey to be within a known phosphate leasing area and to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the underlying phosphate bed, which finding requires competitive leasing of the land.

J. R. Simplot Co., 58 IBLA 305 (Oct. 14, 1981)

John D. Archer et al., 75 IBLA 128 (Aug. 15, 1983)

Earth Sciences, Inc., 80 IBLA 28 (Mar. 28, 1984)

BLM may not properly require an applicant for a hardrock prospecting permit to execute a stipulation that a lease will be issued only upon a showing of a valuable mineral deposit, as a condition precedent to issuance of the permit, where the Secretary has declared that such a standard is not applicable to prospecting permits issued pursuant to sec. 402 of Reorganization Plan No. 3, 60 Stat. 1099.

Amax Exploration, Inc., 58 IBLA 312 (Oct. 16, 1981)

Where there is no regulatory requirement that issuance of an application for a phosphate prospecting permit is contingent upon the filing of an exploration plan, a BLM decision rejecting an application for a permit because no exploration plan was first filed will be reversed.

GeoResources, Inc., 67 IBLA 297 (Sept. 29, 1982)

MINERAL LANDS--Continued

PROSPECTING PERMITS--Continued

"Extension." An extension of a prospecting permit is a prolongation of the term of the previous interest. Accordingly, it commences as of the expiration date of the primary term of the permit.

Asarco, Inc., 70 IBLA 91 (Jan. 11, 1983)

Where, pursuant to 43 CFR Part 3510, BLM grants 2-year extensions to hardrock mineral prospecting permits on certain acquired lands within a national forest, but delays approval of the extensions until from 9 to 19 months have elapsed after the expiration of the original permits, and then dates the extensions from the terminal date of the original permits, the permits will be deemed to have been suspended during the period between the expiration date of the original permits and the granting of the extensions, so that the permittee may have a full 2-year term for prospecting.

ASARCO, Inc., 72 IBLA 110 (Apr. 14, 1983)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Under 43 CFR 3501.1-6, the Bureau of Land Management must reject applications for prospecting permits that are filed for lands not available for prospecting.

Irvin D. Bird, Jr., 73 IBLA 210 (May 27, 1983)

Where, pursuant to 43 CFR 3510, BLM grants a 2-year extension to a hardrock mineral prospecting permit, but delays approval of the extension for 15 months after the expiration of the original permit and then dates the extension from the terminal date of the original permit, the permit will be deemed to have been suspended during the period between the expiration date of the original permit and the granting of the extension, so that the permittee may have a full 2-year term for prospecting.

UOP, Inc., 74 IBLA 54 (June 29, 1983)

Where a regulation authorizes BLM's request for certain information regarding a competitive phosphate lease application and a notice to the applicant states that failure to file such information within 60 days will subject the application to rejection, BLM may reject the application at the conclusion of the 60-day term in the absence of a filing extension.

GeoResources, Inc., 74 IBLA 236 (July 19, 1983)

Bureau of Land Management properly rejects combination prospecting permit/mineral lease applications for lands within the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area that are not open to mineral leasing under 43 CFR 3566.2-2.

David Britton, 74 IBLA 271 (July 25, 1983)

MINERAL LANDS--Continued

PROSPECTING PERMITS--Continued

Where, pursuant to 43 CFR Part 3510, BLM grants a 2-year extension to a hardrock mineral prospecting permit on certain acquired lands within a national forest, but delays approval of the extension until 17 months have elapsed after the expiration of the original permit, and then dates the extension from the terminal date of the original permit, the permit will be deemed to have been suspended during the period between the expiration date of the original permit and the granting of the extension, so that the permittee may have a full 2-year term for prospecting.

Ozark-Mahoning Co., 74 IBLA 355 (July 28, 1983)

The Department of the Interior has no authority to issue permits or leases for the exploration or mining of hard rock minerals in land acquired by and held under the jurisdiction of the Department of the Army.

George S. Crawford, 75 IBLA 290 (Aug. 26, 1983)

BLM may properly reject a hardrock prospecting permit application where the land description by legal subdivision is inaccurate (as well as ambiguous) in that the applicant refers to the NW 1/2 SE 1/4 SE 1/4 and the SE 1/2 SE 1/4 and the land has been surveyed under the rectangular system of public land surveys and the description can be conformed thereto, as provided by 43 CFR 3501.2-4(a).

Ozark-Mahoning Co., 76 IBLA 294 (Oct. 18, 1983)

An application for a hardrock prospecting permit is properly rejected where the lands described therein do not exist. Applicant bears the responsibility of furnishing a proper land description and BLM is without authority to speculate on applicant's intention or to alter a land description.

A new application for prospecting permit filed pursuant to 43 CFR 3511.2-4 within 30 days of rejection of an earlier application for a curable defect obtains priority as of the date of filing of the new application.

John R. Snedegar, 79 IBLA 201 (Feb. 28, 1984)

Where a prospecting permit application is submitted in less than the required number of approved forms, a curable defect exists, which under provision of 43 CFR 3511.2-4(b) if cured within 30 days, entitles the application to priority as of the date of the curative filing.

W. J. Jewell, 80 IBLA 322 (May 7, 1984)

Extension of a prospecting permit may be properly denied where application is not timely filed and no showings are made, as required by 43 CFR 3511.3-2, as to the reasons why additional time is needed to complete prospecting work.

Inverness Mining Co., 81 IBLA 78 (May 23, 1984)

MINERAL LANDS--Continued

PROSPECTING PERMITS--Continued

An application for a prospecting permit for reserved minerals in former public domain the surface of which is patented to the State of California, is not properly rejected pursuant to 43 CFR Subpart 3564 where it appears the application was not provided to the surface manager for comment prior to adjudication as required by 43 CFR 3564.4.

Elton Elliott et al., 82 IBLA 179 (Aug. 9, 1984)

Bureau of Land Management properly rejects combination prospecting permit/mineral lease applications for lands within the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area that are not open to mineral leasing under 43 CFR 3566.2-2.

An application to acquire mineral rights in public lands does not create a property right in the applicant.

Steve D. Mayberry, Mehrle Jennings, Mark Jennings, 82 IBLA 339 (Sept. 12, 1984)

An application for a prospecting permit for reserved minerals in former public domain, the surface of which is patented to the State of California, is properly rejected pursuant to 43 CFR 3564.4 where the State objects to approval of this application for reasons determined by the authorized officer to be satisfactory.

G. Burt Harris, 83 IBLA 334 (Nov. 5, 1984)

MINERAL LEASING ACT
(See also Bureau of Land Management, Coal Leases & Permits, Geothermal Leases, Oil & Gas Leases, Phosphate Leases & Permits, Potassium Leases & Permits, Sodium Leases & Permits--if included in this Index.)

GENERALLY

A natural brine containing water and ions of sodium, potassium, calcium, magnesium, and chlorine may be considered a valuable deposit of a sodium compound within the meaning of 30 U.S.C. § 262 (1976) if either of two contingencies occur. First, sodium must be present in sufficient quantity as to be commercially valuable. Second, sodium must be essential to the molecular structure of the valuable mineral.

The Administrative Law Judge gave proper weight to Government testimony in dismissing the Government's contest complaint where the evidence supported a finding of the existence of a sodium-calcium-chloride brine, but did not support a finding that such brine was "known to be valuable" for a Leasing Act mineral.

The existence of a "related product" within the meaning of 30 U.S.C. § 262 (1976) presumes the existence of a valuable sodium compound deposit.

United States v. Leron Bardsley (Trustee), Marlene B. Bardsley, Individually and as Administratrix of the Estate of Donald H. Bardsley (Deceased), 45 IBLA 367 (Feb. 7, 1980)

MINERAL LEASING ACT--Continued

GENERALLY--Continued

BLM properly applied the regulations set forth in 43 CFR Subparts 3520-21, effective May 7, 1976, to preference right lease applications pending on the effective date of such regulations.

BLM properly excluded from an applicant's demonstrated reserves of trona those reserves which the applicant, by stipulation in the prospecting permit, had agreed would not be subject to mining or recovery operations.

An exchange application tendered pursuant to 43 CFR Subpart 3526 is properly rejected by BLM where a preference right lease applicant has not demonstrated to the Secretary that he has a preference right to a lease.

A hearing is properly ordered pursuant to 43 CFR 3521.1-1(j) where a preference right lease application for trona is rejected and the applicant has alleged in his application facts sufficient to show that he is entitled to a lease. At the hearing, the permittee shall have both the burden of going forward and the burden of proof, and must show by a preponderance of the evidence that he has discovered a valuable deposit of trona and that the land is chiefly valuable therefor.

John S. Wold, Eugene V. Simons, 48 IBLA 106 (May 30, 1980)

Sec. 28 of the Mineral Leasing Act of 1920, 30 U.S.C. § 185 (1976), is not applicable to on-lease oil and gas production facilities which are included in a surface use and operations plan, and which are authorized by the approval of an application to conduct leasehold operations or construction activities.

Sec. 29 of the Mineral Leasing Act of 1920, 30 U.S.C. § 186 (1976), has consistently been interpreted as not providing authority separate from sec. 28 of the Mineral Leasing Act, 30 U.S.C. § 185 (1976), for oil and gas pipeline rights-of-way. Instead, it reserves to the United States the right to allow other rights-of-way or to lease other minerals on Federal land already leased for the extraction of one mineral, and allows the reservation of the right to dispose of the surface of land leased for mineral extraction "insofar as said surface is not necessary to the use of the lessee in extracting and removing deposits thereon."

The Secretary has broad power to regulate all on-lease activities by oil and gas lessees and operators pursuant to the conditions contained in oil and gas leases and his general regulatory authority under the Mineral Leasing Act. The procedures for regulating activities on oil and gas leases, established under Secretarial Order 2948 and the BLM-USGS Cooperative Procedures Agreement implementing that order, reserve to the Department the authority to protect the United States legal interests in the property. The Secretary has broad discretion either to continue this procedure, or to substitute any other delegation of his authority and any other reasonable regulatory procedure which he concludes would equally protect the United States interests.

All facilities related to an oil and gas lease which are located on Federal land outside the lease, regardless of their nature, may be constructed only after appropriate rights-of-way have been granted. Similarly, on-lease oil and gas transportation facilities and on-lease commercial facilities require rights-of-way. Depending on the nature of the facility, the right-of-way would be granted pursuant to either sec. 28 of the Mineral Leasing Act of 1920, 30 U.S.C. § 185 (1976), or Title V of the Federal

MINERAL LEASING ACT--Continued

GENERALLY--Continued

Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976).

Right-of-Way Requirements for Gathering Lines and Other Production Facilities Located Within Oil and Gas Leaseholds, M-36921 (June 19, 1980) 87 I.D. 291

Failure to maintain a claim by doing assessment work each year may constitute evidence of abandonment. Independently, a failure to substantially comply with the requirement that annual assessment work be performed, 30 U.S.C. § 28 (1976), requires a finding that the claim has not been "maintained" within the meaning of sec. 37 of the Mineral Leasing Act, 30 U.S.C. § 193 (1976), and may result in a forfeiture of the claim. Nickel v. The Oil Shale Corp., 400 U.S. 48 (1970).

United States v. Catlin Bohne et al., United States v. Exxon Corp. et al., United States v. Aidabelle Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 248

In the context of a readjustment of the terms of a coal lease under the Mineral Leasing Act, the Bureau of Land Management erred in rejecting a lessee's attempts to negotiate the new proposed terms of a lease ripe for readjustment under the provisions of the Act solely on the ground that the lessee's objections to the proposed terms were received 3 days after the regulatory deadline.

United States Steel Corp., 50 IBLA 252 (Sept. 30, 1980)

The grant of an oil and gas permit under the Mineral Leasing Act, 30 U.S.C. § 181 (1976), prior to the location of a mining claim in 1929 precludes, as long as the permit is in force, the appropriation of land therein included under the mining laws.

United States v. Ernest Hughes et al., 52 IBLA 83 (Jan. 9, 1981)

The filing of a phosphate prospecting permit application creates no vested rights in the applicant and the application must be rejected if the land described therein is determined by Geological Survey to be within a known phosphate leasing area and to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the underlying phosphate bed, which finding requires competitive leasing of the land.

J. R. Simplot Co., 58 IBLA 305 (Oct. 14, 1981)

John D. Archer et al., 75 IBLA 128 (Aug. 15, 1983)

Earth Sciences, Inc., 80 IBLA 28 (Mar. 28, 1984)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in

MINERAL LEASING ACT--Continued

GENERALLY--Continued

a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982) 89 I.D. 82

Where a coal lease issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provides that the lessor may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease, and thereafter at the end of each succeeding 20-year period during the continuance of the lease, the adjustment in the royalty rate and other terms and conditions must be made when the 20-year period expires and not at some later time.

Kaiser Steel Corp. et al., 63 IBLA 363 (Apr. 29, 1982)

Franklin Real Estate Co., 71 IBLA 13 (Feb. 10, 1983)

Northern Minerals Co., Northern Coal Co., 71 IBLA 129 (Mar. 7, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

James R. Chadnow, 63 IBLA 369 (Apr. 30, 1982)

Where coal leases issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provide that the United States may readjust their terms and conditions at the end of 20 years, a decision by BLM to include additional requirements will be affirmed where each of the readjusted provisions objected to by the lessee is mandated by statute and/or regulation.

Lone Star Steel Co., 65 IBLA 147 (June 29, 1982)

Lone Star Steel Co., 71 IBLA 92 (Feb. 24, 1983)

Where a coal lease issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provides that the lessor may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease, and thereafter at the end of each succeeding 30-year period during the continuance of the lease, the adjustment in the royalty rate and other terms and conditions must be made when the 20-year period expires and not at some later date.

Sunoco Energy Development Co., 65 IBLA 323 (July 15, 1982)

MINERAL LEASING ACT--Continued

GENERALLY--Continued

Because sec. 4 of the Federal Coal Leasing Amendments Act of 1976, amending 30 U.S.C. § 201(b) (1976), repealed the Secretary's authority to issue a coal prospecting permit on Federal lands, a coal prospecting permit application filed Oct. 18, 1979, is properly rejected. 30 U.S.C. § 201(b) (1976) and 43 CFR 3410 provide for the issuance of coal exploration licenses for lands subject to leasing.

Ronald E. Berry, Sr., Paul Brown, Sr., 65 IBLA 359 (July 20, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

MINERAL LEASING ACT--Continued

GENERALLY--Continued

The holder of an oil shale placer mining claim is required to perform $100 of annual assessment work each year for the benefit of such claim. Where there has not been "substantial compliance" with this requirement, such claim is forfeited to the United States. Resumption of work following a substantial breach of compliance does not bar the Government from asserting a forfeiture.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

The Board of Land Appeals will not reverse as unreasonable a readjustment of an underground coal lease establishing a royalty of 8 percent, since the lessee may seek further rate relief under 30 U.S.C. § 209 (1976) if needed.

A decision proposing a provision in a readjustment coal lease for suspension of continued operations upon the payment of advance royalty will not be reversed merely because it makes the terms and conditions of the payments the subject of a future agreement.

The Bureau of Land Management may properly include provisions requiring submission of new mining and exploration plans in a readjusted coal lease even though a mining plan has been approved, since new or revised plans may be needed for other mineable coalbeds or because rock conditions may require mining changes.

A provision in a readjusted coal lease requiring the lessee to conduct operations so as to avoid damage "to non-Federal lands in the vicinity of the leased lands," and "where practicable, to repair" such damage as does occur, subject to the approval of the lessor, is improper, unenforceable, and void.

It is proper to include in a readjusted coal lease a provision requiring the lessee to conduct at its own expense a survey and inventory archaeological and paleontological values prior to approval of a mining plan or any activity that would disturb the surface of the land.

It is proper to include a provision in a readjusted coal lease which reserves to the United States the right to authorize other uses of the leased lands that do not unreasonably interfere with the exploration and mining operations of the lessee, even though it contains no express provision for notification to the lessee, since any authorized use would be subject to the lease.

Under 30 U.S.C. § 187 (Supp. II, 1978), a coal lease must include a provision requiring twice-monthly payment of wages in the absence of a showing that compliance with the provision would place the lessee in violation of state law.

A readjusted coal lease may properly require that buildings and surface structures be painted in a color which conforms or blends with the natural color of the surrounding area in order to mitigate negative visual impacts in a nearby recreation area where the lessee fails to establish that compliance with the requirement is not infeasible.

Blackhawk Coal Co., 68 IBLA 96 (Oct. 26, 1982)

Where a potassium lease issued under the provisions of sec. 3 of the Act of Feb. 7, 1927, as amended, 30 U.S.C. § 283 (1976), provides that the Secretary may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease and thereafter at the end of each succeeding 20-year period during the

MINERAL LEASING ACT--Continued

GENERALLY--Continued

continuance of the lease, notice to the lessee of readjustment in the royalties and other terms and conditions must be made when the 20-year period expires and not at some later time.

International Minerals & Chemical Corp., 69 IBLA 114 (Nov. 30, 1982)

Noranda Exploration, Inc., 69 IBLA 317 (Dec. 27, 1982)

Noranda Exploration, Inc., 71 IBLA 9 (Feb. 10, 1983)

The position that only companies actually operating common carrier railroads and their "alter egos" are prohibited from holding federal coal leases by sec. 2(c) of the Mineral Lands Leasing Act and the position that affiliates of such companies are also prohibited are both reasonable, judicially defensible constructions of an ambiguous provision of law. The legislative history of sec. 2(c) fails to answer clearly the question whether affiliates of railroad companies are included in or excluded from the coverage of sec. 2(c).

When the Secretary changes his construction of an ambiguous statutory provision for reasons of policy and law, the new construction operates prospectively only, and does not operate to invalidate actions (issuance of leases and approval of lease transfers) previously taken.

Railroad Affiliates & Coal Leasing, M-36945 (Dec. 6, 1982) 89 I.D. 610

Where notice of intent to readjust a coal lease is given to a lessee prior to expiration of the period allowed for readjustment, such notice satisfies the statutory requirements for readjustment, and BLM may subsequently provide the specific terms or conditions for readjustment.

Coal leases issued prior to Aug. 4, 1976, the date of enactment of the Federal Coal Leasing Amendments Act of 1976, are at the time of readjustment subject to the requirements of that Act and regulations promulgated pursuant to that Act.

Where coal leases issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 207 (1976), provide that the United States may readjust their terms and conditions at the end of 20 years, a decision by BLM to include additional requirements will be affirmed where the readjusted provisions objected to by the lessee are mandated by statute and/or regulation or where such provisions are in accordance with the proper administration of the lands.

Coastal States Energy Co., 70 IBLA 386 (Feb. 9, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. BLM must reject a simultaneous, noncompetitive application where, before issuance of the lease, the parcel won in the drawing is included in a

MINERAL LEASING ACT--Continued

GENERALLY--Continued

special tar sand area leaseable only through competitive bidding pursuant to the Combined Hydrocarbon Leasing Act of 1981.

P. C. Winkler, 71 IBLA 328 (Mar. 23, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to it. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981. The fact that appellant filed its offer before the enactment of the Combined Hydrocarbon Leasing Act and BLM delayed in acting on the offer until after the effective date of the Combined Hydrocarbon Leasing Act does not entitle appellant to a lease.

Gulf Co., 73 IBLA 203 (May 27, 1983)

A decision by the Bureau of Land Management to readjust a coal lease will be affirmed where the readjusted provisions appealed by the lessee are mandated by statute or regulation, or where such provisions are in accordance with proper administration of the lands.

Where notice of intent to readjust a coal lease is given to a lessee prior to expiration of the period allowed for readjustment, such notice satisfies the statutory requirements for readjustment, and BLM may subsequently provide the specific terms or conditions for readjustment.

The Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. §§ 201-209 (1976), governs the terms and conditions that the Department may impose upon readjustment of leases issued prior to the amendments.

It is proper to include in a readjusted coal lease a provision requiring the lessee to conduct at its own expense a survey and inventory of archaeological and paleontological values prior to approval of a mining plan or any activity that would disturb the surface of the land.

It is proper to include a provision in a readjusted coal lease which reserves to the United States the right to authorize other uses of the leased lands that do not unreasonably interfere with the exploration and mining operations of the lessee.

Under 43 CFR 3451.2, readjustment of a coal lease becomes effective 60 days after the lessee is notified of the readjusted terms, except where the authorized officer has required the lessee to furnish information specified in 43 CFR 3422.3-4 for review by the Attorney General. While compliance may be postponed pending review of a lessee's objections, liability for increased rental or royalty accrues from 60 days after initial notification of the readjusted terms.

Gulf Oil Corp., Pittsburg & Midway Coal Mining Co., 73 IBLA 328 (June 8, 1983)

MINERAL LEASING ACT--Continued

GENERALLY--Continued

Where, on appeal, the fair market valuation of an area involved in a competitive phosphate lease offer is challenged in general terms, but no specific evidence of error is presented, and the record supports the evaluation, that evaluation will not be disturbed.

John D. Archer, 74 IBLA 323 (July 28, 1983)

Coal lease issued prior to the enactment of the Federal Coal Leasing Amendments Act is at the time of readjustment subject to the requirements of that Act and regulations promulgated pursuant to that Act. A decision by BLM to readjust coal leases to include requirements mandated by statute and regulation will be affirmed.

Where the Bureau of Land Management has provided the lessee with a notice of intent to readjust a coal lease and specific terms and conditions of the readjusted lease, and has established that the effective date of those readjustments shall be the twentieth anniversary date of the lease, postponing administration of those terms and conditions pending review of the lessee's protest is not inconsistent with requirements for readjustment or untimely application of the terms and conditions by BLM.

FEC Corp., 74 IBLA 389 (July 29, 1983)

A sodium prospecting permittee who applies for a preference right sodium lease, alleging with supportive data that he has discovered a valuable deposit of sodium and that the land is chiefly valuable for sodium, as required by sec. 24 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 262 (1976), is entitled to a hearing conducted in accordance with sec. 5 of the Administrative Procedure Act, 5 U.S.C. § 554 (1976), before his lease application may be finally rejected for failure to prove such a discovery.

Marine Minerals Corp., 76 IBLA 68 (Sept. 21, 1983)

When deciding whether issuance of a sodium prospecting permit is appropriate, the Bureau of Land Management, as the delegate of the Secretary, is entitled to rely on the reasoned opinion of Minerals Management Service as its technical expert. A mineral determination made by Minerals Management Service will not be disturbed in the absence of a clear and definite showing of error.

Delta Chemical Co., 76 IBLA 111 (Sept. 21, 1983)

A decision by the Bureau of Land Management to readjust a coal lease will be affirmed where the readjusted provisions appealed by the lessee are mandated by statute or regulation, or where such provisions are in accordance with proper administration of the lands.

The Board of Land Appeals will not reverse as unreasonable a readjustment of an underground coal lease establishing a royalty of 8 percent, since the lessee may seek further rate relief under 30 U.S.C. § 209 (1976) if needed.

The Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. §§ 201-209 (1976), governs the terms and conditions that the Department may impose upon readjustment of leases issued prior to the amendments.

It is proper to include a provision in a readjusted coal lease which reserves to the United States the right to authorize other uses of the leased lands that do not unreasonably interfere with the exploration

MINERAL LEASING ACT--Continued

GENERALLY--Continued

and mining operations of the lessee, since any authorized use would be subject to the lease.

Mid-Continent Coal & Coke Co., 76 IBLA 312 (Oct. 19, 1983)

Where a notice of intent to readjust a coal lease is given to a lessee prior to expiration of the period allowed for readjustment, such notice satisfies the statutory requirements, and BLM may subsequently provide the specific terms or conditions for readjustment.

Coal leases issued prior to enactment of the Federal Coal Leasing Amendments Act of 1976 are, at the time of readjustment, subject to the requirements of that Act and regulations promulgated pursuant to that Act.

When notice of intent to readjust a coal lease is given to a lessee prior to expiration of the period allowed for readjustment, and such notice prescribes a specific date when readjusted lease terms shall be transmitted to the lessee, BLM's subsequent failure to transmit the readjusted lease terms within the time specified in the notice constitutes a waiver of the right to readjust the lease.

Kaiser Steel Corp., 76 IBLA 387 (Oct. 27, 1983)
90 I.D. 470

A decision by the Bureau of Land Management to readjust a coal lease will be affirmed where the readjusted provisions appealed by the lessee are mandated by statute or regulation, or where such provisions are in accordance with proper administration of the public lands.

The Board of Land Appeals will not reverse as unreasonable a readjustment of an underground coal lease establishing a royalty of 8 percent, since the lessee may seek further rate relief under 30 U.S.C. § 209 (1976) if needed.

The Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. §§ 201-209 (1976), governs the terms and conditions that the Department may impose upon readjustment of leases issued prior to the amendments.

It is proper to include a provision in a readjusted coal lease which reserves to the United States the right to authorize other uses of the leased lands that do not unreasonably interfere with the exploration and mining operations of the lessee, since any authorized use would be subject to the lease.

Mid-Continent Coal & Coke Co., 78 IBLA 178 (Jan. 4, 1984)

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to it. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a favorable petroleum geological province, which is leaseable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as modified by the Alaska National Interest Lands Conservation Act.

E. B. Joiner, 78 IBLA 323 (Jan. 24, 1984)

MINERAL LEASING ACT--Continued

GENERALLY--Continued

Departmental regulation 43 CFR 3473.3-2(a)(1) and (a)(3) implementing 30 U.S.C. § 207(a) (1976), provides that a royalty rate as low as 5 percent may be established for an underground coal mine at lease issuance if conditions warrant such reduced royalty rate. A BLM decision overruling a coal lessee's objection to a provision in readjusted coal leases establishing a royalty rate of 8 percent will be set aside and remanded where, on appeal, BLM requests that the Board remand the cases to BLM to allow the lessee the opportunity to establish that the conditions warrant a royalty rate of less than 8 percent.

Utah Power & Light Co., 80 IBLA 180 (Apr. 16, 1984)

Where a coal lease issued prior to Aug. 4, 1976, the date of enactment of the Federal Coal Leasing Amendments Act of 1976, provides that the United States can readjust its terms and conditions at the end of 20 years, notice of readjustment or notice of intent to readjust must be given to the lessee at or before the expiration of that 20-year period.

Notice of intent to readjust a Federal coal lease which notice is received by the lessee on Nov. 16, 1978, for a lease whose 20-year readjustment date expired Oct. 1, 1978, is untimely and readjusted terms and conditions may not be imposed pursuant to such notice.

Pitkin Iron Corp. et al., 81 IBLA 81 (May 2*, 1984)

A decision by the Bureau of Land Management to readjust a coal lease will be affirmed where the readjusted provisions appealed by the lessee are mandated by statute or regulation, or where such provisions are in accordance with proper administration of the lands.

The Board of Land Appeals will not reverse as unreasonable a readjustment of an underground coal lease establishing a royalty of 8 percent, since the lessee may seek further rate relief under 30 U.S.C. § 209 (1982) if needed.

The Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. §§ 201-209 (1982), governs the terms and conditions that the Department may impose upon readjustment of leases issued prior to the amendments.

It is proper to include a provision in a readjusted coal lease which reserves to the United States the right to authorize other uses of the leased lands that do not unreasonably interfere with the exploration and mining operations of the lessee, since any other authorized use would be subject to the lease.

Mid-Continent Coal & Coke Co., 83 IBLA 56 (Sept. 25, 1984)

The operation and production requirement imposed on a coal lease may be suspended in the interest of conservation if it is not economically feasible to mine the coal because of current market conditions. Where the record is insufficient to determine whether lease suspension is warranted, the case will be remanded to BLM to determine whether or not the lease qualifies for suspension.

Long Star Steel Co., 84 IBLA 77 (Dec. 5, 1984)

MINERAL LEASING ACT--Continued

GENERALLY--Continued

Notice of intent to readjust coal leases given to a lessee prior to expiration of the period allowed for readjustment is effective to permit readjustment although BLM does not provide the specific terms or conditions for readjustment until after the expiration of the period.

Coal leases issued prior to enactment of the Federal Coal Leasing Amendments Act of 1976 become, at readjustment, subject to the requirements of that Act and regulations promulgated pursuant to that Act.

Sunoco Energy Development Co., 84 IBLA 131 (Dec. 11, 1984)

APPLICABILITY

"Public land laws." Under 43 CFR 2091.2-3 (1979), a state exchange application segregated the selected public lands from appropriation under the public land laws, including the mining laws. The term "public land laws" is ordinarily used to refer to statutes governing the alienation of public land, and generally is distinguished from both "mining laws," referring to statutes governing the mining of hard minerals on public lands, and "mineral leasing laws," a term used to designate that group of statutes governing the leasing of public lands for oil, gas, and other selected minerals. Udall v. Tallman, 380 U.S. 1, 19 (1965).

Dale E. Armstrong, 53 IBLA 153 (Mar. 12, 1981)

Although Congress revised the provision governing readjustment of federal coal leases in 1976, the deletion of the clause "unless otherwise provided by law at the time of expiration of such periods" from sec. 7 of the MLA (30 U.S.C. § 207) did not alter the Secretary's obligation not to establish any lease terms contrary to law in readjusting a coal lease.

The legislative history of sec. 6 of the Federal Coal Leasing Amendments Act shows that the revision of sec. 7 of the MLA (30 U.S.C. § 207) was not retroactive, but applied to new leases and to "old" leases upon readjustment. The ten-year production period and revised royalty rates of amended sec. 7 must be imposed on "old" coal leases at readjustment. The legislative history to the 1978 coal leasing revisions (Act of Oct. 30, 1978) discloses that Congress understood and acted on the assumption that the amended sec. 7 royalty rates did apply to all "old" leases upon readjustment.

Whether Leases Issued Prior to August 4, 1976, Subject to Readjustment after that Date must be Readjusted to Conform to the Federal Coal Leasing Amendments Act of 1976, M-36939 (Sept. 17, 1981) 88 I.D. 1003

The DOI Fiscal 1981 Appropriations Act authority to lease oil and gas in the National Petroleum Reserve--Alaska (NPR-A) is authority independent of the Mineral Lands Leasing Act of 1920 and applicable to all lands within the boundaries of the NPR-A. The Department sought such authority and the two Appropriations Committees worked to establish such independent authority.

The conclusion that the Appropriations Act is independent leasing authority is not an implied repeal, pro tanto, of the Mineral Leasing Act of 1920 because the Naval Petroleum Reserves Production Act of 1976 explicitly precluded the operation of the MLA on the NPR-A, and the Appropriations Act modified that withdrawal only for the purpose of the oil and gas leasing program authorized in the Appropriations Act.

Authorization for Oil and Gas Leasing on the National Petroleum Reserve--Alaska, M-36940 (Oct. 15, 1981) 91 I.D. 1

MINERAL LEASING ACT--Continued

APPLICABILITY--Continued

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

CITIZENSHIP

Where a noncompetitive over-the-counter oil and gas lease offer indicates that the offeror resides outside the geographical limits of the United States, BLM may properly require the offeror to submit within 30 days proof of United States citizenship, in order to establish his qualifications to hold an oil and gas lease. However, BLM should not then reject such an offer where the offeror, in attempting to comply, submits timely a statement signed by an American consul stating that he is an American national, without first affording the applicant another opportunity to show that he is a citizen.

James H. Chudnow, 67 IBLA 193 (Sept. 22, 1982)

Where a successful United States corporate applicant for a simultaneous oil and gas lease is wholly owned by another United States corporation, which may have stockholders with foreign citizenship of a class prohibited by 30 U.S.C. § 181 (1982), the subsidiary corporation is not barred from holding Federal oil and gas leases in the absence of proof that a controlling interest in the parent company is owned by the prohibited class of owner.

Joan Lieberman, 84 IBLA 85 (Dec. 6, 1984)

COMBINED HYDROCARBON LEASES

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982) 89 I.D. 82

MINERAL LEASING ACT--Continued

COMBINED HYDROCARBON LEASES--Continued

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

James E. Chudnov, 63 IBLA 369 (Apr. 30, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is

MINERAL LEASING ACT--Continued

COMBINED HYDROCARBON LEASES--Continued

vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-98, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

Dorothy Langley, 70 IBLA 324 (Jan. 31, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. BLM must reject a simultaneous, noncompetitive application where, before issuance of the lease, the parcel won in the drawing is included in a special tar sand area leaseable only through competitive bidding pursuant to the Combined Hydrocarbon Leasing Act of 1981.

P. C. Hinkler, 71 IBLA 328 (Mar. 23, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to it. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981. The fact that appellant filed its offer before the enactment of the Combined Hydrocarbon Leasing Act and BLM delayed in acting on the offer until after the effective date of the Combined Hydrocarbon Leasing Act does not entitle appellant to a lease.

CAF Co., 73 IBLA 203 (May 27, 1983)

Although oil and gas leases issued prior to the enactment of the Combined Hydrocarbon Leasing Act of 1981, 95 Stat. 1070 (1981), and located completely within special tar sand areas may be converted to combined hydrocarbon leases, that Act did not affect oil and gas leases issued prior to the Act which are located outside such areas. The Department has no authority to convey any rights to tar sand or oil and gas leases issued prior to Nov. 16, 1981. A lessee

MINERAL LEASING ACT--Continued

COMBINED HYDROCARBON LEASES--Continued

seeking to develop the tar sand on such a lease must relinquish its lease and seek a new oil and gas lease.

Cooper Petroleum, Inc., 73 IBLA 295 (June 7, 1983)

BLM has no authority under the Mineral Leasing Act as amended by the Combined Hydrocarbon Leasing Act of 1981, 30 U.S.C. § 226(b) (1982), to issue a noncompetitive oil and gas lease for land within a designated tar sand area. A noncompetitive lease improvidently issued after the enactment of the amendment in violation of its requirements is properly canceled upon discovery of the error.

Dorothy Langley, 81 IBLA 349 (June 25, 1984)

CONSENT OF AGENCY

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in an oil and gas lease offer be obtained prior to the issuance of a lease for such land. Absent such consent, the Department of the Interior is without authority to issue a lease.

Altex Oil Corp., 73 IBLA 73 (May 17, 1983)

The Act establishing the Flaming Gorge National Recreation Area requires that any oil and gas lease or permit be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe. 16 U.S.C. § 460v-4 (1976). Where BLM conditions the grant of a lease upon stipulations required by the Forest Service, the Department of the Interior has no authority to waive compliance with the Act.

Thomas F. Stroock, 77 IBLA 137 (Nov. 15, 1983)

ENVIRONMENT

Allegations that stipulations included in a notice of a competitive phosphate lease offer improperly favored one bidder over all other potential bidders will not serve as a basis for disturbing the lease sale where the record does not support such allegations, but does, in fact, support a finding that the stipulations were reasonably directed toward environmental protection.

John D. Archer, 74 IBLA 323 (July 28, 1983)

LANDS SUBJECT TO

Land is "known to be valuable" for a mineral subject to the Mineral Leasing Act of Feb. 25, 1920, as amended, when "known conditions at the time [of location] were plainly such as to engender the belief that the land contained mineral deposits of such quality and in such quantity as would render their extraction profitable and justify expenditures to that end." United States v. Southern Pacific Co., 251 U.S. 1, 13-14 (1919); Diamond Coal Co. v. United States, 233 U.S. 236, 239-40 (1914). In determining whether mineral deposits are such as to render their extraction profitable and justify expenditures, extrinsic factors, such

MINERAL LEASING ACT--Continued

LANDS SUBJECT TO--Continued

as the cost of extraction, processing, transportation, and marketing must be considered.

United States v. Lavon Bardsley (Trustee), Marlene B. Bardsley, Individually and as Administratrix of the Estate of Donald H. Bardsley (Deceased), 45 IBLA 367 (Feb. 7, 1980)

Lands situated within the boundaries of incorporated cities, towns or villages are excluded from oil and gas leasing under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976).

Ed Pendleton, 45 IBLA 398 (Feb. 13, 1980)

L. A. Walstrom, Jr., 46 IBLA 389 (Apr. 10, 1980)

Lands situated within the boundaries of incorporated cities, towns, or villages are excluded from oil and gas leasing under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. §§ 181-263 (1976).

Nova L. Dodgen, 54 IBLA 340 (May 7, 1981)

Lands situated within the borders of incorporated cities and towns are excluded from leasing by the express terms of sec. 1 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976).

Potts Stephenson Exploration Co., 60 IBLA 397 (Dec. 28, 1981)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982) 89 I.D. 82

P. C. Winkler, 71 IBLA 328 (Mar. 23, 1983)

Lands under reservoir rights-of-way may be leased for oil and gas only under authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). Such lands are not "available for leasing under the [Mineral Leasing] Act," within the ambit of the 640-acre limitation set forth at 43 CFR 3110.1-3(a). However, a lease offer, which does not include all of the lands within a reservoir right-of-way comprised of only about 110 acres, is properly rejected in the exercise of the Secretary's discretionary authority, and must be rejected as a matter of law when the offeror is not a person qualified under the 1930 Act to lease the lands in question.

Curtis Wheeler, 62 IBLA 384 (Mar. 24, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for

MINERAL LEASING ACT--Continued

LANDS SUBJECT TO--Continued

a parcel within a special tar sand area must be rejected.

James M. Chadnov, 63 IBLA 369 (Apr. 30, 1982)

CAF Co., 73 IBLA 203 (May 27, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

Lands under a railroad right-of-way issued pursuant to the Act of Mar. 3, 1875, 18 Stat. 482, are not properly leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (1976), but instead must be leased under the exclusive authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976), and 43 CFR 3100.0-3(d)(1).

Champlin Petroleum Co., 68 IBLA 142 (Oct. 29, 1982) 89 I.D. 561

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-98, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

Dorothy Langley, 70 IBLA 324 (Jan. 31, 1983)

An asphalt prospecting permit application which was pending at the time of the passage of the Combined Hydrocarbon Leasing Act of 1981, 95 Stat. 1070 (1981), must be rejected because that Act amended the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (Supp. V 1981), to include a definition for "oil" that encompasses asphalt. One seeking to extract hydrocarbons from asphalt after Nov. 16, 1981, in an area other than a "special tar sand area" must file a noncompetitive oil and gas lease offer. The holder of an oil and gas lease issued on or after Nov. 16, 1981, may develop all nongaseous hydrocarbon substances other than those substances leasable

MINERAL LEASING ACT--Continued

LANDS SUBJECT TO--Continued

as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons).

Cooper Petroleum, Inc., 73 IBLA 295 (June 7, 1983)

Lands situated within the borders of incorporated cities and towns are excluded from leasing by the express terms of sec. 1 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (Supp. V 1981).

The Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates. This authority is properly invoked to cancel a lease erroneously issued for land which is the subject of a prior contract of sale and which has thus been withdrawn from mineral leasing under the terms of the Public Land Sales Act of 1964, 43 U.S.C. §§ 1421-1427 (1976).

D. B. Yates, 76 IBLA 208 (Oct. 11, 1983)

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to it. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a favorable petroleum geological province, which is leaseable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as modified by the Alaska National Interest Lands Conservation Act.

E. B. Joiner, 78 IBLA 323 (Jan. 24, 1984)

Generally, unless the mineral leasing laws or a withdrawal or reservation order specifically provides otherwise, the lands withdrawn or reserved for a specific purpose are available for leasing under the mineral leasing laws, if issuance of a mineral lease would not be inconsistent with or interfere with the purpose for which the lands are withdrawn or reserved.

The 1984 Continuing Resolution (98 Stat. 151) provides, at sec. 137, that no funds shall be used to process or grant oil and gas lease applications or offers on any Federal lands, outside Alaska, that are units of the National Wildlife Refuge System, except where there are valid existing rights or where the lands are subject to drainage, unless and until the Secretary of the Interior promulgates revisions to the existing regulations so as to explicitly authorize the leasing of such lands; holds a public hearing with respect to such revision; and prepares an environmental impact statement with respect thereto. All action upon affected oil and gas lease applications or offers filed before Nov. 14, 1983, is properly suspended until completion of the necessary steps.

TXO Production Corp., 79 IBLA 81 (Feb. 16, 1984)

Appurtenant lands acquired by the United States prior to Feb. 25, 1920, from the State of Michigan by operation of Michigan law are subject to the Mineral Leasing Act of 1920.

Sam P. Jones, 81 IBLA 300 (June 13, 1984)

MINERAL LEASING ACT--Continued

LANDS SUBJECT TO--Continued

BLM has no authority under the Mineral Leasing Act as amended by the Combined Hydrocarbon Leasing Act of 1981, 30 U.S.C. § 226(b) (1982), to issue a noncompetitive oil and gas lease for land within a designated tar sand area. A noncompetitive lease improvidently issued after the enactment of the amendment in violation of its requirements is properly canceled upon discovery of the error.

Dorothy Langley, 81 IBLA 349 (June 25, 1984)

LITIGATION

When an assignment of a phosphate lease has been approved and there is a controversy as to the validity of the assignment, the Department will not rescind approval of the assignment where no error or irregularity is shown therein, and will maintain the status quo where the parties have instituted litigation to resolve their dispute.

John D. and Elizabeth Archer, 46 IBLA 203 (Mar. 24, 1980)

METHODS OF DEVELOPMENT

The MLA refers only to "gas" or "natural gas" without any qualifying adjectives, thus supporting a nonrestrictive reading of those terms to include coalbed gas. Coalbed gas is leasable under the oil and gas leasing provision of the MLA, 30 U.S.C. § 226 (1976).

Coalbed gas is not included in a coal lease under the MLA. In the coal leasing provision of the MLA, Congress did not provide for a coal lessee's extraction of minerals related to or associated with coal. 30 U.S.C. § 201 (Supp. II 1978). This provision does not authorize a coal lessee's extraction of coalbed gas, other than the venting of the gas required by mine health and safety laws and regulations.

Ownership of and Right to Extract Coalbed Gas in Federal Coal Deposits, M-36935 (May 12, 1981)
88 I.D. 538

ROYALTIES

The Crude Oil Windfall Profit Tax Act, P.L. 96-223, 94 Stat. 229 (1980) imposes the windfall profit tax on Federal oil royalty revenue. The states have no economic interest, as that phrase is used in the Windfall Profit Tax Act, in Federal royalty revenue that would exempt their share from taxation. Moreover, revenue from the windfall profit tax cannot be treated as royalty revenue and be distributed to the states under sec. 35 of the Mineral Leasing Act, as amended, 30 U.S.C. § 191 (1976). Accordingly, the states' share of Federal oil royalties must be based upon after-tax royalty revenue.

Effect of the Crude Oil Windfall Profit Tax Act of 1980 on the States' Share of Federal Oil Royalties, M-36929 (Dec. 30, 1980)
87 I.D. 661

"Gross value at the point of shipment to market." The royalty rate for products mined and disposed under sodium leases must be imposed on the "gross value of the sodium compounds and other related products at the point of shipment to market," which means the gross value of a refined product for sale in an established

MINERAL LEASING ACT--Continued

ROYALTIES--Continued

market even when applied to an intermediate product and without deduction for the cost that would be incurred in producing a refined product.

Sales commissions are not an allowable deduction in the computation of royalty under sodium leases.

The Government is not estopped from requiring the recalculation of royalty payments, even if it has accepted improper payments in the past.

FMC Corp., 54 IBLA 77 (Apr. 14, 1981)

Sales commissions are not an allowable deduction in the computation of royalty under sodium leases.

To the extent that a commission is granted to distributors or jobbers who purchase soda ash for resale, such a discount represents an allowable deduction from the royalty base; however, where one company has a managing interest in a second company and under a sales agreement the first company purchases all the second company's product and reimburses the second company on the basis of the "net sales proceeds" received by the first company minus a retained commission, the first company cannot be considered a distributor for resale so as to allow the retained commission to be deducted from the royalty base. In such a situation the retained commission is properly characterized as a sales commission and not deductible.

In computing royalty under sodium leases where one company has a managing interest in a second company and under a sales agreement the first company purchases all the second company's product, if the first company buys the soda ash for consumption at its own plants, it cannot use an unpublished preferential sales price in determining the amount owed the second company. The second company is properly required to pay royalties on the basis of the published delivered prices paid by the first company's customers less the customary rail freight equalization allowances.

In computing royalty under sodium leases where one company has a managing interest in a second company and under a sales agreement the first company purchases all the second company's product, exchange agreement billings by the first company, which amount to discounts, understate the gross value of the soda ash for royalty purposes.

Stauffer Chemical Co. of Wyoming, 54 IBLA 85 (Apr. 14, 1981)

Where the mineral lease provides for such determination, the Minerals Management Service may properly determine to value zinc concentrates sold, for royalty purposes, on the basis of the highest price which the lessee would pay or receive pursuant to a contract with an unaffiliated supplier or buyer, if the contract under which the concentrates are actually sold is not a bona fide arm's-length transaction between independent parties.

Apex Lead Co. of Missouri, 84 IBLA 102 (Dec. 10, 1984)

MINERAL LEASING ACT FOR ACQUIRED LANDS

GENERALLY

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency, e.g., the United States Army Corps of Engineers, having jurisdiction of acquired land described in a lease offer be obtained prior to the issuance of an acquired lands

MINERAL LEASING ACT FOR ACQUIRED LANDS--Continued

GENERALLY--Continued

lease for such land. The Department of the Interior has no authority to lease such land where the consent is withheld.

Jacobs Contracting Corp., 45 IBLA 40 (Jan. 14, 1980)

Where applicants for a preference right lease for hardrock minerals fail to present evidence showing the quantity and quality of the minerals discovered in the area covered by the prospecting permit, but rather present evidence showing only an extremely deep deposit of low value ore, which evidence is inadequate to show that they have made a discovery of a valuable mineral deposit, and they do not dispute the findings relied on by the Bureau of Land Management, their application is properly rejected.

John D. Archer, Elizabeth B. Archer, 47 IBLA 268 (May 13, 1980)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Sept. 30, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Ines Spear, 52 IBLA 360 (Feb. 19, 1981)

An offer to lease oil and gas deposits under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1976), is properly rejected where the land applied for is not shown to be acquired land of the United States.

Laurent Reginbal, 64 IBLA 170 (May 26, 1982)

Under sec. 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1976), the Secretary of the Interior is without authority to waive compliance with a condition imposed by the agency having jurisdiction over the acquired lands as a prerequisite to giving its consent to issuance of a noncompetitive oil and gas lease. Moreover, the Department has no authority to require that the agency provide a rational justification for imposition of the condition.

Amoco Production Co., 69 IBLA 279 (Dec. 21, 1982)

An acquired lands oil and gas lease offeror may properly be required to furnish the Bureau of Land Management with certain title information from the county recorder's offices as a precondition to lease issuance if the Bureau has insufficient title information. However, where the oil and gas plat bears the notation that the United States holds a 50 percent mineral interest, it is unreasonable for the Bureau to require the offeror to submit information from the county records to establish the 50 percent mineral interest in the United States without first attempting to verify its records.

James M. Chadnow, 70 IBLA 150 (Jan. 18, 1983)

MINERAL LEASING ACT FOR ACQUIRED LANDS--Continued

CONSENT OF AGENCY

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency, e.g., the United States Army Corps of Engineers, having jurisdiction of acquired land described in a lease offer be obtained prior to the issuance of an acquired lands lease for such land. The Department of the Interior has no authority to lease such land where the consent is withheld.

Jacobs Contracting Corp., 45 IBLA 40 (Jan. 14, 1980)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

Arthur E. Reinhart and Irvin Rubenstein, 46 IBLA 27 (Feb. 20, 1980)

Under the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. §§ 351-59 (1976), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a service or bureau within the Department of the Interior, such as the Bureau of Reclamation (now the Water and Power Resources Service), the consent of the Secretary of the Interior is necessary under the Act for leasing of the land.

Hardan Exploration, Inc., 52 IBLA 296 (Feb. 9, 1981)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

Dennis Harris, 55 IBLA 280 (June 25, 1981)

Rachelk Production, Inc., 64 IBLA 4 (May 3, 1982)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in an oil and gas lease offer be obtained prior to the issuance of a lease for such land. Absent such consent, the Department of the Interior is without authority to issue a lease.

Altex Oil Corp., Henry Energy, Inc., 66 IBLA 307 (Aug. 24, 1982)

Joseph C. Hanna, 71 IBLA 187 (Mar. 10, 1983)

Florence Wentworth, 72 IBLA 248 (Apr. 27, 1983)

Robert G. Lynn, 72 IBLA 355 (Apr. 29, 1983)

Joe R. Shelton, 73 IBLA 250 (June 2, 1983)

Frederick L. Smith, 78 IBLA 345 (Jan. 25, 1984)

MINERAL LEASING ACT FOR ACQUIRED LANDS--Continued

CONSENT OF AGENCY--Continued

Under the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-59 (1976 and Supp. V 1981), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a bureau within the Department of the Interior, such as the Bureau of Reclamation, the consent of the Secretary of the Interior or his proper delegate is necessary under the Act for leasing of the land.

Where the Bureau of Land Management, based on the recommendation of the Bureau of Reclamation, requires the execution of a special stipulation prohibiting all drilling operations on any of the lands described in the lease as a condition to issuance of an oil and gas lease, the record must reflect that such stipulation is supported by valid reasons weighed with due regard for the public interest, including evidence that less stringent alternatives would not adequately accomplish the intended purpose.

Gary D. Askins, 74 IBLA 12 (June 24, 1983)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over the acquired land described in the lease offers be obtained prior to the issuance of leases for such land. Where the Corps of Engineers does not consent to lease lands noncompetitively, but indicates a willingness to lease competitively, the Department of the Interior is without authority to lease the lands noncompetitively.

Sam P. Jones, 74 IBLA 242 (July 19, 1983)

The Act establishing the Flaming Gorge National Recreation Area requires that any oil and gas lease or permit be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe. 16 U.S.C. § 460v-4 (1976). Where BLM conditions the grant of a lease upon stipulations required by the Forest Service, the Department of the Interior has no authority to waive compliance with the Act.

Thomas F. Stroock, 77 IBLA 137 (Nov. 15, 1983)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (Supp. V 1981), authorizes the Secretary of the Interior to lease all deposits of oil and gas, inter alia, which are owned by the United States and which are within the lands acquired by the United States. Where the mineral interest in lands sought by appellant is owned by the State of Colorado, BLM may not issue a lease pursuant to 30 U.S.C. § 352, even though the United States owns the surface. BLM's management of the public lands pursuant to sec. 302 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732 (1976), does not extend to lands whose mineral estate is owned by the State of Colorado and whose surface is managed by the Army.

Donald Ernest Willkens, 77 IBLA 144 (Nov. 15, 1983)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease application be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

MINERAL LEASING ACT FOR ACQUIRED LANDS--Continued

CONSENT OF AGENCY--Continued

Where an offeror seeks to lease lands under the jurisdiction of the Department of the Navy, and that Department refuses consent, no lease may issue.

Union Oil Co. of California, Stephen E. Bubala, 79 IBLA 86 (Feb. 16, 1984)

ENVIRONMENT

Analysis of the environmental impact of a proposed prospecting plan under a hardrock mineral prospecting permit issued pursuant to 16 U.S.C. § 520 (1976), should properly consider the potential cumulative impact of increased vehicular traffic on an access road due to prospecting activity under the permit and related activity on adjacent mining claims.

A finding that a proposed action will not have a significant impact on the environment, and that hence no environmental impact statement is required, will be affirmed on appeal where the record establishes that a hard look has been taken at environmental problems, that relevant areas of environmental concern have been identified, and the determination is the reasonable result of the environmental analysis.

John A. Rajeckly, Contra Costa Youth Ass'n, 80 IBLA 14 (Mar. 28, 1984)

LANDS SUBJECT TO

A hardrock prospecting permit application is properly rejected where the deed conveying the subject lands to the United States expressly excepts therefrom all minerals and rights thereunder outstanding of record in third parties.

Exxon Corp., 45 IBLA 260 (Feb. 4, 1980)

Acquired lands situated within the boundaries of incorporated cities, towns, or villages are excluded from oil and gas leasing under sec. 3 of the Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. § 352 (1976).

Whitney H. Harvin, 46 IBLA 290 (Mar. 31, 1980)

Lands acquired by the Forest Service pursuant to the General Exchange Act of 1922 and the Federal Land Policy and Management Act of 1976 have the status of public lands and are not subject to uranium prospecting permits under the Mineral Leasing Act for Acquired Lands, but such lands are subject to location and entry under the general mining law and to leasing under the Mineral Leasing Act of 1920.

Wyoming Fuel Co., 52 IBLA 302 (Feb. 10, 1981)

An applicant for a prospecting permit on acquired forest lands must execute any special stipulations required by the Department of Agriculture as a condition precedent to the issuance of the permit, or suffer rejection of the offer.

John W. Jewell, 53 IBLA 179 (Mar. 16, 1981)

MINERAL LEASING ACT FOR ACQUIRED LANDS--Continued

LANDS SUBJECT TO--Continued

A noncompetitive oil and gas lease offer for acquired land within the boundaries of the Fort Laramie National Historic Site administered by the National Park Service is properly rejected since the Mineral Leasing Act for Acquired Lands specifically excludes lands within national parks or monuments from its terms.

Ed Pendleton, 57 IBLA 146 (Aug. 25, 1981)

Where title to lignite in a certain tract of land is disputed, and a Bureau of Land Management determination that the United States owns the lignite by virtue of its ownership of the surface is not supported by the record, the Bureau of Land Management's decision to include the tract in a competitive lignite lease sale is improper and must be reversed.

City of San Antonio, Texas, 65 IBLA 326 (July 15, 1982)

Acquired lands situated within the boundaries of incorporated cities, towns, or villages are excluded from oil and gas leasing under the Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. § 352 (1976).

C. H. Nicholson, 75 IBLA 234 (Aug. 23, 1983)

BLM must cancel a noncompetitive oil and gas lease of acquired lands where it is determined after lease issuance that the lands are situated within the boundaries of an incorporated city. Such lands are not subject to oil and gas leasing under sec. 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (Supp. V 1981).

Robert Lyon, 78 IBLA 232 (Jan. 9, 1984)

Generally, unless the mineral leasing laws or a withdrawal or reservation order specifically provides otherwise, the lands withdrawn or reserved for a specific purpose are available for leasing under the mineral leasing laws, if issuance of a mineral lease would not be inconsistent with or interfere with the purpose for which the lands are withdrawn or reserved.

The 1984 Continuing Resolution (98 Stat. 151) provides, at sec. 137, that no funds shall be used to process or grant oil and gas lease applications or offers on any Federal lands, outside Alaska, that are units of the National Wildlife Refuge System, except where there are valid existing rights or where the lands are subject to drainage, unless and until the Secretary of the Interior promulgates revisions to the existing regulations so as to explicitly authorize the leasing of such lands; holds a public hearing with respect to such revision; and prepares an environmental impact statement with respect thereto. All action upon affected oil and gas lease applications or offers filed before Nov. 14, 1983, is properly suspended until completion of the necessary steps.

TXO Production Corp., 79 IBLA 81 (Feb. 16, 1984)

Acquired lands situated within the boundaries of incorporated cities, towns, or villages are excluded from leasing under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 352 (1976).

Jerry Waters, 79 IBLA 198 (Feb. 28, 1984)

MINERAL LEASING ACT FOR ACQUIRED LANDS--Continued

LANDS SUBJECT TO--Continued

Acquired lands situated within the boundaries of incorporated cities, towns, or villages are excluded from mineral leasing by sec. 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1982).

Jerald A. Waters, 82 IBLA 334 (Sept. 12, 1984)

MINERALS EXPLORATION

Where applicants for a preference right lease for hardrock minerals fail to present evidence showing the quantity and quality of the minerals discovered in the area covered by the prospecting permit, but rather present evidence showing only an extremely deep deposit of low value ore, which evidence is inadequate to show that they have made a discovery of a valuable mineral deposit, and they do not dispute the findings relied on by the Bureau of Land Management, their application is properly rejected.

John D. Archer, Elizabeth B. Archer, 47 IBLA 268 (May 13, 1980)

An application for permit to drill for oil and gas in a "potash enclave" in a designated "Potash Area" is properly denied where the applicant fails to show that its application comes within either of the two exceptions to the policy in favor of potash development enunciated in an order of the Secretary dated Oct. 7, 1975, 40 FR 51486 (Nov. 5, 1975).

Bass Enterprises Production Co., 48 IBLA 11 (May 27, 1980)

MINERALS MANAGEMENT SERVICE

Where a unit agreement approved by the Department provides that where a leased tract committed to the unit agreement is relinquished, unless the tract is included in a new lease within 6 months thereafter, the fee owner of the tract is deemed to have waived the right to lease such lands within a participating area in the unit and to have agreed, in consideration of compensation provided by the unit agreement, that operations under the unit agreement in the participating area shall not be affected by the relinquishment. The United States is considered to be the "fee owner" of unleased public domain in the context of the unit agreement.

Belco Development Corp., 66 IBLA 134 (Aug. 10, 1982)

MINES AND MINING

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and

MINES AND MINING--Continued

the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

MINING CLAIMS
(See also Hearings, Millsites, Multiple Mineral Development Act, Surface Resources Act--if included in this Index.)

GENERALLY

A Presidential proclamation, which extended the boundaries of a forest reserve and which specifically stated that prior proclamations respecting the reserve were "superseded," had the effect of and was construed as restoring to entry lands earlier withdrawn by a Secretarial order which reserved from public entry, for protection of giant sequoia trees, a township situated within the boundaries of the forest reserve. This conclusion is particularly compelling in view of the long continued course of administrative action treating the subject township as having been restored to entry for purposes of prospecting, locating and developing mineral resources, subject to compliance with the rules and regulations pertaining to forest reserves.

Dolores Olsen and Wesley E. Hess, et al., 45 IBLA 232 (Feb. 4, 1980)

Where regulations implementing sec. 314 of the Federal Land Policy and Management Act of 1976 require reference to the Bureau of Land Management serial number under which a mining claim is recorded for future recordings, a claimant fails to include the number when he files a notice of assessment work, and he is specifically informed of this and other requirements, but fails to furnish the number, the filing is unacceptable, and failure to comply with the filing requirements constitutes abandonment of the claim, as provided by the Act.

David V. Udy, 45 IBLA 389 (Feb. 13, 1980)

In order to obtain a temporary deferment, a claimant must file with the authorized officer of the proper office a petition in duplicate requesting such deferment. The applicant must attach to one copy thereof a copy of the notice to the public required by the Act which shows that it has been filed or recorded in the office in which the notices or certificates of location were filed or recorded.

A petition for deferment of annual assessment work is properly denied where a claimant's mining claims and millsites have been declared null and void by the Department.

Andrew L. Preuss, 50 IBLA 26 (Sept. 9, 1980)
87 I.D. 395

In determining whether a claimant has made a discovery, the present costs of mining, removing, and marketing the minerals involved are properly considered.

United States v. Cornelius E. Hannix, 50 IBLA 110 (Sept. 24, 1980)

MINING CLAIMS--Continued

GENERALLY--Continued

The motivation of any Government agency in initiating a contest against mining claims is irrelevant. The fact that such contest challenges the validity of certain mining claims and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

United States v. E. H. MacLaughlin, Christine MacLaughlin, 50 IBLA 176 (Sept. 30, 1980)

The motivation of any Government agency in initiating a contest against mining claims is irrelevant. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

United States v. Leon R. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

Under Andrus v. Shell Oil Co., ___ U.S. ___, 64 L.Ed.2d 593 (1980), 48 U.S.L.W. 4603 (June 2, 1980), oil shale is a prospectively valuable mineral and therefore present marketability need not be shown to demonstrate discovery.

To demonstrate a sufficient discovery of oil shale under Freeman v. Summers, 52 L.D. 201 (1927), a mining claimant must show that mineral was disclosed on or before Feb. 25, 1920, in such situation and such formation that he can follow the deposit to depth with reasonable assurance that paying minerals will be found. An isolated bit of mineral, not connected with or leading to substantial prospective values, is not a sufficient discovery.

United States v. Cameron Catlin Bohee et al., United States v. Exxon Corp. et al., United States v. Aidabelle Brown et al. (Supp.), 51 IBLA 97 (Nov. 5, 1980)
87 I.D. 535

The grant of an oil and gas permit under the Mineral Leasing Act, 30 U.S.C. § 181 (1976), prior to the location of a mining claim in 1929 precludes, as long as the permit is in force, the appropriation of land therein included under the mining laws.

United States v. Ernest Higbee et al., 52 IBLA 83 (Jan. 9, 1981)

BLM's decision declaring mining claims null and void ab initio will be vacated where it appears that the claims were located on lands which were open to mineral entry on the date of location.

In the absence of a showing that a person holds a written deed giving him legal title to mining claims which have apparently been abandoned, the person filing notices of location in his own name is properly regarded as a "relocation" of the claims, that is, the initiation of new claims which are adverse to the previous claims. Where a person has "relocated" mining claims, these claims date from the time of relocation

MINING CLAIMS--Continued

GENERALLY--Continued

and do not relate back to the date of location of the earlier claims.

Mining claims located on lands withdrawn from mineral entry are null and void ab initio.

American Resources, Ltd., 52 IBLA 290 (Feb. 9, 1981)

Geological inference alone cannot support a finding of discovery.

The apex law gives the owner of a properly located claim on a vein the right to an indefinite extension on the dip of the vein beyond the vertical planes through the side lines of his claim. For a claim to be properly located there must be a discovery within the limits of the claim. The apex law cannot be utilized to establish the validity of another claim absent an independent showing of a valid discovery.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

The Bureau of Land Management may require maps of mining claims meeting the requirements of 43 CFR 3833.1-2(c)(5) before accepting the recordation of the claims under 43 U.S.C. § 1744 (1976). However, where the record suggests that the claimant may have complied, the decision declaring her claims abandoned will be vacated and the case remanded.

Marion Birch, 53 IBLA 366 (Mar. 30, 1981)

It is proper to declare mining locations null and void ab initio where the locations were not perfected by performance of the condition precedent set forth in the order opening lands in a reclamation withdrawal to mineral location and entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976).

Wayne M. Mann, 54 IBLA 8 (Apr. 6, 1981)

No discovery of a valuable mineral deposit is demonstrated where the amounts of mineral yielded by a claim are so small that mining could not be expected to produce an economic return in any way commensurate with the labor and cost involved in extracting, transporting, and processing the mineralization.

United States v. Michael Kuretich et al., 54 IBLA 124 (Apr. 17, 1981)

While it may be appropriate in some cases to refer a matter for a hearing before an Administrative Law Judge to determine whether a mining claim, the location notice for which is dated after withdrawal of the land, is based on an amended location and thus survives withdrawal of the land for mining purposes, the allowance of a request for a hearing is within the discretion of the Board, and this discretion is likely to be employed to deny the request for hearing where the appellant has failed to provide the Board with any evidence to support the allegation that the amended location can be proved.

Under the "equal-footing" doctrine, a state has title to lands beneath its navigable rivers, and this Board has no jurisdiction to determine the validity of such riverbed mining claims asserted under state law. However, where an unpatented mining claim is filed for record with the Bureau of Land Management pursuant to the Federal mining law and the public records disclose that all public lands embraced in the claim had been withdrawn from mining location before the claimant

MINING CLAIMS--Continued

GENERALLY--Continued

located the mining claim, the filing is properly rejected by BLM and the claim declared null and void ab initio.

Gary Willis, 56 IBLA 217 (July 22, 1981)

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required preliminary to a decision holding that such claims are invalid.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

John A. Ross, Maxine Lidke, 73 IBLA 15 (May 5, 1983)

R. M. Copeland, 75 IBLA 87 (Aug. 11, 1983)

Shiny Rock Mining Corp. (On Reconsideration), 77 IBLA 261 (Nov. 30, 1983)

The discovery of a valuable mineral deposit is essential to a valid mining claim. There must be exposed within the limits of a lode mining claim a vein or lode of rock in place bearing mineral of such quantity and quality that a prudent person would expend time and means with a reasonable prospect of success in developing a valuable mine.

The "marketability test" is a refinement of the "prudent man test" and requires that extraction, removal, and marketing costs be considered, as such factors directly bear on the question whether a person of ordinary prudence would be justified in the further expenditure of time and means to develop a paying mine.

Where a mining claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claims must be tested by the value of the mineral deposit as of the date of withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Leon Worce and Thomas Pokita, 59 IBLA 268 (Oct. 29, 1981)

The Bureau of Land Management is directed by sec. 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that the continuation of existing mining uses in the same manner and degree in which they were being conducted on the date of enactment of FLPMA (Oct. 21, 1976) is allowed. Such grandfathered use is properly regulated to prevent unnecessary or undue degradation of the land and its resources.

The existence of mining operations actually being conducted on the land on Oct. 21, 1976, and not mere statutory right to use is required to authorize subsequent mining activities in the same manner and degree.

A mining claim located prior to the Federal Land Policy and Management Act of 1976 (Oct. 21, 1976) on which a valid discovery has existed from Oct. 21, 1976, to the present constitutes a valid existing right. The owner of such a claim on land under wilderness review will be allowed to continue mining operations to full development even if operations will impair wilderness

MINING CLAIMS--Continued

GENERALLY--Continued

suitability, subject to regulation to preclude unnecessary or undue degradation of the land and its resources.

Dale F. Gimblett, 60 IBLA 341 (Dec. 22, 1981)

Haylah Group, 60 IBLA 349 (Dec. 22, 1981) 88 I.D. 1115

In order to obtain a temporary deferment of assessment work, a claimant must file a petition for deferment with the authorized officer of the proper office in accordance with 43 CFR 3852.2, and if the petition is based on a "legal impediment" which interdicts the claimant from access to the claim, the complete details of the impediment must be set out with the application. Where the application is deficient on its face for a failure to provide such details, the claimant should be given the opportunity to provide the necessary information to cure the deficiency.

A. J. Bauer, Jr., 61 IBLA 39 (Dec. 31, 1981)

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

The Bureau of Land Management is directed by sec. 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent impairment of wilderness characteristics, except that the continuation of existing mining uses in the same manner and degree in which they were being conducted on the date of enactment of FLPMA (Oct. 21, 1976) is allowed. Such grandfathered use is properly regulated to prevent unnecessary or undue degradation of the land and its resources.

Carl W. Clark, 65 IBLA 153 (June 29, 1982)

Gilbert W. Daily, 65 IBLA 223 (July 9, 1982)

John Loskot, 71 IBLA 165 (Mar. 10, 1983)

Where there are factual questions relating to whether a refiling subsequent to a withdrawal was in the nature of an "amended location" or whether it constituted a "relocation," the matter will be referred for a hearing to allow the claimant the opportunity to show that the subsequent filing is an amended location, and that it is thus the successor in an unbroken chain of title dating back to the original location.

Fairfield Mining Co., Inc., 66 IBLA 115 (Aug. 10, 1982)

The discovery of a valuable mineral deposit is essential to a valid claim. Under the "prudent man test," in order to qualify as a valuable mineral deposit, the discovered deposits must be of such a character that "a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine."

The "marketability test," a refinement of the "prudent man test," requires a claimant to show that a mineral can be extracted, removed, and marketed at a profit. The latter does not set forth a distinct standard, but rather is regarded as complementary to the

MINING CLAIMS--Continued

GENERALLY--Continued

"prudent man test." Factors such as the cost of extraction, removal, and marketing are relevant considerations to determine whether a person of ordinary prudence would be justified in the further expenditure of time and means to develop a paying mine.

A prima facie case of no discovery is established when a Government mineral examiner testifies that he examined the claim and found insufficient evidence of the discovery of a valuable mineral deposit.

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case of the evidence that a discovery has not been made and does not exist within the boundaries of the claim. The mining claimant has the ultimate burden to overcome the case by establishing the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

A Government mineral examiner in determining the validity of a mining claim need only examine the claim to verify whether the claimants have made a discovery. He is not required to perform discovery work, to explore or sample beyond the claimants' workings, or to rehabilitate alleged discovery cuts to establish the Government's prima facie case of no discovery. It is incumbent upon a mining claimant to keep discovery points available for inspection by a Government mineral examiner.

Discovery required by the mining laws means more than a showing only of isolated bits of mineral not connected with or leading to substantial values. To constitute a discovery on a lode claim there must be exposed within the limits of the claim a vein or lode of mineral-bearing rock in place, possessing in and of itself a present value for mining purposes.

Where a mining or millsite claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the mining claim was not supported at the date of the withdrawal by a discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

Any exposure of the rich oil shale formation known as the Parachute Creek member can be geologically inferred to embrace sufficient quantity of high grade oil shale and, therefore, to constitute a valuable mineral deposit on an oil shale placer mining claim. However, exposure of a surface deposit of lean oil shale is inadequate to desonstrate the existence of rich deposits at depth in the absence of evidence showing that it is part of a deposit that can be followed to depth within the lateral limits of the claim.

United States v. Weber Oil Co. et al., 68 IBLA 37 89 I.D. 538 (Oct. 21, 1982)

MINING CLAIMS--Continued

GENERALLY--Continued

For the purpose of Departmental adjudication, an amended location is one made in furtherance of an earlier valid location, while a relocation is one which is adverse to the prior location.

An amended location notice generally relates back, where no adverse rights have intervened, to the date of the original location.

Coates-Lahusen, 69 IBLA 137 (Dec. 9, 1982)

An amended location notice generally relates back to the date of the original location notice, that is, to the extent that an amended location merely furthers rights acquired by a prior subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights prior to the filing of the amended location and subsequent to the original location will not invalidate the claims.

Rhinehart Berg, 71 IBLA 131 (Mar. 9, 1983)

The Secretary of the Interior is required by sec. 603(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent the impairment of the wilderness characteristics of those lands. Where the Bureau of Land Management denies a mine plan of operations for mining claims located in a wilderness study area on the basis that the proposed open pit operation would impair the naturalness of the study area, the denial will be upheld where the mining claimant fails to establish error in the determination.

Keith R. Kusserfeld, 72 IBLA 1 (Apr. 4, 1983)

The discovery of a valuable mineral deposit is essential to a valid claim. Under the "prudent man test," in order to qualify as a valuable mineral deposit, the discovered deposits must be of such a character that "a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine."

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case on the evidence that a discovery has not been made and does not exist within the boundaries of the claim. The mining claimant has the ultimate burden to overcome the case by establishing the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

United States v. Connor et al., 72 IBLA 254 (Apr. 27, 1983)

Unless the statute creating the area specifically provides otherwise, areas within the national park system are not open for location of mining claims.

The provision of the Wilderness Act of 1964, 16 U.S.C. § 1133(d)(3) (1976), which allows mining claims to be located in "wilderness areas" until Dec. 31, 1983, applies only to mining activities within national forest lands designated as wilderness. It is not applicable to lands such as the

MINING CLAIMS--Continued

GENERALLY--Continued

Buffalo National River which are part of the national park system, not national forest lands.

H. E. Bingham et al., 73 IBLA 19 (May 9, 1983)

Tom Brown, 74 IBLA 34 (June 27, 1983)

It is not the function of the Board of Land Appeals to make an inquiry into the motivation of any Government agency which has initiated a contest against mining claims. The fact that such contest challenges the validity of certain mining claims, and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

United States v. Lee H. Rice, Goldie E. Rice, 73 IBLA 128 (May 23, 1983)

A decision by BLM disapproving plans of operations concerning mining claims located within wilderness study areas will be upheld where BLM's determination, pursuant to 43 Subpart 3802, that proposed operations would impair the suitability of the study areas for preservation as wilderness is reasonable based on the record and the mining claimant fails to present any new, relevant information in support of an appeal from BLM's decision.

Mining plans of operations concerning claims or portions thereof located outside a wilderness study area are properly evaluated under the surface management provisions of 43 CFR Subpart 3809, rather than under the provisions governing lands under wilderness review contained in 43 CFR Subpart 3802.

Keith R. Kusserfeld, 74 IBLA 106 (June 30, 1983)

Where a corporation seeking a mineral patent files a certificate showing incorporation under the laws of a state, such corporation has established its citizenship within the meaning of the Mining Law of 1872, and a conclusive presumption thereby arises that all stockholders of the corporation are citizens of the United States, regardless of whether this is true or not.

In re Pacific Coast Molybdenum Co., 75 IBLA 16 (Aug. 5, 1983) 90 I.D. 352

The Secretary of the Interior is required by sec. 603(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1976), to manage lands under review for wilderness suitability so as to prevent the impairment of the wilderness characteristics of those lands. Where the Bureau of Land Management rejects a plan of operations for drilling on mining claims located in a wilderness study area on the basis that the proposed operation would impair the naturalness of the study area, the rejection will be upheld where the mining claimant fails to establish error in the determination.

Golden Triangle Exploration Co., 76 IBLA 245 (Oct. 17, 1983)

MINING CLAIMS--Continued

GENERALLY--Continued

Where the Bureau of Land Management declares various lode mining claims null and void because the owner of record is not a United States citizen and, on appeal, evidence is submitted showing that the claims are currently owned in part by United States citizens, the decision will be reversed.

J. Garth Woodworth, 78 IBLA 112 (Dec. 22, 1983)

Lands segregated on the public records by a Recreational and Public Purposes lease are not available for the location of mining claims, but a claimant may establish the exterior boundaries of a lode claim on land under a Recreation and Public Purposes lease, with the permission of the lessee, for the purpose of making end lines parallel so as to obtain extralateral rights to a vein or lode discovered on lands available for location.

Where a lode mining claim is located partially on patented or withdrawn land, such a claim is not null and void ab initio to the extent of its inclusion of such lands. While the claim may not afford the claimant any rights whatever in the lands into which the claim is partially projected, the configuration of such a claim might, in the proper circumstances, invest the claimant with extralateral rights in other land beyond or adjacent to that land which is closed to mineral entry.

Santa Fe Mining, Inc., 79 IBLA 48 (Feb. 9, 1984)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701, 1782(c) (1976), requires the Secretary to regulate mining operations in lands under wilderness review to prevent impairment of the suitability of these areas for prospective or potential inclusion in the wilderness system. Where a proposed mining plan of operation on such land calls for the use of mechanized earthmoving equipment to clear a new area and the creation of new roads in new areas, BLM properly rejected the plan.

Mining operations in lands under wilderness review may continue even if they are determined to be impairing wilderness values if the operations are occurring in the same manner and degree that they were being conducted on Oct. 21, 1976. Mining activities not exceeding that manner and degree shall be regulated only to prevent undue and unnecessary degradation of public lands. However, the existence of mining operations actually being conducted on the land on Oct. 21, 1976, and not mere statutory right to use, is required to authorize subsequent mining activities in the same manner and degree.

Doyle Cape, 79 IBLA 204 (Feb. 28, 1984)

Where a lode mining claim is located partially on patented or withdrawn land, such a claim is not null and void ab initio to the extent of its inclusion of such lands. While the claim may not afford the claimant any rights whatever in the lands into which the claim is partially projected, the configuration of such a claim might, in the proper circumstances, invest the claimant with extralateral rights in other land beyond or adjacent to that land which is closed to mineral entry.

Comstock Tunnel & Drainage Co., Sutro Tunnel Co., 79 IBLA 237 (Mar. 1, 1984)

MINING CLAIMS--Continued

GENERALLY--Continued

In the absence of specific evidence that a mining claim location notice dated subsequent to the date of withdrawal of the land upon which the claim was located was intended to be an amendment, rather than a relocation, of a claim located prior to the withdrawal, a mining claimant cannot relate the date of a location to an earlier location and thus validate a claim which would otherwise be considered null and void ab initio.

John C. Neill, 80 IBLA 39 (Mar. 28, 1984)

Federal law requires that mining locations be made in good faith for the purpose of mining, processing, or prospecting for valuable minerals. Title to mineral lands cannot be acquired by occupancy unless for the prime purpose of mining and extracting minerals. Even if a discovery could be shown to exist, proof of bad faith can invalidate a claim, since in such a situation the mineral values are incidental to the purpose for which the land is claimed.

United States v. Jon Zimmers, Claire Kelly, 81 IBLA 41 (May 17, 1984)

Where a lode mining claim is located partially on withdrawn lands, such a claim is not null and void ab initio to the extent of its inclusion of such lands. While the claim may not afford the claimant any rights whatever in the withdrawn lands into which the claim is partially projected, the configuration of such a claim might, in the proper circumstances, invest the claimant with extralateral rights in other land beyond or adjacent to that land which is closed to mineral entry.

Marvin F. Johnston, 81 IBLA 295 (June 12, 1984)

Where a lode mining claim is located partially on withdrawn or patented land, it is not null and void ab initio to the extent of its inclusion of such lands. A locator whose discovery is on lands open to location may extend the end lines and side lines of his claim across withdrawn or patented land to define the extralateral rights to lodes or veins which apex within the claim.

Western Nuclear, Inc., 82 IBLA 67 (July 12, 1984)

With respect to an interim conveyance of land to a Native corporation pursuant to sec. 14 of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1613 (1982), the statute does not provide for the reservation of a private right of access to a mining claim, but such right of access is protected as a valid existing right under sec. 17(b)(2) of the Alaska Native Claims Settlement Act, as amended, 43 U.S.C. § 1616(b)(2) (1976).

Herbert I. Stewart, Donald J. Ferguson, 82 IBLA 329 (Sept. 7, 1984)

A perfected but unpatented mining claim is property in the fullest sense of the word, and its ownership, transfer, and use are governed by well-defined code or codes of law, and are recognized by states and the Federal Government.

California Portland Cement Corp., 83 IBLA 11 (Sept. 18, 1984)

MINING CLAIMS--Continued

GENERALLY--Continued

Where a lode mining claim is located partially on withdrawn land, it is not null and void ab initio to the extent of its inclusion of such lands. A locator whose discovery is on lands opened to location may extend the end lines and side lines of his claim across withdrawn or patented land to define the extralateral rights to lodes or veins which apex within the claim.

Conoco American, Inc., 84 IBLA 209 (Dec. 27, 1984)

ABANDONMENT

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 31 of the calendar year following the calendar year in which the claim was recorded in the BLM office, the claim is properly deemed conclusively to have been abandoned.

Willene Binnier, 45 IBLA 1 (Jan. 8, 1980)

Where a mining claimant submits a copy of a notice of location in the BLM's Riverside, California, District Office, for a claim located after Oct. 21, 1976, he has not complied with 43 CFR 3833.1-2(b), even though the material was submitted in the District Office before the expiration of the 90-day deadline, as the notice has not been filed in the "proper BLM office," which is the BLM California State Office in Sacramento, as expressly provided by 43 CFR 3833.0-5(g) and 1821.2-1(d). Where the District Office forwards the information to the State Office but it does not arrive until after the 90-day deadline has passed, owing to its extremely late submission to the District Office, it is untimely, and the claim is properly declared abandoned and void under 43 CFR 3833.4(a).

C. F. Lien, 45 IBLA 156 (Jan. 23, 1980)

"Copy of the Official Record of the Notice or Certificate of Location." Under the revised definition of the term at 43 CFR 3833.0-5(i) (1979), a duplicate of a notice of location which has been filed with the local recorder is a "copy of the official record of the notice or certificate of location," even though it is not stamped by the local recorder and does not include a reference to the local record, and is therefore acceptable under 43 CFR 3833.1-2(b) if tendered within 90 days of the date of location.

James E. Strong, 45 IBLA 386 (Feb. 13, 1980)

Where regulations implementing sec. 314 of the Federal Land Policy and Management Act of 1976 require reference to the Bureau of Land Management serial number under which a mining claim is recorded for future recordings, a claimant fails to include the number when he files a notice of assessment work, and he is specifically informed of this and other requirements, but fails to furnish the number, the filing is unacceptable, and failure to comply with the filing requirements constitutes abandonment of the claim, as provided by the Act.

David V. Udy, 45 IBLA 389 (Feb. 13, 1980)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Under 43 CFR 3833.2-1(b) (1978), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, shall, prior to Dec. 31 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.

Robert W. Hansen, Federal Bentonite Co., 46 IBLA 93 (Feb. 28, 1980)

The owner of an unpatented mining claim located before Oct. 21, 1976, has until Oct. 22, 1979, in which to record his/her notice of location with BLM. However, if he/she elects to record in 1977, he/she must file an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the following calendar year, 1978, and each year thereafter, or the claim will be conclusively deemed to have been abandoned.

Josephine M. Buchen, 46 IBLA 298 (Mar. 31, 1980)

Le Le M. Cosby, 46 IBLA 363 (Apr. 8, 1980)

Clarence W. and Anna F. Owens, 47 IBLA 149 (May 6, 1980)

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it properly is declared abandoned and void.

Phyllis Wood et al., 46 IBLA 309 (Apr. 4, 1980)

Lawrence Jacob, Freeda Jacob, 49 IBLA 137 (July 28, 1980)

Brewery Hill Mining Co., Inc., 49 IBLA 197 (Aug. 6, 1980)

Lost Pollack Mining and Exploration, Ltd., 50 IBLA 227 (Sept. 30, 1980)

Edward J. Szynkowski, Jr., 53 IBLA 310 (Mar. 25, 1981)

Unde. 43 CFR 3833.1-2 the owner of an unpatented mining claim, millsite, or tunnel site located on or before Oct. 21, 1976, must file (file shall mean being received and date stamped by the proper BLM office) an official copy of the notice of location with the proper BLM office on or before Oct. 22, 1979, or the claim will be conclusively deemed to have been abandoned under 43 CFR 3833.4. Mining claimants are not relieved of the requirement to file timely their documents when they mail them, as the documents cannot be considered as filed until they are received by the proper office of the Bureau of Land Management.

Carl Oberg, 46 IBLA 319 (Apr. 4, 1980)

43 CFR 3833.1-2(a) states that the owner of an unpatented mining claim, millsite, or tunnel site on Federal lands on or before Oct. 21, 1976, shall file (file shall mean being received and date stamped by the proper BLM office) on or before Oct. 22, 1979, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. The depositing of a copy of the document in the mail

MINING CLAIMS--Continued

ABANDONMENT--Continued

does not constitute a "filing" within the context of the regulation.

Wayne Van Dyke, 46 IBLA 358 (Apr. 8, 1980)

Earl A. Tenley, 47 IBLA 200 (May 7, 1980)

Darleen Porter, 48 IBLA 55 (May 29, 1980)

Where the owner of an unpatented mining claim located after Oct. 21, 1976, in the calendar year 1977, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 31 of the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

Northwest Mining & Mercantile, Inc., 46 IBLA 360 (Apr. 8, 1980)

Geonet Exploration, Inc., 47 IBLA 135 (Apr. 30, 1980)

Robert R. Bingham, 50 IBLA 145 (Sept. 26, 1980)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1, the owner of an unpatented mining claim located in calendar year 1977, must file an affidavit of assessment work or a notice of intention to hold the mining claim on or before Dec. 30 of the following calendar year, 1978, or the claims will be conclusively deemed to have been abandoned and will be declared void.

Vernon E. and Barbara E. Johnson, 47 IBLA 43 (Apr. 11, 1980)

The owner of an unpatented mining claim, located after Oct. 21, 1976, must file within 90 days after the date of location, in the proper BLM office, a copy of the certificate of location of the claim.

The failure to file the instruments required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, constitutes an abandonment of the mining claim, and the claim is properly deemed to be void.

Eric Murray, 47 IBLA 112 (Apr. 28, 1980)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file with the appropriate office of the Bureau of Land Management an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the calendar year following the date of location or the claim will be conclusively deemed to have been abandoned.

Betty and Clarence L. Guffey, 47 IBLA 175 (May 7, 1980)

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements.

Alva F. Rockwell and Alva A. Rockwell, 47 IBLA 272 (May 13, 1980)

Dollie L. Glaab, 48 IBLA 404 (July 11, 1980)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Where a mining claimant submits a copy of a notice of location to the BLM District Office at Burley, Idaho, for a claim located prior to Oct. 21, 1976, he has not complied with 43 CFR 3833.1-2(a), even though the material was submitted to the District Office before the expiration of the statutory deadline of Oct. 22, 1979, as the location notice has not been filed in the "proper BLM office," which is the BLM Idaho State Office, in Boise, as expressly provided by 43 CFR 3833.0-5(g) and 1821.2-1(d), and the mining claim is properly declared abandoned and void under 43 CFR 3833.4(a).

Roy Trombino, 47 IBLA 289 (May 15, 1980)

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, and it properly is declared abandoned and void.

Wilbur Martin, 47 IBLA 370 (May 21, 1980)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file with the appropriate office of the Bureau of Land Management an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the calendar year following the date of location or the claim will be deemed conclusively to have been abandoned.

Where an appellant asserts on appeal that proof of labor was mailed timely to the Bureau of Land Management, but there exists no record of their receipt, the documents cannot be considered as filed.

Gary L. Barton, J. Marinelli, R. Nixon, 47 IBLA 386 (May 21, 1980)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1977, must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of the following calendar year, 1978, or the claims will be conclusively deemed to have been abandoned.

Where a claimant is not required to do any assessment work under the general mining laws, but is required nevertheless to file under 43 CFR 3833.2-1(c), he must file a notice of intention to hold the claims in lieu of an affidavit of assessment work performed.

William J. Walker, Lewis Sandberg, 47 IBLA 389 (May 22, 1980)

Where the owner of an unpatented mining claim, located by a predecessor in 1977, fails to file an affidavit of assessment work as required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(c), on or before Dec. 30 of the calendar year following the calendar year in which the claim was located, the claim is properly deemed to have been abandoned.

White Star Foundation, Inc., 48 IBLA 96 (May 29, 1980)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of annual assessment work or notice of intention to hold on or before Oct. 22, 1979, his claim is deemed conclusively to be abandoned and to be null and void.

Kenneth K. Parker, 48 IBLA 129 (May 30, 1980)

Century XXI Mining, Inc., 49 IBLA 166 (July 30, 1980)

Under 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, shall, on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.

Ronald Forsker, 48 IBLA 132 (May 30, 1980)

Anna Schalkewicz, 48 IBLA 134 (May 30, 1980)

Zoes Associates, 50 IBLA 164 (Sept. 30, 1980)

The owner of a mining claim located on or before Oct. 21, 1976, had until Oct. 22, 1979, to record a copy of the location notice with Bureau of Land Management and pay the required service fee, and where the fee was not paid 43 CFR 3833.1-2(d) requires that the notice of location be returned as unacceptable.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to timely file an instrument required by 43 CFR 3833.1-2 constitutes an abandonment of the mining claim, and it is deemed to be void.

George B. Flewelling, 48 IBLA 141 (May 30, 1980)

Under 43 CFR 3833.2-1(a) and 3833.4(a), the owner of an unpatented mining claim located before Oct. 21, 1976, notice of which is recorded with BLM in the calendar year 1977, must file an affidavit of assessment work or a notice of intention to hold the claim on or before Dec. 30 of the following calendar year, 1978, or the claim will be conclusively deemed to have been abandoned.

Betty Horton, 48 IBLA 184 (June 9, 1980)

Under 43 CFR 3833.2-1(a), the owner of an unpatented mining claim must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of each calendar year following the year of recordation of the claim with BLM, or the claim will be conclusively deemed to have been abandoned under 43 CFR 3833.4(a).

Victor DeLange, 48 IBLA 222 (June 16, 1980)

Failure to maintain a claim by doing assessment work each year may constitute evidence of abandonment. Independently, a failure to substantially comply with the requirement that annual assessment work be performed, 30 U.S.C. § 28 (1976), requires a finding that the claim has not been "maintained" within the meaning of sec. 37 of the Mineral Leasing Act, 30 U.S.C. § 193 (1976), and may result in a forfeiture of the claim. Nichol v. The Oil Shale Corp., 400 U.S. 48 (1970).

United States v. Catlin Bohse et al., United States v. Exxon Corp. et al., United States v. Aidabelle Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 248

MINING CLAIMS--Continued

ABANDONMENT--Continued

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b) and 3833.4, the owner of an unpatented mining claim located after Oct. 21, 1976, shall file within 90 days after the date of location in the proper BLM office a copy of the official record of the notice or certificate of location, or the claim must be deemed abandoned and void.

James White, 48 IBLA 346 (July 3, 1980)

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, or the claim is deemed abandoned and void.

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Arsando Bajalca, 48 IBLA 351 (July 11, 1980)

The owner of an unpatented mining claim located on Federal lands excluding lands within a unit of the National Park System, but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, after Oct. 21, 1976, shall, on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Where the claimant does not do so, the claims are deemed abandoned and properly declared void.

Don and Mary L. Clark, 49 IBLA 11 (July 15, 1980)

Under 43 U.S.C. § 1744 (1976) if the owner of a mining claim located on or before Oct. 21, 1976, does not file a copy of the recorded notice or certificate of location by Oct. 22, 1979, the claim must be deemed abandoned and void.

Frank Otegui, 49 IBLA 40 (July 21, 1980)

The owner of mining claims located prior to Oct. 21, 1976, must file evidence of annual assessment work performed on the claims during the preceding assessment year, or, where appropriate, notices of intention to hold the claims, no later than on or before Oct. 22, 1979, or the claims are properly declared abandoned and void.

"Preceding assessment year." The "preceding assessment year" is the assessment year most recently completed. Thus, the requirement that evidence of annual assessment work completed during the "preceding assessment year" be filed on or before Oct. 22, 1979, concerns the assessment year ending at noon on Sept. 1, 1979.

A mining claimant may file a notice of intention to hold its mining claims in lieu of evidence of annual

MINING CLAIMS--Continued

ABANDONMENT--Continued

assessment work performed thereon only where the obligation to perform the annual assessment work has been suspended or deferred or has not yet accrued. Where the record indicates no such circumstances and shows to the contrary that the claimant was required to and did perform this work in the preceding assessment year, filing notices of intention will not suffice.

A notice of intention to hold a group of mining claims must meet the requirements set out at 43 CFR 3833.2-3(a), and must include, inter alia, a clear statement of the reason why the annual assessment work was not performed. This requirement is impossible of satisfaction where the claimant in fact did the assessment work.

A failure to file evidence of annual assessment work for the preceding assessment year is not excused by 43 CFR 3833.4(b), which provides that a filing which complies with FLPMA may not be deemed invalid because of its failure to meet the requirements of other laws.

Alaskamin Co., 49 IBLA 43 (July 21, 1980)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file a copy of the certificate or notice of location of the claim with BLM within 90 days of the date of location of the claim, failing which BLM properly rejects the untimely tendered document and declares the claim abandoned and void.

Henry D. Friedman, 49 IBLA 97 (July 28, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a), 3833.2-1(a), 3833.4, for a mining claim located on or before Oct. 21, 1976, a copy of the notice or certificate of location and evidence of assessment work or notice of intention to hold must be filed with the Bureau of Land Management by Oct. 22, 1979, or the claim shall be deemed abandoned and void.

Canyon View Mining Co., 49 IBLA 184 (July 31, 1980)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed conclusively to have been abandoned.

Margaret J. Wilson, 49 IBLA 228 (Aug. 12, 1980)

James V. Brady, 51 IBLA 361 (Dec. 29, 1980)

For a mining claim located on or before Oct. 21, 1976, under 43 U.S.C. § 1744 (1976), 43 CFR 3833.1-2(a) and 3833.4, a copy of the recorded notice or certificate of location must be filed with the appropriate BLM state office by Oct. 22, 1979, or the claim shall be conclusively deemed to be abandoned and void.

Virgal M. Taylor, Elizabeth Hutton, 49 IBLA 329 (Aug. 25, 1980)

Under 43 CFR 3833.1-2(a) and 3833.4(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the recorded notice or certificate of location with the Bureau of Land Management by Oct. 2, 1979, or the claim is deemed abandoned and void.

MINING CLAIMS--Continued

ABANDONMENT--Continued

All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations.

Hugh A. Johnson, 50 IBLA 47 (Sept. 9, 1980)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file an instrument required by secs. 3833.1 and 3833.2 of this title within the time period prescribed therein shall be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it shall be void.

Tod Anderson, 50 IBLA 66 (Sept. 17, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management Office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

Don Sagmoen, Perry Adkison, Ward I. Jones, 50 IBLA 84 (Sept. 17, 1980)

Where a person has located a mining claim on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to file timely with the proper office of the Bureau of Land Management a copy of the notice or certificate of location of a mining claim is deemed conclusively to constitute an abandonment of the mining claim by the owner.

The Department of the Interior, as agency of Executive Branch of Government, is not proper forum to decide whether or not as to mining claims the recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Abner Weed, 50 IBLA 141 (Sept. 26, 1980)

Pursuant to 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of the recording with BLM of the copy of the notice or certificate of location, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

The owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, must, on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Where the claimant does not

MINING CLAIMS--Continued

ABANDONMENT--Continued

do so, the claims are deemed abandoned and properly declared void.

Milburn Downey, Eugene A. Cunningham, 50 IBLA 212 (Sept. 30, 1980)

Where the owners of an unpatented mining claim located prior to Oct. 21, 1976, fail to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, having filed a copy of the notice of location with BLM during calendar year 1978, the claim is properly deemed to be abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR L.Ed.2d 593 (1980), 48 U.S.L.W. 4603 (June 2, 1980),

Where appellants assert on appeal that evidence of assessment work was timely mailed to BLM, but there exists no record of its receipt the documents cannot be considered as filed.

Donald D. Yeagly et al., 50 IBLA 277 (Oct. 6, 1980)

Where the owner of unpatented mining claims located before Oct. 21, 1976, files copies of the notices of location of these claims prior to the Oct. 22, 1979, deadline for so doing, but fails to file evidence of annual assessment work during the preceding assessment year on or before this deadline, the claims are properly declared abandoned and void.

Stanley Bishop, 50 IBLA 371 (Oct. 21, 1980)

Joseph V. Dodge, d.b.a. Rocky Mountain Mineral Co., 50 IBLA 394 (Oct. 24, 1980)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1977, must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of the following calendar year, 1978, or the claims are conclusively deemed to have been abandoned by the owner and to be void.

Henry H. Schmid, Judith A. Schmid, 50 IBLA 406 (Oct. 24, 1980)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, was required to file with BLM evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file constitutes conclusive abandonment of the claim and renders it void.

Peter and Rinda Hasson, 51 IBLA 17 (Oct. 28, 1980)

Under 43 CFR 3833.1-2(d), the owner of unpatented mining claims must tender a filing fee of $5 per claim when filing recordation information, or BLM properly rejects the filing as unacceptable. Where he submits information on or before the Oct. 22, 1979, deadline, but does not include this fee on or before this date, BLM properly regards this filing as unacceptable, so that the claims became void under 43 CFR 3833.4 when the deadline passed without an acceptable filing.

Where the owner of two mining claims files recordation information for two claims with BLM, but tenders only $5 as a filing fee, this amount is insufficient to provide the required $5 fee for both claims, and BLM

MINING CLAIMS--Continued

ABANDONMENT--Continued

properly may recognize only one claim as valid. In these circumstances, BLM properly requires the owner to select which claim to validate.

Eva Holmes et al., 51 IBLA 140 (Nov. 20, 1980)

Where the owner of an unpatented mining claim located after Oct. 21, 1976, in the calendar year 1978, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 30, 1979, the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

Michael Jon McFarland, 51 IBLA 173 (Nov. 26, 1980)

Pacific Coast Mines, Inc., 53 IBLA 200 (Mar. 17, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file on or before Oct. 22, 1979, an affidavit of annual assessment work or notice of intention to hold, the claim must be deemed abandoned and void.

Pearl Kelly, 51 IBLA 185 (Dec. 2, 1980)

Lloyd M. Buttgereit, 52 IBLA 363 (Feb. 19, 1981)

All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations.

John P. Schnelzer, 51 IBLA 188 (Dec. 2, 1980)

Pursuant to 43 CFR 3833.1-1, an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 Oct. 20, 1976), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

Gordon L. Cooper, 51 IBLA 191 (Dec. 5, 1980)

Under 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, must on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim, or the claim must be presumed abandoned and void.

Santa Monica Hospital Medical Center Foundation, 51 IBLA 194 (Dec. 5, 1980)

Glen Gould, 52 IBLA 305 (Feb. 10, 1981)

Where a person locates mining claims on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 CFR 3833.4, the failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute

MINING CLAIMS--Continued

ABANDONMENT--Continued

an abandonment of the mining claim, millsite, or tunnel site by the owner.

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to BLM for recordation on Oct. 22, 1979, and the check submitted was returned by the bank as uncollectible, the mining claims located prior to Oct. 21, 1976, are deemed abandoned and void.

John J. Dunsmore et al., 51 IBLA 297 (Dec. 17, 1980)

Where a person locates a mining claim on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to file such instruments as required by subsections (a) and (b) of that section shall be deemed conclusively to constitute an abandonment of the mining claim, or mill or tunnel site by the owner.

The Department of Interior, as agency of Executive Branch of Government, is not the proper forum to decide whether or not the recordation provisions of the Federal Land Policy and Management Act of 1976 relating to mining claims are constitutional.

Marvin E. Brown, Ione M. Brown, 52 IBLA 44 (Jan. 6, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the mining claim void.

Thomas F. Dykon, Anna E. Philo, 52 IBLA 49 (Jan. 6, 1981)

Where the owner of an unpatented mining claim files a copy of the notice of location of this claim with BLM in 1978, he is required to file a copy of the proof of annual labor performed on the claim during the assessment year ending on Sept. 1, 1979, on or before Oct. 22, 1979, failing which his claim is properly declared abandoned and void.

Michael Hauger, 52 IBLA 129 (Jan. 16, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file constitutes conclusive abandonment of the claim and renders it void.

L. E. Garrison, 52 IBLA 131 (Jan. 16, 1981)

MINING CLAIMS--Continued

ABANDONMENT--Continued

The failure to file an instrument required by 43 CFR 3833.1-2(a), (b), and 3833.2-1 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim and it is properly declared abandoned and void.

Susan Nativo, 52 IBLA 134 (Jan. 16, 1981)

The Federal regulations at 43 CFR 3833.4(a) do not conflict with 43 CFR 3833.4(b) which pertains to the filing of defective or untimely instruments under laws other than the Federal Land Policy and Management Act.

Alex Pinkham, Mary Anne Pinkham, 52 IBLA 149 (Jan. 16, 1981)

The filing of evidence of annual assessment work in the county clerk's office is not compliance with the recordation requirements of 43 CFR 3833.2-1.

Johannes Soyland, 52 IBLA 233 (Feb. 3, 1981)

The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim.

Don Martensen, Anne Martensen, Will Halstead, 52 IBLA 253 (Feb. 6, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management office on or before Oct. 22, 1979. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

Joe Eastons, 52 IBLA 288 (Feb. 9, 1981)

John W. Baccus, 59 IBLA 288 (Oct. 30, 1981)

Where the mining claimant alleges that he timely submitted his yearly affidavit of assessment work to BLM, but that it apparently was lost in the mail, this circumstance will not excuse a late filing. One who selects a means of delivering a document must bear the responsibility for any consequential delay or failure of delivery by that means.

Dean Saylor, 52 IBLA 366 (Feb. 19, 1981)

Where mining claimants assert on appeal that affidavits of annual assessment work were timely filed with BLM but present no evidence substantiating that assertion, the Board of Land Appeals will affirm a BLM decision declaring the claims abandoned pursuant to 43 CFR 3833.2-1(a).

Verla Rhoads, Rene Morgan, 52 IBLA 393 (Feb. 24, 1981)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Kerry and Ingrid Douglas, 53 IBLA 18 (Feb. 26, 1981)

Thomas Williams, 56 IBLA 55 (July 10, 1981)

Judy M. Genger, 59 IBLA 199 (Oct. 27, 1981)

West Fork Mining Co., 60 IBLA 370 (Dec. 22, 1961)

Samantha Bowman, 61 IBLA 20 (Dec. 29, 1981)

Norman Piltz, 61 IBLA 113 (Jan. 6, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Paul R. Scott and Betty F. Scott, 53 IBLA 75 (Mar. 2, 1981)

Paula Troester Saragoza et al., 53 IBLA 247 (Mar. 19, 1981)

United States v. Paul M. Konnigsmark et al., 53 IBLA 377 (Mar. 31, 1981)

James Watkins, 54 IBLA 54 (Apr. 9, 1981)

Randal Angeloni, Douglas Flint, 54 IBLA 56 (Apr. 9, 1981)

John Richard Bodie, 54 IBLA 93 (Apr. 14, 1981)

Joseph Ojukovich, 54 IBLA 100 (Apr. 15, 1981)

Bill C. Ross, 54 IBLA 116 (Apr. 16, 1981)

Charles W. McGowan III, 54 IBLA 119 (Apr. 16, 1981)

Mascot Silver-Lead Mines, Inc., 54 IBLA 121 (Apr. 16, 1981)

Charley E. Gossett, Jr., et al., 54 IBLA 139 (Apr. 17, 1981)

James W. Quakenbush, 54 IBLA 155 (Apr. 21, 1981)

Dell Warren, 54 IBLA 159 (Apr. 21, 1981)

Lyman Mining Co., 54 IBLA 165 (Apr. 21, 1981)

William I. Schindler, 54 IBLA 221 (Apr. 23, 1981)

Emery Crowley et al., 54 IBLA 229 (Apr. 27, 1981)

William Adolph Yonkee et al., 54 IBLA 232 (Apr. 27, 1981)

Mrs. Randolph G. Muniz, 54 IBLA 237 (Apr. 27, 1981)

George H. Willis et al., 54 IBLA 239 (Apr. 27, 1981)

Bernard J. Braker, 54 IBLA 332 (May 5, 1981)

Philip Brandi, George Youmans, 54 IBLA 343 (May 7, 1981)

Reg Whitson, 55 IBLA 5 (May 26, 1981)

Robert C. Cluzen, 55 IBLA 12 (May 26, 1981)

Sidney Hodges, John Golden, 55 IBLA 17 (May 26, 1981)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Earl Krenmiller, 55 IBLA 28 (May 27, 1981)

Glenn D. Graham, Lynne L. Graham, 55 IBLA 39 (May 28, 1981)

Joe Benham, 55 IBLA 45 (May 29, 1981)

Betty L. Henry, 55 IBLA 47 (May 29, 1981)

Bruce L. Baker, Robert C. Baker, 55 IBLA 55 (May 29, 1981)

Alex Stewart, 55 IBLA 105 (June 1, 1981)

Alberto F. Romero, 55 IBLA 140 (June 4, 1981)

James K. Pope et al., 55 IBLA 148 (June 8, 1981)

GSA Reserve Corp., 55 IBLA 162 (June 9, 1981)

Howard L. Kirley, 55 IBLA 165 (June 9, 1981)

Joseph Ojukovich, 55 IBLA 182 (June 15, 1981)

M. LeGrande Lay, 55 IBLA 193 (June 16, 1981)

Herbert S. McClung, 55 IBLA 260 (June 25, 1981)

Don F. Bates, 55 IBLA 263 (June 25, 1981)

Richard B. Dumas et al., 55 IBLA 382 (June 29, 1981)

Charles M. Love et al., 55 IBLA 384 (June 29, 1981)

Melvin and Beppice Darby, 56 IBLA 81 (July 8, 1981)

Jerald D. Ledbetter, 56 IBLA 84 (July 15, 1981)

King of the Hills Mining Co., 56 IBLA 107 (July 16, 1981)

Gary M. Greenlaw, Ronald D. Sharp, 56 IBLA 109 (July 16, 1981)

Walter D. Condon, 56 IBLA 112 (July 16, 1981)

Ken Alexander, 56 IBLA 129 (July 16, 1981)

George I. Lekich, 56 IBLA 148 (July 20, 1981)

Lyle I. Thompson, 56 IBLA 155 (July 20, 1981)

Stephen G. Rudisill, Evelyn J. Rudisill, 56 IBLA 158 (July 20, 1981)

Louise P. Shultis, 56 IBLA 163 (July 20, 1981)

Rolland Marshall, 56 IBLA 187 (July 20, 1981)

William O. Bahny, 56 IBLA 190 (July 20, 1981)

Harwell Mining Co., Wilford F. Montgomery, 56 IBLA 236 (July 22, 1981)

Estate of Kenneth D. Stahl, 56 IBLA 276 (July 28, 1981)

L. D. Lamoureux, 56 IBLA 298 (July 28, 1981)

William E. Bowman, 56 IBLA 312 (July 29, 1981)

Timothy Edward Monte, 56 IBLA 315 (July 29, 1981)

Belmont Oil Corp., 56 IBLA 321 (July 29, 1981)

Caroline E. Brown, 56 IBLA 334 (July 30, 1981)

John E. Urban, 56 IBLA 343 (July 30, 1981)

Loren Nelson, 56 IBLA 352 (Aug. 3, 1981)

Donald E. Black, 56 IBLA 354 (Aug. 3, 1981)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Shannon M. Thornton, 56 IBLA 359 (Aug. 3, 1981)

Estate of Mary B. Ritchie, 56 IBLA 361 (Aug. 3, 1981)

Jerome P. Brown, 56 IBLA 364 (Aug. 3, 1981)

Edith Gion, 56 IBLA 375 (Aug. 3, 1981)

Lola J. Fillmore, 56 IBLA 385 (Aug. 3, 1981)

Norman L. Moon, 57 IBLA 1 (Aug. 5, 1981)

Don E. Robinson, 57 IBLA 5 (Aug. 5, 1981)

Harry J. Pike, 57 IBLA 15 (Aug. 6, 1981)

Dave M. Newman, 57 IBLA 23 (Aug. 6, 1981)

Howard F. Hosser, 57 IBLA 27 (Aug. 6, 1981)

William J. Kroetch, 57 IBLA 29 (Aug. 6, 1981)

M.D.C., Inc., 57 IBLA 35 (Aug. 10, 1981)

Robert P. Wilson, 57 IBLA 40 (Aug. 10, 1981)

Bill Kaser, 57 IBLA 51 (Aug. 17, 1981)

David Truesdell et al., 57 IBLA 60 (Aug. 17, 1981)

Gordon M. Riggs, 57 IBLA 122 (Aug. 25, 1981)

C.O.G.S., Inc., 57 IBLA 128 (Aug. 25, 1981)

Roy Rowe et al., 57 IBLA 136 (Aug. 25, 1981)

Shirley Thompson, Duane E. Thompson, 57 IBLA 154 (Aug. 25, 1981)

George M. Andrews, 57 IBLA 221 (Aug. 27, 1981)

Polar Resources Co. (On Reconsideration), 57 IBLA 237 (Aug. 27, 1981)

L. Grace Wadsworth, 57 IBLA 242 (Aug. 27, 1981)

Verne G. Long, 57 IBLA 263 (Aug. 28, 1981)

Nelson C. Barry, 57 IBLA 268 (Aug. 31, 1981)

Intermountain Exploration Co., 57 IBLA 271 (Aug. 31, 1981)

Intermountain Exploration Co., 57 IBLA 274 (Aug. 31, 1981)

Rodney M. Caton, 57 IBLA 276 (Aug. 31, 1981)

Del Rupp, 57 IBLA 297 (Aug. 31, 1981)

Erwin Tonne, 57 IBLA 303 (Aug. 31, 1981)

George W. Vrable, 57 IBLA 330 (Sept. 1, 1981)

Park City Chief Mining Co., 57 IBLA 346 (Sept. 3, 1981)

Kathy Shaner, 57 IBLA 349 (Sept. 8, 1981)

Virgie Dowler, 57 IBLA 389 (Sept. 10, 1981)

Virginia M. Johnston, 57 IBLA 392 (Sept. 10, 1981)

Heidelberg Silver Mining Co., Inc., 58 IBLA 10 (Sept. 16, 1981)

Sonny Champeaux, 58 IBLA 29 (Sept. 16, 1981)

Steven V. Minkoff, 58 IBLA 32 (Sept. 16, 1981)

Michael J. Healue, 58 IBLA 35 (Sept. 17, 1981)

Keith M. O'Hara, 58 IBLA 59 (Sept. 21, 1981)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Kathryn Mackenzie, 58 IBLA 64 (Sept. 22, 1981)

Grant Kirkham, Roberta Kirkham, 58 IBLA 131 (Sept. 24, 1981)

James K. Daily, 58 IBLA 134 (Sept. 24, 1981)

Clayton F. Schacht, 58 IBLA 137 (Sept. 25, 1981)

H. S. Radenacher, 58 IBLA 152 (Sept. 25, 1981) 88 I.D. 873

Ben Hester, 58 IBLA 163 (Sept. 28, 1981)

Ray Wyco, 58 IBLA 192 (Sept. 29, 1981)

Albert L. Fillerup, 58 IBLA 194 (Sept. 29, 1981)

Freemont Energy Corp., 58 IBLA 197 (Sept. 29, 1981)

John T. Titus, 58 IBLA 207 (Sept. 29, 1981)

George D. Morrill, H. Grant Noble, 58 IBLA 211 (Sept. 29, 1981)

Tom Applegarth, 58 IBLA 224 (Sept. 30, 1981)

Albert Fouche, James Ulberg, 58 IBLA 230 (Oct. 6, 1981)

Michael J. Fabisiak, 58 IBLA 243 (Oct. 6, 1981)

Heirs of Raymond D. Carson et al., 58 IBLA 265 (Oct. 7, 1981)

John B. Kuhn, 58 IBLA 316 (Oct. 16, 1981)

Lee B. Haynes, 58 IBLA 325 (Oct. 16, 1981)

Donald L. Hoffman, 58 IBLA 327 (Oct. 16, 1981)

Eugene M. Goatcher, 58 IBLA 337 (Oct. 19, 1981)

Dennis Forsberg, 58 IBLA 346 (Oct. 19, 1981)

Frank S. Schiff, 58 IBLA 355 (Oct. 20, 1981)

Lloyd P. Webster, 58 IBLA 363 (Oct. 20, 1981)

Judy Kelley, George Kelley, 58 IBLA 369 (Oct. 20, 1981)

Warren J. Fryer, 58 IBLA 381 (Oct. 21, 1981)

AOS Co., 59 IBLA 112 (Oct. 26, 1981)

Joe L. Watts, 59 IBLA 127 (Oct. 26, 1981)

Don G. Gilbertson, 59 IBLA 143 (Oct. 26, 1981)

Fletcher D. Fisher, 59 IBLA 150 (Oct. 26, 1981)

Teddy W. Morgan, 59 IBLA 153 (Oct. 26, 1981)

George E. Casler, 59 IBLA 189 (Oct. 27, 1981)

Robert C. LeFaivre, 59 IBLA 220 (Oct. 28, 1981)

Louis E. Sharp, 59 IBLA 223 (Oct. 28, 1981)

William B. Swith, 59 IBLA 252 (Oct. 29, 1981)

James W. Cole, 59 IBLA 280 (Oct. 30, 1981)

M. J. Rodabaugh, 59 IBLA 286 (Oct. 30, 1981)

Anton J. Meyer, 59 IBLA 311 (Nov. 4, 1981)

Hellaut Laue, Arthur J. Devine, 59 IBLA 316 (Nov. 4, 1981)

Lloyd J. Osborn, P.G.C.S., Ltd., 59 IBLA 323 (Nov. 5, 1981)

Lawrence S. McLean, 60 IBLA 65 (Nov. 19, 1981)

MINING CLAIMS--Continued

ABANDONMENT--Continued

W. O. Heinze, 60 IBLA 78 (Nov. 19, 1981)

R. L. Baroid Petroleum Services, 60 IBLA 90 (Nov. 19, 1981)

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

Lee R. Heath, 60 IBLA 171 (Nov. 24, 1981)

Marvin G. Stuck, 60 IBLA 197 (Nov. 27, 1981)

Ronald M. Guntert, Marion G. Guntert, 60 IBLA 200 (Nov. 27, 1981)

Everett V. Cohoe, 60 IBLA 235 (Dec. 4, 1981)

Don Cook, 60 IBLA 255 (Dec. 4, 1981)

Carl R. Andersen, 61 IBLA 4 (Dec. 29, 1981)

Robert Wright, 61 IBLA 158 (Jan. 20, 1982)

Philip W. Lyttle, 61 IBLA 161 (Jan. 21, 1982)

Dale I. Patchen, Gur W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Mooney, 61 IBLA 210 (Jan. 26, 1982)

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

Esther M. Moore, 61 IBLA 391 (Feb. 18, 1982)

Kay M. Krebs, 62 IBLA 84 (Feb. 25, 1982)

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Robert S. Verri, 62 IBLA 291 (Mar. 16, 1982)

W. E. Matheson, 62 IBLA 303 (Mar. 18, 1982)

Douglas E. Overman, 62 IBLA 397 (Mar. 25, 1982)

George Fauver, 62 IBLA 399 (Mar. 25, 1982)

Robert L. Race et al., 63 IBLA 1 (Mar. 25, 1982)

Danner Mines, Inc., 63 IBLA 49 (Mar. 30, 1982)

Carl W. St. Claire, 63 IBLA 125 (Apr. 5, 1982)

Lloyd J. Osborn, 64 IBLA 21 (May 6, 1982)

Yester Marler, 64 IBLA 86 (May 12, 1982)

Herbert A. Horton, 64 IBLA 89 (May 12, 1982)

Cora Lee Jensen-Gore, 64 IBLA 271 (June 2, 1982)

Charles L. Roberts, 65 IBLA 67 (June 23, 1982)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

James Holdean, 65 IBLA 180 (June 29, 1982)

Joe Karren, Sr., et al., 65 IBLA 387 (July 23, 1982)

Vance W. Dighans, Leon S. Wright, 69 IBLA 394 (Jan. 4, 1983)

Donna Bernhardt, 73 IBLA 207 (May 27, 1983)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on Federal lands on or before Oct. 21, 1976, and recorded with the Bureau of Land Management in 1979, must file in the proper Bureau of Land Management office evidence of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979. This requirement

MINING CLAIMS--Continued

ABANDONMENT--Continued

is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

Palmira Mines, Inc., 53 IBLA 89 (Mar. 2, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file conclusively constitutes abandonment of the claim and renders it void.

Janice Fay Opdrenko, I. D. Monaghan, 53 IBLA 128 (Mar. 5, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1978, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1979, or the claims are conclusively deemed abandoned and, thus, void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

Cleatus Sypult, 53 IBLA 171 (Mar. 16, 1981)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Lynn Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369

Faber Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

Edgar W. Cook, Marlene Cook, 58 IBLA 358 (Oct. 20, 1981)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Sidney G. Smith, 62 IBLA 378 (Mar. 24, 1982)

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

Virgus Silver Mines Co., Inc., 67 IBLA 130 (Sept. 16, 1982)

John Heston, 68 IBLA 206 (Nov. 10, 1982)

Melvin Bradshaw, 68 IBLA 390 (Nov. 23, 1982)

Estate of Woodie Nichols, 69 IBLA 382 (Jan. 4, 1983)

Inez McDorman, Audrey Filger, 72 IBLA 383 (May 5, 1983)

MINING CLAIMS--Continued

ABANDONMENT--Continued

James D. Ross, Maria J. Ross, 72 IBLA 395 (May 5, 1983)

George P. Haycomb, 73 IBLA 104 (May 23, 1983)

Hamburg Mining Co., 73 IBLA 270 (June 7, 1983)

Harold L. Long, 73 IBLA 280 (June 7, 1983)

Rex Mining Co., 73 IBLA 284 (June 7, 1983)

Ray McKee, Cheryl McKee, 73 IBLA 311 (June 7, 1983)

Paul P. Smith et al., 73 IBLA 336 (June 8, 1983)

Hugh Spragge, 73 IBLA 386 (June 15, 1983)

Page Investment Co., 74 IBLA 163 (July 12, 1983)

Bruce Naylor, Bill Barney, Darrell Taylor, 74 IBLA 201 (July 18, 1983)

Leonard E. Snider, Sr., 74 IBLA 213 (July 18, 1983)

Hughes Minerals, Inc., 74 IBLA 217 (July 18, 1983)

Frank Bongos, 74 IBLA 367 (July 28, 1983)

Parke Potter, 74 IBLA 397 (Aug. 2, 1983)

Mackay Bar Corp., 75 IBLA 57 (Aug. 5, 1983)

Paul T. Byrd, Melvin V. Lunt, 75 IBLA 76 (Aug. 10, 1983)

Moonwalker, Inc., 76 IBLA 53 (Sept. 19, 1983)

Robert W. Hughes, 76 IBLA 99 (Sept. 21, 1983)

Charles Mayo, Marie G. Mayo, 76 IBLA 107 (Sept. 21, 1983)

John V. Balding, 76 IBLA 218 (Oct. 17, 1983)

Crowsite Corp., American Pumice Products, Inc., 76 IBLA 236 (Oct. 17, 1983)

Adolf Dieckmann (Trust), 76 IBLA 357 (Oct. 24, 1983)

Homestake Mining Co., 77 IBLA 235 (Nov. 29, 1983)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Where mining claimants assert on appeal that evidence of assessment work required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a) was timely mailed to the Bureau of Land Management (BLM) but there exists no record of BLM's receipt of the documents, the Board must find that there was not a timely filing and that the claims are declared abandoned and void. Claimants, who chose the manner of mailing, must bear the consequences of nondelivery.

Mr. and Mrs. Jack White, 53 IBLA 267 (Mar. 23, 1981)

John Evanoff, 58 IBLA 403 (Oct. 21, 1981)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Where the owners of unpatented mining claims located prior to Oct. 21, 1976, file notices of recordation for such claims with the Bureau of Land Management on Oct. 22, 1979, but fail to file evidence of annual assessment work until Dec. 28, 1979, pursuant to sec. 314(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a), the failure to file timely the evidence of annual assessment work constitutes conclusive abandonment of the claims and renders the claims void.

John Platt, Jr., et al., 53 IBLA 313 (Mar. 25, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1978, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1979, or the claims are conclusively deemed abandoned and, thus, void. Neither FLPMA nor the regulations provide for any leeway in the application of the penalty for failure to file the required information.

Ernest B. Cuttscreo, 54 IBLA 108 (Apr. 15, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1978, must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of the following calendar year, 1979, or the claims will be conclusively deemed to have been abandoned.

Jess E. Hinton, Jr., 54 IBLA 134 (Apr. 17, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

The filing of evidence of annual assessment work in the county clerk's office is not compliance with the recordation requirements of 43 CFR 3833.2-1.

Clayton V. Curtis, 54 IBLA 184 (Apr. 22, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of annual assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to file conclusively constitutes abandonment of the claim and renders it void.

William M. Hand, 54 IBLA 303 (Apr. 29, 1981)

Robert Keough, 54 IBLA 337 (May 5, 1981)

MINING CLAIMS--Continued

ABANDONMENT--Continued

William M. Barbat, 56 IBLA 26 (July 8, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1977, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1978, or the claims are conclusively deemed abandoned and, thus, void.

Eugene E. Daugherty, 54 IBLA 352 (May 12, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a), the owner of an unpatented mining claim located before Oct. 21, 1976, must file on or before Oct. 22, 1979, in the proper BLM office, a copy of the notice of location or the claim will be conclusively deemed to have been abandoned and declared void.

Where an unpatented mining claim is located in Alaska near the dividing line separating the Anchorage and Fairbanks districts, indicated on the map in 43 CFR 1821.2-1, such that it is virtually impossible from the map to determine with substantial accuracy in which district the mining claim lies, the timely filing of the location notice by the owner of the claim in either the Alaska State Office or the Fairbanks District Office will be considered as satisfying the requirement of 43 CFR 3833.1-2(a) of filing in the proper BLM office.

Inspiration Development Co., 54 IBLA 390 (May 20, 1981)
88 I.D. 557

Lowell L. Patten, 55 IBLA 125 (June 3, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1979, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1980, or the claims are conclusively deemed abandoned and, thus void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

Onco, Inc., 55 IBLA 77 (June 1, 1981)

Acceptance for recordation of a timely filed certificate of location of unpatented mining claim and negotiation of the check for the required service fee creates no estoppel to subsequently declare the claim abandoned and void for failure to file timely the required evidence of assessment work or notice of intention to hold.

Margaret E. Peterson, 55 IBLA 136 (June 4, 1981)

Pursuant to 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of the recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4. The fact that the Post Office may

MINING CLAIMS--Continued

ABANDONMENT--Continued

have assured the claimant that the documents would reach the New Mexico State Office by Dec. 30, 1980, will not excuse late filing.

Jack H. Wheatley, 55 IBLA 145 (June 8, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply conclusively constitutes an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Robert W. Fennell, Clair B. Colburn, d.b.a. Colfenach Mining Ass'n, 56 IBLA 43 (July 8, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1979, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notice of intention to hold the mining claims on or before Dec. 30, 1980, or the claims are conclusively deemed abandoned and, thus, void.

Allen Turner, 56 IBLA 280 (July 28, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein, must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

Fred W. Crosen III, 56 IBLA 318 (July 29, 1981)

William Scott Olson, 65 IBLA 274 (July 12, 1982)

Deficiencies under the regulations in the content of an affidavit of assessment work or notice of intention to hold filed with the Bureau of Land Management with respect to an unpatented mining claim may be considered curable and do not result in a conclusive presumption of abandonment of the claim where the filing meets the requirements of sec. 314 of the Federal Land

MINING CLAIMS--Continued

ABANDONMENT--Continued

Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either notice of intention to hold the claim or evidence of assessment work with the local recording office where the notice of location is recorded and a copy thereof with the Bureau of Land Management prior to Dec. 31 of the year following the calendar year in which the claim was located under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Ted Dildar, 56 IBLA 337 (July 30, 1981) 88 I.D. 682

Ronald Willden, 60 IBLA 173 (Nov. 24, 1981)

The failure to file such instruments as are required by 43 CFR 3833.1 and to pay the requisite service fee within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, and it is properly declared void.

Warren Wheeler, 56 IBLA 350 (Aug. 3, 1981)

Eugene J. Curless, 67 IBLA 135 (Sept. 16, 1982)

Glen W. Taylor, 67 IBLA 393 (Oct. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file on or before Oct. 22, 1979, in the proper BLM office, a copy of the notice of location, or the claim will be conclusively deemed to have been abandoned and declared void.

Kenneth C. Richter, 56 IBLA 391 (Aug. 3, 1981)

Pursuant to 43 CFR 3833.1-1 and 36 CFR 9.5(a), an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 (Oct. 20, 1976)), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

Abram H. Kreider, 57 IBLA 68 (Aug. 18, 1981)

George D. Hooker et al., 66 IBLA 168 (Aug. 12, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site. These requirements are mandatory and failure to comply within the time period prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, millsite or tunnel site.

D. L. Nielson, R. W. Tompkins, 57 IBLA 114 (Aug. 25, 1981)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

R. E. Bailey, 57 IBLA 120 (Aug. 25, 1981)

Ralph A. Pisoh, 58 IBLA 254 (Oct. 6, 1981)

John Silva, 59 IBLA 167 (Oct. 26, 1981)

Where the case records of unpatented mining claims located prior to Oct. 21, 1976, disclose that prior to Oct. 22, 1979, both copies of notices of location and proofs of assessment work were filed with the proper office of the Bureau of Land Management, it is not proper to declare the claims abandoned and void because the evidence of assessment work was filed prior to the filing of the copies of the notices of location.

Leland W. Wiscombe, Dudley L. Davis, 57 IBLA 161 (Aug. 25, 1981)

It is gross error for the Bureau of Land Management to declare unpatented mining claims abandoned and void for failure to submit a proof of labor when the case files of the subject mining claims reflect that a proof of labor was timely submitted to BLM and BLM had acknowledged receipt thereof.

Parish Chemical Co., 57 IBLA 240 (Aug. 27, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The fact that mining claims are oil placer claims and that there is production on the claims does not prevent the conclusive abandonment and voiding of the claims for failure to comply with FLPMA's recordation requirements.

Petro-Lewis Corp., Partnership Properties Co., 57 IBLA 300 (Aug. 31, 1981)

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Harlow H. Oberbillig, 57 IBLA 336 (Sept. 1, 1981)

The failure of the owner of an unpatented mining claim to furnish a date of location, not indicated in a copy of the notice of location of the claim filed with BLM, in response to a notice of deficiency requiring the submission of such date within 30 days, may be waived where BLM already had evidence of when the claim was located, the person entrusted with such matters was incapacitated during this time period,

MINING CLAIMS--Continued:

ABANDONMENT--Continued

and the claimant promptly furnished the date of location upon learning of the failure to respond timely.

Park City Chief Mining Co., 57 IBLA 342 (Sept. 3, 1981)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Vernon Bradley, 57 IBLA 351 (Sept. 8, 1981)

United States Energy Corp. et al., 58 IBLA 159 (Sept. 28, 1981)

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

Rupert Thorne, 58 IBLA 319 (Oct. 16, 1981)

Wayne Cook, 58 IBLA 350 (Oct. 19, 1981)

Enterprise Mines, Inc., 58 IBLA 372 (Oct. 20, 1981)

John T. Sweaton et al., 59 IBLA 108 (Oct. 26, 1981)

Elizabeth Francis, 60 IBLA 6 (Nov. 12, 1981)

William Cooper, 60 IBLA 50 (Nov. 17, 1981)

Raymond W. McCool, Harold P. Hinds, 60 IBLA 62 (Nov. 19, 1981)

George Vincent McMahon, 60 IBLA 187 (Nov. 27, 1981)

Nicolaus P. Newby, 60 IBLA 264 (Dec. 15, 1981)

Major G. Atkins, 60 IBLA 284 (Dec. 17, 1981)

Al Sherman, 61 IBLA 94 (Jan. 4, 1982)

William H. H. Underwood, 61 IBLA 172 (Jan. 25, 1982)

Leonard W. Nelson, Sr., 61 IBLA 353 (Feb. 11, 1982)

Douglas Lee Jones, 62 IBLA 107 (Mar. 2, 1982)

Floren Klopfenstein, 62 IBLA 238 (Mar. 11, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

Lawrence Paul, 63 IBLA 275 (Apr. 19, 1982)

Gregory M. Harrington, 64 IBLA 331 (June 10, 1982)

Charles E. Hull et al., 65 IBLA 61 (June 23, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

Mermaid Mining Co., 65 IBLA 172 (June 29, 1982)

Helena Silver Mines, Inc., 65 IBLA 287 (July 13, 1982)

J & B Mining Co., Inc., 65 IBLA 335 (July 15, 1982)

David G. Still, 66 IBLA 35 (July 23, 1982)

Alan T. Trees, James L. Barnes, 66 IBLA 334 (Aug. 26, 1982)

Magma Power Co., et al., 68 IBLA 201 (Nov. 10, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Mildred McGee, 68 IBLA 292 (Nov. 19, 1982)

Arden F. Griffith et al., 68 IBLA 295 (Nov. 19, 1982)

Carlyle A. Brough, 68 IBLA 318 (Nov. 19, 1982)

Douglas E. Martin, 68 IBLA 322 (Nov. 19, 1982)

James A. Huff, Elizabeth H. Young, 69 IBLA 31 (Nov. 26, 1982)

Phil E. Parks, 69 IBLA 48 (Nov. 29, 1982)

Susan S. Simmons, 69 IBLA 84 (Nov. 30, 1982)

Dudley L. Davis, 69 IBLA 127 (Dec. 8, 1982)

Costas-Lahusen, 69 IBLA 137 (Dec. 9, 1982)

Charles W. Shannon, Ruth Kuykel, 69 IBLA 300 (Dec. 23, 1982)

Doe Wright, 69 IBLA 309 (Dec. 23, 1982)

James A. Huff, Elizabeth H. Young, 69 IBLA 368 (Jan. 3, 1983)

David F. Matuszak, 70 IBLA 11 (Jan. 6, 1983)

Lode Number 5, Inc., 70 IBLA 14 (Jan. 6, 1983)

Ezra Jolley, Suzanne E. Marco, 70 IBLA 29 (Jan. 6, 1983)

William C. Riedeker et al., 70 IBLA 55 (Jan. 10, 1983)

Gervin Blake Riding, 70 IBLA 59 (Jan. 10, 1983)

Robert Paolucci, II, et al., 70 IBLA 118 (Jan. 13, 1983)

Zada Anderson et al., 70 IBLA 122 (Jan. 13, 1983)

Eugene H. Walck, Jr., 72 IBLA 30 (Apr. 5, 1983)

White Rose Corp., 72 IBLA 80 (Apr. 13, 1983)

Addison Girard Clark, 72 IBLA 321 (Apr. 28, 1983)

William E. Day, 72 IBLA 364 (May 2, 1983)

Dean W. Frazier, 73 IBLA 13 (May 5, 1983)

Githa T. Mayo, 73 IBLA 277 (June 7, 1983)

Harold H. Block, 74 IBLA 156 (July 12, 1983)

Shirley Pomerinke, 74 IBLA 210 (July 18, 1983)

Lee Saulsberry, 74 IBLA 223 (July 18, 1983)

Joe V. Anderson, Art Hutsch, Estate of Don T. Anderson, 75 IBLA 71 (Aug. 10, 1983)

Floyd R. Bekins, Jr., 75 IBLA 80 (Aug. 10, 1983)

Shamrock Mining Inc., 75 IBLA 110 (Aug. 11, 1983)

John Dillingham, Mabel Dillingham, 75 IBLA 146 (Aug. 17, 1983)

Three Rivers Mining Co., 75 IBLA 176 (Aug. 19, 1983)

John D. Dowers, 75 IBLA 266 (Aug. 26, 1983)

Walter E. Nelson, Thomas C. Nelson, 75 IBLA 269 (Aug. 26, 1983)

Estate of Stanley Styles, 75 IBLA 272 (Aug. 26, 1983)

Edmund G. Rich, 75 IBLA 275 (Aug. 26, 1983)

H. E. Monroe, 75 IBLA 325 (Aug. 30, 1983)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Henry A. Hall, Barbara Hall, 75 IBLA 339 (Aug. 30, 1983)

Cliff Sassella, 76 IBLA 8 (Sept. 6, 1983)

Elliott Glassner, 76 IBLA 11 (Sept. 6, 1983)

Henry Allen, Harold Dilg, 76 IBLA 14 (Sept. 6, 1983)

Edward H. Beck, 76 IBLA 80 (Sept. 21, 1983)

Lydia Darlene Sheaks, 76 IBLA 148 (Sept. 26, 1983)

Farrell D. Clontz, 76 IBLA 180 (Oct. 3, 1983)

Michael J. Rouse, 76 IBLA 183 (Oct. 3, 1983)

C. G. Rhinehart, 76 IBLA 228 (Oct. 17, 1983)

Grace P. Crocker, 76 IBLA 231 (Oct. 17, 1983)

Hiko Bell Mining & Oil Co., 76 IBLA 254 (Oct. 17, 1983)

Henry G. Zacher, 77 IBLA 1 (Oct. 31, 1983)

J. Neil Smith, 77 IBLA 239 (Nov. 29, 1983)

Mining claims are properly declared abandoned and void where copies of the notices of location are not filed with the proper Bureau of Land Management office within the time periods prescribed by sec. 314 of the Federal Land Policy and Management Act of 1976.

Donald Jardine, 58 IBLA 69 (Sept. 21, 1981)

Richard Thorpe, Anne Thorpe, 59 IBLA 176 (Oct. 26, 1981)

Where the owner of an unpatented mining claim located after Oct. 21, 1976, in calendar year 1977, fails to file with BLM an affidavit of assessment work or a proper notice of intention to hold the claim on or before Dec. 30, 1978, the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

John T. Hotes, Marie Hotes, 58 IBLA 62 (Sept. 21, 1981)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location and either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report provided by sec. 28-1 of Title 30, relating thereto, all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

Notices of locations for various mining claims and millsites filed for recordation under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), must be rejected where the claims and millsites were previously held null and void following Departmental contest proceedings.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

J. G. Womack, 58 IBLA 85 (Sept. 22, 1981)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed with the proper office of BLM on or before Dec. 30 of each year, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

W. LeRoy Ewell, 58 IBLA 121 (Sept. 24, 1981)

Riley Ekker, Kerry R. Ekker, 58 IBLA 251 (Oct. 6, 1981)

The failure to file copies of the official record of notices of location of a mining claim within 90 days after the date of location must be deemed conclusively to constitute an abandonment of the mining claim. There is no provision for waiver of this mandatory requirement, and where delivery of the location notices is delayed by the Postal Service, the consequences of the late filing must be borne by the claimant.

Whelan's Mining and Exploration, Inc., 58 IBLA 127 (Sept. 24, 1981)

Pursuant to sec. 314 of FLPMA and 43 CFR 3833.2-1(b), the owner of unpatented mining claims situated within any unit of the National Park System must file in the proper office of BLM a notice of intention to hold the claims on or before Dec. 30 of each year following the year in which the claims were recorded with the National Park Service as required by the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), and 36 CFR 9.5. Where a permit to do assessment work has been issued by NPS, the owner of the claims may file evidence of assessment work in lieu of the notice of intention to hold the claims. Failure to file either a notice of intention to hold the unpatented mining claims or evidence of assessment work with the proper BLM office within the time period prescribed conclusively constitutes abandonment of the claims.

Uranus, Inc., 58 IBLA 139 (Sept. 25, 1981)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply conclusively constitutes an abandonment of the claim by the owner and renders the claim void.

Mrs. Walter E. Bolles, 58 IBLA 257 (Oct. 6, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Richard W. Thom, 58 IBLA 291 (Oct. 13, 1981)

S. F. Cook, 68 IBLA 176 (Nov. 5, 1982)

F. A. Stacy, 68 IBLA 248 (Nov. 16, 1982)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1978, is required to file evidence of annual assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to file conclusively constitutes abandonment of the claim and renders it void.

Bernard E. Packard et al., 58 IBLA 308 (Oct. 16, 1981)

Oil placer mining claims located pursuant to the Petroleum and Mineral Oils Act of Feb. 11, 1897, c. 216, 29 Stat. 526, and preserved by sec. 37 of the Mineral Leasing Act of 1920, 30 U.S.C. § 193 (Supp. II 1978), are subject to the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Conoco, Inc., 58 IBLA 390 (Oct. 21, 1981) 88 I.D. 918

The recordation provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), applies to claims which rely on the provision of 30 U.S.C. § 38 (1976) to prove location and posting. Where such claims have not been duly recorded, they are a nullity.

United States v. Richard P. Haskins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

MINING CLAIMS--Continued

ABANDONMENT--Continued

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), where the owner of unpatented mining claim located before Oct. 21, 1976, submits a copy of the location notice to BLM in April 1978, and proof of labor to BLM in Oct. 1979, but fails to submit evidence of annual assessment work or notice of intention to hold the mining claim on or before Dec. 30, 1980, BLM properly declares the mining claim abandoned and void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

Roy B. Swalley et al., 59 IBLA 238 (Oct. 28, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of unpatented mining claims located on or before Oct. 21, 1976, must file affidavit of assessment work or a notice of intention to hold the claims on or before Oct. 22, 1979, or the claims will be conclusively deemed to have been abandoned.

Edward Kelley, 59 IBLA 250 (Oct. 29, 1981)

Henry Chavez, 62 IBLA 312 (Mar. 19, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located on Federal land after Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location in the proper BLM office within 90 days after the date of location.

Frank E. Evans, 60 IBLA 44 (Nov. 17, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Where the mining claimant files timely a notice of location in the wrong BLM state office, the claim is deemed abandoned and void even though the document was not returned in time to correct the error.

Susan Bottles, 60 IBLA 75 (Nov. 19, 1981)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

All Minerals Corp., 60 IBLA 85 (Nov. 19, 1981)

MINING CLAIMS--Continued

ABANDONMENT--Continued

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Where, on or before Oct. 22, 1979, a mining claimant files proof of assessment work for a claim located prior to Oct. 21, 1976, which proof had been duly filed in the local offices of the state wherein the notice of location was filed, but such assessment work was not performed in the assessment year preceding the filing, the claimant has complied with the statutory requirements and should be afforded an additional opportunity to comply with the regulatory requirements prior to a finding of abandonment.

Karen B. Tony et al., 60 IBLA 167 (Nov. 24, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1977, but which is not accompanied by evidence of assessment work or a notice of intent to hold the claim, is required to file evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file constitutes conclusive abandonment of the claim and renders it void.

P & P Mining Co., Inc., 60 IBLA 178 (Nov. 25, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR Subpart 3833 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claims by the owner.

Jack and Lisa Silbaugh, William E. Dan, 60 IBLA 217 (Nov. 30, 1981)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of annual assessment work or notice of intention to hold the claim with the Bureau of Land Management on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

C. F. Turley, Jr., 60 IBLA 237 (Dec. 4, 1981)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively

MINING CLAIMS--Continued

ABANDONMENT--Continued

constitutes an abandonment of the mining claim by the owner.

Prudential Mining & Exploration, Inc., 60 IBLA 363 (Dec. 22, 1981)

The owner of an unpatented mining claim must file in each calendar year, on or before Dec. 30, either an affidavit of assessment work performed on the claim or a notice of intention to hold the mining claim. Failure to so file results in a conclusive statutory presumption of abandonment of the claim by the owner.

Northern Stone Supply, 61 IBLA 36 (Dec. 29, 1981)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(b). This requirement is mandatory and where a mining claimant fails to comply therewith the claims are properly declared abandoned and void.

Bessie L. Bayne, Freddie B. Bayne, 61 IBLA 55 (Dec. 31, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice of location of the claim. This requirement is mandatory, and failure to comply within the time period prescribed must be deemed conclusively to constitute an abandonment of the mining claim.

Glenn Cox, 61 IBLA 97 (Jan. 4, 1982)

Harry Birkholz, 61 IBLA 170 (Jan. 25, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Jayne A. McMorgue, 61 IBLA 163 (Jan. 25, 1982)

Sec. 314(a) of FLPMA requires the owner of an unpatented mining claim located prior to Oct. 21, 1976, to file with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter, an affidavit of assessment work performed thereon, or a notice of

MINING CLAIMS--Continued

ABANDONMENT--Continued

intention to hold the claim, or a detailed report provided by sec. 28-1 of Title 30, relating thereto. Sec. 314(c) states that the failure to comply with subsec. (a) invokes a conclusive presumption of the claim's abandonment, and 43 CFR 3833.4(a) declares that the claim "shall be void."

The presumption of abandonment under sec. 314 of FLPMA need not have been preceded by any particular notice from BLM, because the public is deemed to know the content of relevant statutes and regulations.

David and Roirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

In enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment.

At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. The burden of proof of the intent to abandon rests upon the party who asserts it, and the proof must be clear and convincing. Where the evidence is persuasive that a notice of abandonment mistakenly described the wrong claim, and that the claimant thereafter remained in occupancy and possession for many years, there was neither an intent to abandon nor actual abandonment, and the erroneous notice may be repudiated.

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that proof of labor was timely filed is insufficient to rebut the presumption.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location and either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report relating thereto, as provided by 30 U.S.C. § 28-1 (1976), all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Arnie P. Kapsler, 62 IBLA 224 (Mar. 10, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were timely recorded in accordance with 16 U.S.C. § 1907 (1976), may not conclusively be deemed abandoned and void if a notice of intention to hold is not filed in 1978 for record in the unit of the national park system where the location notice is recorded, as the filing requirement is not statutory, but only regulatory, so the defect is curable. Notice of such defect should be given and the claimant allowed 30 days within which to correct the defect. An unpatented mining claim located before Oct. 21, 1976, on land within a unit of the national park system and timely recorded under the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), may not be deemed abandoned and void where a copy of the recorded instrument showing evidence of assessment work is filed with the proper office of BLM on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Morrill A. Nielson et al., 62 IBLA 249 (Mar. 15, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed with the proper office of BLM on or before Oct. 22, 1979, for claims located prior to Oct. 21, 1976, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

R. Gail Tibbetts, 62 IBLA 252 (Mar. 15, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The Board cannot decide cases simply on evidence from previous unrelated cases showing BLM's fallibility. There is an established legal presumption, which may be rebutted, that official acts of public officers discharging their official duties are regular. That presumption can be rebutted by any substantial evidence tending to show that BLM's action was not regular in a particular instance. If such a showing is made, the Board decides the case without further reference to the presumption, and the appellant must prove his case by a preponderance of the evidence.

R. C. Wilcox, 63 IBLA 19 (Mar. 26, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Elmer F. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Proof of labor or notice of intention to hold a mining claim must be filed with BLM each calendar year, on or after Jan. 1 and on or before Dec. 30. The requisite filing of either of those documents for calendar year 1980 was not accomplished by appellant's filing a labor affidavit in Oct. 1979 for the 1980 assessment year, and the BLM decision declaring the affected mining claims abandoned and void must be affirmed. The failure to file timely those documents is not curable after the filing deadline.

Erickson Placers, Inc., 63 IBLA 60 (Mar. 30, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Where the claimants inadvertently omit the name of a mining claim from their affidavit of annual assessment work, which was otherwise properly recorded both in the county and with BLM, the omitted claim must be deemed conclusively to be abandoned under the provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Frances J. Darger, 63 IBLA 67 (Mar. 30, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Appellant has not complied with the statutory and regulatory rules for recordation of mining claim locations where the document filed with BLM bears a location date that the document filed with the county does not. Moreover, State of Washington law, which governs determination of the location date in this case, contemplates recordation of a location notice with the county only after certain prerequisites have been accomplished on the claim to locate it. Thus, the declaration that location occurred on Nov. 11, 1981, or on Feb. 3, 1982, is incorrect when the location notice was recorded with the county Nov. 10, 1981. Where it is impossible for BLM to ascertain whether the mining claimant has timely filed, because the location date is clearly incorrect or missing, the filing is properly rejected.

Gerald B. Pardon, 63 IBLA 115 (Apr. 2, 1982)

"Date of location." Although 43 CFR 3833.0-5(h) provides that the date of location of a mining claim shall be determined by state law in the jurisdiction where the claim is located, where the location certificate, as recorded with the county recorder's office as required by state law, recites a specific date of location of the claim, that date will be used as the inception of the 90-day period allowed for recordation by 43 U.S.C. § 1744 (1976), as that is the date upon which the claimant asserts he located the claim and entered upon the public land.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Mrs. George G. Wagner et al., 63 IBLA 146 (Apr. 6, 1982)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Donald C. Strong, 63 IBLA 195 (Apr. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and

MINING CLAIMS--Continued

ABANDONMENT--Continued

failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, in the proper office of the Bureau of Land Management within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Tako Mining, 63 IBLA 206 (Apr. 9, 1982)

E. Del & Associates, 65 IBLA 170 (June 29, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

Estoppel of the Government, especially where public lands are concerned, is a remedy applicable only to extraordinary circumstances. A sine qua non of estoppel of the Government is affirmative misconduct by an authorized agent or officer that results in a misrepresentation of fact upon which there is detrimental reliance. BLM's apparently innocent silence at the time mining claim documents were filed does not estop the Government from later declaring mining claims invalid for failure to file other required documents.

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute

MINING CLAIMS--Continued

ABANDONMENT--Continued

itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Francis Shay et al., 63 IBLA 235 (Apr. 19, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because of a snowstorm, the consequence must be borne by the claimant.

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with the proper office of BLM within 90 days after the date of location. 43 CFR 3833.4 states that failure to submit the required instruments within the specified time limits is conclusively considered abandonment of the the claim and it shall be void. The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

George Whitehead, 64 IBLA 111 (May 17, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

A notice of intention to hold which does not comply with the form requirements of 43 CFR 3833.2-3 to the extent that the regulatory requirements regarding content go beyond the requirements of the statute, will not automatically result in a claim being declared abandoned and void. However, where the notice does not include a copy of a notice of intention to hold filed in the local recording office, as required by the statute, a claim is properly declared abandoned and void.

Great West Land & Mining Corp., 64 IBLA 114 (May 19, 1982)

It is error for the Bureau of Land Management to declare unpatented mining claims abandoned and void for failure to submit an affidavit of assessment work after having sent the claimant a notice that the affidavit has been received.

Vern W. Simmons, Jr., 64 IBLA 139 (May 24, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Under 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2, the owner of an unpatented mining claim must file for record before Dec. 31 of each calendar year, in the office of local jurisdiction where the location notice of the claim is recorded, evidence of assessment work performed on the claim or a notice of intention to hold the claim, and must also file in the proper Bureau of Land Management office a copy of the instrument filed in the local jurisdiction. Failure to make both filings of the same instrument is deemed to be an abandonment of the claim.

Elkins Real Estate, 64 IBLA 141 (May 24, 1982)

Donald Klein, Rozelle Klein, 66 IBLA 212 (Aug. 16, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Stanley Sims, 64 IBLA 257 (June 2, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 in the proper BLM office within the time period prescribed by statute constitutes an abandonment of the mining claim by the owner. Regulation 43 CFR 3833.1-2(d) requires each location notice filed for recordation to be accompanied by a service fee of $5. This is a mandatory requirement, so there is no recordation of a mining claim where the check tendered as payment of the service fee is never honored by the drawer's bank. Therefore, when the location notices are filed with BLM Oct. 22, 1979, but the service fee is not paid with a negotiable check until June 3, 1980, the recordation date of the claims is June 3, 1980. For claims located prior to Oct. 21, 1976, where the effective date of recordation of the location notices with BLM is June 3, 1980, sec. 314 of FLPMA compels the conclusive determination that the claims are abandoned.

Cajon Minerals, 64 IBLA 261 (June 2, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, received timely by BLM. Appellant in this case has not carried the burden of proof by showing that BLM received the documents.

MINING CLAIMS--Continued

ABANDONMENT--Continued

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the recorded notice of location within 90 days after the date of location, and a notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year of the location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void. Thus, a mining claim located in Dec. 1979 for which neither a notice of intention to hold or evidence of assessment work was recorded before Dec. 31, 1980, both in the county where the location notice is recorded and in the proper BLM office, is properly declared abandoned and void.

Kenneth L. Wilbur, 65 IBLA 4 (June 17, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), within the prescribed time period is imposed by the statute itself. A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

C. Douglas Lee, 65 IBLA 41 (June 22, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1 in the proper BLM office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner. The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Roger Stanley, 65 IBLA 69 (June 23, 1982)

Gladys M. Cramer, 65 IBLA 120 (June 25, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. Where BLM states that it did not receive certain instruments, it is the responsibility of the appellant to show that they were, in fact, received.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Howard E. Thompson, 65 IBLA 79 (June 23, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was delivered to show that it was, in fact, timely received by BLM. Appellant in this case has not carried his burden of proof by showing that BLM received the documents.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Edwin P. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2 and 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, failed to file a copy of the official record of the location notice with the Bureau of Land Management, on or before Oct. 22, 1979, the claim must be considered to be abandoned by the owner, and it is void.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, timely received by BLM.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Fawn Rupp, 65 IBLA 277 (July 12, 1982)

Manuel R. Hernandez, 65 IBLA 281 (July 12, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

William P. Gaechter et al., 66 IBLA 230 (Aug. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of the BLM is mandatory, not discretionary.

Where the claimant inadvertently omits the name of several mining claims from his affidavit of annual assessment work, which otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Peter Laczay, 65 IBLA 291 (July 13, 1982)

Where a mining claim was located in Sept. 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work performed during 1978, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either notice of intention to hold the claim or evidence of assessment work with the local recording office where the notice of location is recorded, and a copy thereof with the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Herschel Knapp, 65 IBLA 314 (July 14, 1982)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Olive M. Stirland, 65 IBLA 363 (July 20, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Where mining claims are located in 1977, the owners were required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file a notice of intention to hold the claims or evidence of assessment work performed during 1978, both in the county where the location notices were of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments is conclusively deemed to constitute an abandonment of the claims.

Harver A. Wolcott et al., 65 IBLA 369 (July 20, 1982)

Elaine Marianne McLevis, 67 IBLA 220 (Sept. 23, 1982)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, timely received by BLM.

Victor Heggsted, 66 IBLA 31 (July 23, 1982)

Where a mining claim was located in Nov. 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work performed during 1981, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work in both the local recording office where the notice of location is recorded, and in the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Evelyn L. Parnell, George V. Hall, 66 IBLA 147 (Aug. 10, 1982)

Where a mining claim was located in Oct. 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work performed during 1978, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work with the local recording office where the notice of location is recorded, and a copy thereof in the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the

MINING CLAIMS--Continued

ABANDONMENT--Continued

Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Roger Ferguson, Sybil R. Ferguson, 67 IBLA 284 (Sept. 29, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location and either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report relating thereto, as provided by 30 U.S.C. § 28-1 (1976), all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

Blanche M. Peterson, 67 IBLA 388 (Oct. 8, 1982)

Where a mining claim was located in Dec. 1979, and evidence of assessment work or a proper notice of intention to hold the claim was not filed both in the office where the claim is recorded and in the proper office of BLM on or before Dec. 30, 1980, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

B. Bigby Young, 68 IBLA 397 (Nov. 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

Where a claimant inadvertently omits the name of several mining claims from his affidavit of annual assessment work or notice of intention to hold the claims, which otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or

MINING CLAIMS--Continued

ABANDONMENT--Continued

excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Richard E. Noyes, 69 IBLA 48 (Nov. 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

B. Rigby Young, 69 IBLA 88 (Nov. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Asbestos Mines, Inc., 69 IBLA 100 (Nov. 30, 1982)

Donald O. Shrider, 70 IBLA 36 (Jan. 7, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976 that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does

MINING CLAIMS--Continued

ABANDONMENT--Continued

not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Brent K. Young, 69 IBLA 131 (Dec. 8, 1982)

Minexco, Inc., 69 IBLA 379 (Jan. 4, 1983)

Byron S. Kenyon, 73 IBLA 10 (May 5, 1983)

Las Vegas Portland Cement, Inc., 75 IBLA 104 (Aug. 11, 1983)

Under 43 CFR 4.450-1, a private contest may be brought to have a claim invalidated for any reason not shown by the records of the BLM. Because compliance with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), can only be resolved by the records of BLM, no private contest may be maintained solely on the basis of that issue.

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Gold Depository & Loan Co., Inc. v. Mary Brock et al., 69 IBLA 194 (Dec. 15, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976 that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

Where the claimant inadvertently omits the names of several mining claims from his affidavit of annual assessment work, which otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Klondex Gold & Silver Mining Co., 69 IBLA 247 (Dec. 20, 1982)

MINING CLAIMS--Continued

ABANDONMENT--Continued

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper BLM office within the time periods prescribed by statute consitutes an abandonment of the mining claim by the owner. Regulation 43 CFR 3833.1-2(d) requires each location notice filed for recordation to be accompanied by a service fee of $5. This is a mandatory requirement, so there is no recordation of a mining claim where the check tendered as payment of the service fee is never honored by the drawer's bank. Therefore, when the location notices are filed with BLM May 14, 1979, but the service fee is not paid with a negotiable check until Dec. 20, 1979, the recordation date of the claims is Dec. 20, 1979. For claims located prior to Oct. 21, 1976, where the effective date of recordation of the location notices with BLM is Dec. 20, 1979, sec. 314 of FLPMA compels the conclusive determination that the claims are abandoned.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Midas International, Inc., 69 IBLA 251 (Dec. 21, 1982)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that proof of labor was timely filed is insufficient to rebut the presumption.

L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Dewayl Bailey, 70 IBLA 33 (Jan. 7, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold the claim, evidence of assessment work performed on the claim, or a detailed report provided by 30 U.S.C. § 28-1 (1976), prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement

MINING CLAIMS--Continued

ABANDONMENT--Continued

is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work, notice of intention to hold the mining claim, or a detailed report provided by 30 U.S.C. § 28-1 (1976), be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

R. B. Heitler, Alfred Robinson, Bird Crum, 70 IBLA 42 (Jan. 10, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year. This requirement is mandatory, and failure to comply is conclusively deemed to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the location notice is recorded and in the proper office of BLM is mandatory, not discretionary.

Where the claimant inadvertently neglects to file with the Bureau of Land Management his affidavit of annual assessment work, which otherwise was properly recorded in the county, the claim must be deemed conclusively to be abandoned under provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

George Rosenhoff, 70 IBLA 49 (Jan. 10, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land before Oct. 21, 1976, must file a copy of the location notice and evidence of assessment work with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, and evidence of assessment work performed or a notice of intention to hold the claim on or before Dec. 30 of every year hereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976 that evidence of assessment work or a notice of intention to hold mining claims be filed both in the office where the notice of location is recorded

MINING CLAIMS--Continued

ABANDONMENT--Continued

and in the proper office of BLM is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Mineral Investigation & Development Co., 71 IBLA 398 (Mar. 31, 1983)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes an abandonment of the mining claim by the owner.

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Therefore, appellant's bare assertion that proof of labor was timely filed is insufficient to rebut the presumption.

Robert J. King, L. K. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

Where a mining claim was located in Sept. 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work performed during 1981, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Jack Devault, Dorothy Devault, 72 IBLA 324 (Apr. 28, 1983)

Raymond J. Garcia, 75 IBLA 346 (Aug. 31, 1983)

William L. Manley, 76 IBLA 93 (Sept. 21, 1983)

Where a mining claim was located in Dec. 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work performed during 1981, both in the county where the location notice is of record and in the

MINING CLAIMS--Continued

ABANDONMENT--Continued

proper office of the BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Clotius G. Rogers, 73 IBLA 1 (May 5, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976 that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

Where the claimant inadvertently omits the names of several claims from his affidavit of annual assessment work which otherwise was properly recorded both in the county and with BLM, the omitted claims must be deemed conclusively to be abandoned under provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Wilbur B. Parsons, 73 IBLA 6 (May 5, 1983)

Where a mining claim was located in Dec. 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work, both in the county where the location notice is of record and in the proper office of BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to an unpatented mining claim located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land

MINING CLAIMS--Continued

ABANDONMENT--Continued

Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Homestake Mining Co., 73 IBLA 117 (May 23, 1983)

Where a mining claim was located in Nov. 1979, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1980, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claim or evidence of the performance of assessment work on the claim, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Herbert Clark, 73 IBLA 195 (May 26, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of the BLM is mandatory, not discretionary.

Where the claimant inadvertently omits the name of a mining claim from the affidavit of annual assessment work, which otherwise was properly recorded both in the county and with BLM, the omitted claim must be deemed conclusively to be abandoned under provisions of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

William J. Booth, 73 IBLA 274 (June 7, 1983)

Norma M. Campbell, 73 IBLA 390 (June 15, 1983)

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

Wayne M. Hunt, 73 IBLA 315 (June 7, 1983)

Devon M. Hunt, 75 IBLA 149 (Aug. 18, 1983)

Dale Rossi, Judy Rossi, 75 IBLA 262 (Aug. 26, 1983)

Betty E. Baxter, 76 IBLA 188 (Oct. 6, 1983)

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

IBCO Services, 73 IBLA 374 (June 15, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of mining claims located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of assessment work on the claims prior to Dec. 31 of each year following the calendar year in which the claims were located. Pursuant to 43 CFR 3833.0-5(m), a proof of labor or notice of intention to hold will be deemed as timely filed if it is mailed in an envelope bearing a clearly dated postmark affixed by the United States Postal Service prior to Dec. 31,

MINING CLAIMS--Continued

ABANDONMENT--Continued

the period prescribed by law, and is delivered to the proper BLM office by Jan. 19 immediately following.

J. Bradley Smith, 73 IBLA 390 (June 15, 1983)

J. L. Shinn, 74 IBLA 226 (July 18, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. The filing must be made both in the county where the location notice is recorded and in the proper office of BLM. Where evidence is introduced showing that the notice of intention to hold was recorded timely in the county and with BLM, a BLM decision declaring the unpatented mining claim abandoned and void will be vacated.

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Richard Holland, 74 IBLA 167 (July 12, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of mining claims located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of assessment work on the claims with BLM by Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. Pursuant to 43 CFR 3833.0-5(m), a proof of labor or notice of intention to hold will be deemed as timely filed if it is mailed in an envelope bearing a clearly dated postmark affixed by the United States Postal Service prior to Dec. 31, the period prescribed by law, and is delivered to the proper BLM office by Jan. 19 immediately following.

Arthur A. Tooze, 74 IBLA 221 (July 18, 1983)

Where a mining claim was located in Dec. 1978, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1979, a notice of intention to hold the claim or evidence of the performance of assessment work, both in the county where the location notice is of record and in the proper office of BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

With respect to an unpatented mining claim located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded and in the proper office of BLM prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Robert E. Bauer, 75 IBLA 62 (Aug. 5, 1983)

L. C. Carter et al., 76 IBLA 90 (Sept. 21, 1983)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Where a mining claim was located in Sept. 1977, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1978, a notice of intention to hold the claim or evidence of assessment work, both in the county where the location is of record and in the proper office of BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the mining claim.

With respect to an unpatented mining claim located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining laws has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Curtis Corr., W. E. Casperson, 75 IBLA 100 (Aug. 11, 1983)

Where mining claims were located in May 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claims or evidence of assessment work performed on the claims during 1981, both in the county where the location notices are of record and in the proper office of BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claims.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Fredrick A. Rogers, 75 IBLA 332 (Aug. 30, 1983)

Where a mining claim was located in Dec. 1978, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1979, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claim or evidence of the performance of assessment work on the claim, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

There is an established legal presumption, which is rebuttable, that official acts of public officers

MINING CLAIMS--Continued

ABANDONMENT--Continued

are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

Homer Owens, 75 IBLA 335 (Aug. 30, 1983)

Where a mining claim was located in Nov. 1979, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1980, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claim or evidence of performance of assessment work on the claim, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining laws has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

James Capp, 76 IBLA 96 (Sept. 21, 1983)

Where a mining claim was located in Mar. 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work, both in the county where the location is of record and in the proper office of BLM. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the mining claim.

With respect to an unpatented mining claim located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining laws has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded and in the proper office of BLM, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

W. J. Glass, 76 IBLA 215 (Oct. 17, 1983)

MINING CLAIMS--Continued

ABANDONMENT--Continued

Where a mining claim was located in Apr. 1981, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1982, a notice of intention to hold the claim or evidence of assessment work performed on the claim during 1982, both in the county where the location notice is of record and in the proper office of BLM. Failure to file the required instrument within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

John Milner, 76 IBLA 221 (Oct. 17, 1983)

Where a mining claim was located in Feb. 1979, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1980, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claim or evidence of the performance of assessment work on the claim, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

Ralph Kubinski, 76 IBLA 224 (Oct. 17, 1983)

Where mining claims were located in Sept. and Oct. 1979, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1980, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claims or evidence of performance of assessment work on the claims, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim. For mining claims located in Aug. 1981, the requirement for first recordation of a notice of intention to hold the claim or proof of assessment work performed with the Bureau of Land Management became effective in 1982.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or

MINING CLAIMS--Continued

ABANDONMENT--Continued

excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining laws has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper office of Bureau of Land Management, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Edmund J. Cowan, 76 IBLA 257 (Oct. 17, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file with the Bureau of Land Management within 90 days after location of the claim a copy of the notice of location. This requirement is mandatory, not discretionary.

The conclusive presumption of abandonment which attends the failure of a claimant to file an instrument required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive the requirements of the Act, or to afford claimants any relief from the statutory consequences.

Harold A. Hinkle, Michael R. Hinkle, Thomas J. Potter, 77 IBLA 152 (Nov. 16, 1983)

Where copies of location notices of mining claims were filed with the Bureau of Land Management in 1977 before promulgation of regulations pursuant to sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and where BLM later called upon the claim owner to pay the required filing fees, without setting a time limit for compliance, it is error for BLM to reject the mining claim filings because the first check submitted for payment of the filing fees was returned as uncollectible, although the claim owner had replaced that check with a guaranteed remittance upon notification.

Banco Exploration, Inc., 77 IBLA 226 (Nov. 28, 1983)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

MINING CLAIMS--Continued

ABANDONMENT--Continued

A presumption of regularity supports the official acts of public officers and absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties. Suggestion that BLM may not have investigated a mining claimant's good faith in locating a claim which includes a water source is insufficient to rebut the presumption of regularity.

Desert Survivors, 80 IBLA 111 (Apr. 3, 1984)

ASSESSMENT WORK

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 31 of the calendar year following the calendar year in which the claim was recorded in the BLM office, the claim is properly deemed conclusively to have been abandoned.

Willene Minnier, 45 IBLA 1 (Jan. 8, 1980)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), if an unpatented mining claim located before Oct. 21, 1976, is not supported annually on or before Dec. 31 of the calendar year following the calendar year he recorded the claim in the BLM office by either an affidavit of assessment work or notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement that there was no intention to abandon and that the failure to file the required statements with BLM was an oversight.

Jerry Cupper, 45 IBLA 215 (Jan. 30, 1980)

Under 43 CFR 3833.2-1(b) (1978), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, shall, prior to Dec. 31 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.

Robert W. Hansen, Federal Bentonite Co., 46 IBLA 93 (Feb. 28, 1980)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file with the appropriate office of the Bureau of Land Management an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the calendar year following the date of location or the claim will be conclusively deemed to have been abandoned.

Betty and Clarence L. Guffey, 47 IBLA 175 (May 7, 1980)

Where the owner of an unpatented mining claim located before Oct. 21, 1976, files a copy of the original notice of location in the calendar year 1978, he is required by 43 CFR 3833.2-1(a) to file proof of assessment work for the assessment year ending on Aug. 31, 1979, on or before Oct. 22, 1979, failing which his claim is properly declared abandoned and void.

A mining claimant's failure to file timely evidence of annual assessment work is not excused by alleged tardiness of the State recorder's office in recording this information and returning a record copy to claimant, as a claimant is permitted under 43 CFR 3833.2-2(a) to satisfy the Federal filing requirements by submitting a duplicate of the assessment notice,

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

even though it has not yet been filed for record with the State.

Harry J. Phillips, 47 IBLA 252 (May 13, 1980)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file with the appropriate office of the Bureau of Land Management an affidavit of assessment work or a notice of intention to hold the mining claim prior to Dec. 31 of the calendar year following the date of location or the claim will be deemed conclusively to have been abandoned.

Where an appellant asserts on appeal that proof of labor was mailed timely to the Bureau of Land Management, but there exists no record of their receipt, the documents cannot be considered as filed.

Gary L. Barton, J. Marinelli, R. Nixon, 47 IBLA 386 (May 21, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location and related material for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. File means being received and date stamped by the proper BLM office. Failure to so file is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

Robert Willing et al., 48 IBLA 39 (May 29, 1980)

Where the owner of an unpatented mining claim located prior to, but recorded with BLM after Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Alice E. Deetz, 48 IBLA 59 (May 29, 1980)

Under 43 CFR 3833.2-1(a), the owner of a mining claim located on Federal lands on or before Oct. 21, 1976, must file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. Filing is accomplished when a document is delivered to and received by the proper office. Failure to so file constitutes abandonment of the claim and renders the claim void.

Johnnie Finnegan, Don E. Gordon, Carl Holder, 48 IBLA 79 (May 29, 1980)

Where the owner of an unpatented mining claim, located by a predecessor in 1977, fails to file an affidavit of assessment work as required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(c), on or before Dec. 30 of the calendar year following the calendar year in which the claim was located, the claim is properly deemed to have been abandoned.

White Star Foundation, Inc., 48 IBLA 96 (May 29, 1980)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Where the owners of unpatented mining claims located before Oct. 21, 1976, fail to file copies of the original notices of location with the proper BLM office on or before Oct. 22, 1979, their claims are properly held to be abandoned and void.

Jean C. Lepper et al., 48 IBLA 103 (May 29, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of annual assessment work or notice of intention to hold on or before Oct. 22, 1979, his claim is deemed conclusively to be abandoned and to be null and void.

Kenneth E. Parker, 48 IBLA 129 (May 30, 1980)

Century III Mining, Inc., 49 IBLA 166 (July 30, 1980)

Under 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, shall, on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.

Ronald Forster, 48 IBLA 132 (May 30, 1980)

Anna Schalkowicz, 48 IBLA 134 (May 30, 1980)

Zoss Associates, 50 IBLA 164 (Sept. 30, 1980)

A claimant who has located a mining claim in April 1975 and thereafter records his notice of location simultaneously with his filing of evidence of assessment work in May 1978 has satisfied the requirements of 43 CFR 3833.2-1(a) by filing evidence of assessment work on or before Dec. 30, 1979.

Robert W. Perkin, 48 IBLA 209 (June 16, 1980)

Under 43 CFR 3833.2-1(a), the owner of a mining claim located on Federal lands on or before Oct. 21, 1976, must file with BLM evidence of annual assessment work or a notice of intention to hold the mining claim on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the year of recording with BLM, whichever is sooner. Failure to so file constitutes abandonment of the claim.

A. J. Grady, 48 IBLA 218 (June 16, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where a mining claim is located on Aug. 20, 1970, and recorded with BLM on Nov. 14, 1978, the evidence of assessment work must be filed with BLM on or before Oct. 22, 1979. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

A. W. Josse, 48 IBLA 225 (June 16, 1980)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Where the Government contests the validity of a mining claim for nonperformance of annual assessment work, there is nothing inherent or implied in that action which requires a conclusion that the claim is valid in all other respects, nor may the bringing of such an action be treated as tantamount to an admission by the Government that "property rights in the claim have been established by the making of a valid location."

Failure to maintain a claim by doing assessment work each year may constitute evidence of abandonment. Independently, a failure to substantially comply with the requirement that annual assessment work be performed, 30 U.S.C. § 28 (1976), requires a finding that the claim has not been "maintained" within the meaning of sec. 37 of the Mineral Leasing Act, 30 U.S.C. § 193 (1976), and may result in a forfeiture of the claim. Hickel v. The Oil Shale Corp., 400 U.S. 48 (1970).

United States v. Catlin Bohne et al., United States v. Exxon Corp. et al., United States v. Aidabelle Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 248

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed conclusively to have been abandoned.

Margaret J. Wilson, 49 IBLA 228 (Aug. 12, 1980)

James V. Brady, 51 IBLA 361 (Dec. 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, 3833.2-1, and 3833.4, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location and a copy of the recorded affidavit of assessment work or notice of intention to hold the claim, with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim must be deemed abandoned and void.

John Lincoln, Jr., 49 IBLA 335 (Aug. 25, 1980)

In order to obtain a temporary deferment, a claimant must file with the authorized officer of the proper office a petition in duplicate requesting such deferment. The applicant must attach to one copy thereof a copy of the notice to the public required by the Act which shows that it has been filed or recorded in the office in which the notices or certificates of location were filed or recorded.

A petition for deferment of annual assessment work is properly denied where a claimant's mining claims and millsites have been declared null and void by the Department.

Andrew L. Freese, 50 IBLA 26 (Sept. 9, 1980)
87 I.D. 395

Pursuant to 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of the recording with BLM of the copy of the notice or certificate of location, whichever date is sooner, evidence of annual

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Milburn Dewpey, Eugene A. Cunningham, 50 IBLA 212 (Sept. 30, 1980)

Where the owners of an unpatented mining claim located prior to Oct. 21, 1976, fail to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, having filed a copy of the notice of location with BLM during calendar year 1978, the claim is properly deemed to be abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

Where appellants assert on appeal that evidence of assessment work was timely mailed to BLM, but there exists no record of its receipt the documents cannot be considered as filed.

Donald D. Vesely et al., 50 IBLA 277 (Oct. 6, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner.

Cleo May Fresh, Marjorie F. Peterts, 50 IBLA 363 (Oct. 16, 1980)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, was required to file with BLM evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file constitutes conclusive abandonment of the claim and renders it void.

Peter and Minda Hasson, 51 IBLA 17 (Oct. 28, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, 3833.4, where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file on or before Oct. 22, 1979, an affidavit of annual assessment work or notice of intention to hold, the claim must be deemed abandoned and void.

Pearl Kelly, 51 IBLA 185 (Dec. 2, 1980)

Lloyd H. Buttgereit, 52 IBLA 363 (Feb. 19, 1981)

Under 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located on Federal lands after Oct. 21, 1976, must on or before Dec. 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim, or the claim must be presumed abandoned and void.

Santa Monica Hospital Medical Center Foundation, 51 IBLA 194 (Dec. 5, 1980)

Glen Gould, 52 IBLA 305 (Feb. 10, 1981)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Where the owner of an unpatented mining claim files a copy of the notice of location of this claim with BLM in 1978, he is required to file a copy of the proof of annual labor performed on the claim during the assessment year ending on Sept. 1, 1979, on or before Oct. 22, 1979, failing which his claim is properly declared abandoned and void.

Michael Hauger, 52 IBLA 129 (Jan. 16, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file constitutes conclusive abandonment of the claim and renders it void.

L. E. Garrison, 52 IBLA 131 (Jan. 16, 1981)

The filing of evidence of annual assessment work in the county clerk's office is not compliance with the recordation requirements of 43 CFR 3833.2-1.

Johannes Soyland, 52 IBLA 233 (Feb. 3, 1981)

Joseph Ojukovich, 54 IBLA 100 (Apr. 15, 1981)

Charley E. Gossett, Jr., et al., 54 IBLA 139 (Apr. 17, 1981)

James W. Quakenbush, 54 IBLA 155 (Apr. 21, 1981)

Clayton V. Curtis, 54 IBLA 184 (Apr. 22, 1981)

C.O.G.S., Inc., 57 IBLA 128 (Aug. 25, 1981)

Failure to timely file evidence of annual assessment work may not be excused because the claimant was unexpectedly called out of town or because the recorded copy of his affidavit of annual labor was not timely returned by the local recording office. Regulation 43 CFR 3833.2-2 does not require the filing of a copy of the recorded affidavit.

Dan Creek Placer Mines, 52 IBLA 243 (Feb. 6, 1981)

Where the mining claimant alleges that he timely submitted his yearly affidavit of assessment work to BLM, but that it apparently was lost in the mail, this circumstance will not excuse a late filing. One who selects a means of delivering a document must bear the responsibility for any consequential delay or failure of delivery by that means.

Dean Saylor, 52 IBLA 366 (Feb. 19, 1981)

Where mining claimants assert on appeal that affidavits of annual assessment work were timely filed with BLM but present no evidence substantiating that assertion, the Board of Land Appeals will affirm a BLM decision declaring the claims abandoned pursuant to 43 CFR 3833.2-1(a).

Verla Rhoads, Rose Morgan, 52 IBLA 393 (Feb. 24, 1981)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Kerry and Ingrid Douglas, 53 IBLA 18 (Feb. 26, 1981)

Thomas Williams, 56 IBLA 55 (July 10, 1981)

All Minerals Corp., 60 IBLA 85 (Nov. 19, 1981)

Samantha Bowman, 61 IBLA 20 (Dec. 29, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on Federal lands on or before Oct. 21, 1976, and recorded with the Bureau of Land Management in 1979, must file in the proper Bureau of Land Management office evidence of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

Palmyra Mines, Inc., 53 IBLA 89 (Mar. 2, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to so file conclusively constitutes abandonment of the claim and renders it void.

Janice Fay Cudreako, I. D. Monaghan, 53 IBLA 128 (Mar. 5, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1978, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1979, or the claims are conclusively deemed abandoned and, thus, void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

Cleatus Syrult, 53 IBLA 171 (Mar. 16, 1981)

Where mining claimants assert on appeal that evidence of assessment work required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a) was timely mailed to the Bureau of Land Management (BLM) but there exists no record of BLM's receipt of the documents, the Board must find that there was not a timely filing and that the claims are declared abandoned and void. Claimants, who chose the manner of mailing, must bear the consequences of nondelivery.

Mr. and Mrs. Jack White, 53 IBLA 267 (Mar. 23, 1981)

Even though the Bureau of Land Management knew of the existence of certain mining claims, as evidenced by BLM's initiation of contest proceedings against the claims, the claimants were not relieved of the responsibility of complying with the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976. The filing of evidence of assessment work is an annual requirement and failure to so file alone

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

is deemed to constitute conclusive abandonment of the claims.

United States v. Paul M. Koopingmark et al., 53 IBLA 377 (Mar. 31, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1978, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1979, or the claims are conclusively deemed abandoned and, thus, void. Neither FLPMA nor the regulations provide for any leeway in the application of the penalty for failure to file the required information.

Ernest M. Cuzzocreo, 54 IBLA 108 (Apr. 15, 1981)

Evidence of assessment work must be delivered to and received by the proper Bureau of Land Management office by the due date in order to be timely filed. Depositing a document in the mails does not constitute filing.

Mascot Silver-Lead Mines, Inc., 54 IBLA 121 (Apr. 16, 1981)

Earl Kreniller, 55 IBLA 28 (May 27, 1981)

Glenn D. Graham, Lynne L. Graham, 55 IBLA 39 (May 28, 1981)

Doris McFall, Donald Duncan, Clarence Duncan, 55 IBLA 110 (June 1, 1981)

George I. Lakich, 56 IBLA 148 (July 20, 1981)

Lyle I. Thompson, 56 IBLA 155 (July 20, 1981)

George H. Andrews, 57 IBLA 221 (Aug. 27, 1981)

Cora Lee Jensen-Gore, 64 IBLA 271 (June 2, 1982)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of annual assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to file conclusively constitutes abandonment of the claim and renders it void.

William H. Hand, 54 IBLA 303 (Apr. 29, 1981)

William H. Barbat, 56 IBLA 26 (July 8, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1979, is required to file evidence of annual assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to file conclusively constitutes abandonment of the claim and renders it void.

The filing of evidence of annual assessment work in the county clerk's office is not compliance with the recordation requirements of 43 CFR 3833.2-1.

Robert Keough, 54 IBLA 337 (May 5, 1981)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Where claimants list the wrong name for one of their mining claims on their affidavit of annual assessment work and there is no other means of identifying the claim on the document, BLM properly declares the claim abandoned for failure to comply with 43 CFR 3833.2.

Philip Brandl, George Yourkas, 54 IBLA 343 (May 7, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1977, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1978, or the claims are conclusively deemed abandoned and, thus, void.

Eugene E. Daugherty, 54 IBLA 352 (May 12, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1979, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1980, or the claims are conclusively deemed abandoned and, thus void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

The filing of evidence of annual assessment work in the county recording office or any office other than the proper BLM office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

Onco, Inc., 55 IBLA 77 (June 1, 1981)

Pursuant to 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of the recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4. The fact that the Post Office may have assured the claimant that the documents would reach the New Mexico State Office by Dec. 30, 1980, will not excuse late filing.

Jack H. Wheatley, 55 IBLA 145 (June 8, 1981)

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the letter is actually received by the proper BLM office before such date, even if the mail was delayed through no fault of the sender.

James K. Pope et al., 55 IBLA 148 (June 8, 1981)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the letter is actually received by the proper BLM office before such date.

GSA Reserve Corp., 55 IBLA 162 (June 9, 1981)

Michael J. Fabiniak, 58 IBLA 243 (Oct. 6, 1981)

The filing of evidence of assessment work, required by 43 CFR 3833.2-1(a), for any assessment year may be submitted at any time after the work is performed during the assessment year through Dec. 30 following the end of the assessment year.

Thus, filing on Oct. 5, 1979, for the 1980 assessment year which began on Sept. 1, 1979, satisfies the requirement of filing on or before Dec. 30, 1980.

General Electric Co., Nellie McLaughlin, 55 IBLA 185 (June 16, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply conclusively constitutes an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Robert E. Pennell, Clair B. Colburn, d.b.a. Colfenach Mining Ass'n, 56 IBLA 43 (July 8, 1981)

The filing of evidence of annual assessment work in a county recording office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

Gary M. Greenlaw, Ronald D. Sharp, 56 IBLA 109 (July 16, 1981)

Walter D. Condon, 56 IBLA 112 (July 16, 1981)

Rolland Marshall, 56 IBLA 187 (July 20, 1981)

L. D. Lamoureux, 56 IBLA 298 (July 28, 1981)

Timothy Edward Monte, 56 IBLA 315 (July 29, 1981)

Caroline E. Brown, 56 IBLA 334 (July 30, 1981)

Donald E. Black, 56 IBLA 354 (Aug. 3, 1981)

Estate of Mary B. Ritchie, 56 IBLA 361 (Aug. 3, 1981)

Edith Gion, 56 IBLA 375 (Aug. 3, 1981)

Lola J. Fillmore, 56 IBLA 385 (Aug. 3, 1981)

Dave B. Newman, 57 IBLA 23 (Aug. 6, 1981)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Robert P. Wilson, 57 IBLA 40 (Aug. 10, 1981)

Verne G. Long, 57 IBLA 263 (Aug. 28, 1981)

Virgie Dowler, 57 IBLA 389 (Sept. 10, 1981)

Kathryn Mackenzie, 58 IBLA 64 (Sept. 22, 1981)

John T. Titus, 58 IBLA 207 (Sept. 29, 1981)

Eugene M. Goetchek, 58 IBLA 337 (Oct. 19, 1981)

Lloyd P. Webster, 58 IBLA 363 (Oct. 20, 1981)

Don G. Gilbertson, 59 IBLA 143 (Oct. 26, 1981)

George R. Casler, 59 IBLA 189 (Oct. 27, 1981)

Lloyd J. Osborn, P.G.C.S., Ltd., 59 IBLA 323 (Nov. 5, 1981)

Lawrence S. McLean, 60 IBLA 65 (Nov. 19, 1981)

Don Cook, 60 IBLA 255 (Dec. 4, 1981)

Douglas M. Cyrenne, 62 IBLA 397 (Mar. 25, 1982)

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1979, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notice of intention to hold the mining claims on or before Dec. 30, 1980, or the claims are conclusively deemed abandoned and, thus, void.

Allen Turner, 56 IBLA 280 (July 28, 1981)

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, i.e., on or after Jan. 1 and on or before Dec. 30.

James V. Joyce (On Reconsideration), 56 IBLA 327 (July 30, 1981)

Jack McCarley, 58 IBLA 239 (Oct. 6, 1981)

Rupert Thorne, 58 IBLA 319 (Oct. 16, 1981)

Edwin Striegel, Marie A. O'Brien, 60 IBLA 232 (Dec. 4, 1981)

Where a mining claimant files timely an affidavit of assessment work with the Bureau of Land Management as required by sec. 314 of the Federal Land Policy and Management Act of 1976, which is not the affidavit of assessment required to be filed under 43 CFR 3833.2-1, it is a curable defect, and a mining claimant is entitled to notice and a reasonable opportunity to submit the precise instrument. Failure to do so will result in the Bureau of Land Management declaring the claim abandoned and void.

Harry J. Pike, 57 IBLA 15 (Aug. 6, 1981)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Delivering evidence of annual assessment work after BLM's office hours on Dec. 30, 1980, to the home of a BLM employee does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1. Filing is accomplished only when a document is delivered to and received by the proper BLM office.

M.P.C., Inc., 57 IBLA 35 (Aug. 10, 1981)

Where the owner of unpatented mining claims located before Oct. 21, 1976, submits copies of the location notices and proof of labor to BLM in June and Aug. 1979, and submits another proof of labor to BLM in Nov. 1980, it has satisfied the current recording requirements of both the Federal Land Policy and Management Act of 1976, and the regulations in 43 CFR Subpart 3833.

Silica Sand Corp., 57 IBLA 76 (Aug. 21, 1981)

Where, on or before Oct. 21, 1979, a mining claimant files proof of assessment work performed for the preceding assessment year for a claim located on or before Oct. 21, 1976, which proof had been duly filed in the local offices of the state wherein the notice of location was filed, the claimant has complied with both the statutory and regulatory requirements for filing assessment work.

Ervin D. Hull, Paul Fichnolz, 57 IBLA 278 (Aug. 31, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of an unpatented mining claim located in the calendar year 1978, must have filed with the Bureau of Land Management (BLM), affidavit of assessment work or notice of intention to hold the mining claims on or before Dec. 30, 1979, or the claim is conclusively deemed abandoned and, thus void.

Evidence of assessment work must be delivered to and received by the proper Bureau of Land Management office by the due date in order to be timely filed. Depositing a document in the mails does not constitute filing.

Bart Cannon, 57 IBLA 281 (Aug. 31, 1981)

A mining claimant's failure to file timely evidence of annual assessment work is not excused by alleged tardiness of the State recorder's office in recording this information and returning a record copy to claimant, as a claimant is permitted under 43 CFR 3833.2-2(a) to satisfy the Federal filing requirements by submitting a duplicate of the assessment notice, even though it has not yet been filed for record with the State.

George W. Vrable, 57 IBLA 330 (Sept. 1, 1981)

The filing of evidence of annual assessment work in the county recording office or any office other than the proper BLM office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

Michael J. Mealue, 58 IBLA 35 (Sept. 17, 1981)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the documents in the file.

H. E. Radenacher, 58 IBLA 152 (Sept. 25, 1981)
88 I.D. 873

George Fauver, 62 IBLA 399 (Mar. 25, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply conclusively constitutes an abandonment of the claim by the owner and renders the claim void.

Mrs. Walter F. Polles, 58 IBLA 257 (Oct. 6, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1978, is required to file evidence of annual assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to file conclusively constitutes abandonment of the claim and renders it void.

Bernard E. Packard et al., 58 IBLA 308 (Oct. 16, 1981)

A notice of intention to hold mining claims must set forth the information required by 43 CFR 3833.2-3 and be recorded both in the county where the claims are situated and in the proper BLM office to satisfy the recordation requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Dennis Forsberg, 58 IBLA 346 (Oct. 19, 1981)

Because Regulation 43 CFR 3833.2-2 allows for the filing of a copy of the evidence of assessment work which was or will be filed for record, a copy of the recorded affidavit is not necessary to meet the filing requirement of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976). Failure to file timely such evidence of annual assessment work may not be excused because the recorded copy of the owner's affidavit of annual labor was not timely returned by the local recording office.

Judy Kelley, George Keller, 58 IBLA 369 (Oct. 20, 1981)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance either with the recordation requirements of the

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Enterprise Mines, Inc., 58 IBLA 372 (Oct. 20, 1981)

Elizabeth Francis, 60 IBLA 6 (Nov. 12, 1981)

William Cooper, 60 IBLA 50 (Nov. 17, 1981)

Major G. Atkins, 60 IBLA 284 (Dec. 17, 1981)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Flores Klopfenstein, 62 IBLA 238 (Mar. 11, 1982)

Calaho Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Lawrence Paul, 63 IBLA 275 (Apr. 19, 1982)

Gregory M. Harrington, 64 IBLA 331 (June 10, 1982)

Vernon J. Noll, 66 IBLA 171 (Aug. 12, 1982)

Carlyle A. Brough, 68 IBLA 318 (Nov. 19, 1982)

Oil placer mining claims located pursuant to the Petroleum and Mineral Oils Act of Feb. 11, 1897, c. 216, 29 Stat. 526, and preserved by sec. 37 of the Mineral Leasing Act of 1920, 30 U.S.C. § 193 (Supp. II 1978), are subject to the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Conoco, Inc., 58 IBLA 390 (Oct. 21, 1981) 88 I.D. 918

Where mining claimants assert on appeal that evidence of assessment work required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a) was timely mailed to the Bureau of Land Management (BLM), but there exists no record of BLM's receipt of the documents, the Board must find that there was not a timely filing and that the claims are declared abandoned and void. Claimants who chose the manner of delivery must bear the consequences of nondelivery.

John Evanoff, 58 IBLA 403 (Oct. 21, 1981)

Failure to substantially comply with the requirements to annually perform assessment work on a claim which is located on withdrawn land results in a forfeiture of that claim to the United States.

United States v. Richard P. Haskins, 59 IBLA 1 88 I.D. 925 (Oct. 21, 1981)

Evidence of annual assessment work must be delivered to and received by the proper BLM office in order to be filed. Depositing a document in the mails does not constitute filing. Reliance on erroneous information provided by BLM employees which is contrary to regulation does not relieve a mining claimant of this obligation.

Joe L. Watts, 59 IBLA 127 (Oct. 26, 1981)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

The filing of evidence of annual assessment work in a county recording office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

Judy B. Genger, 59 IBLA 199 (Oct. 27, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), where the owner of unpatented mining claim located before Oct. 21, 1976, submits a copy of the location notice to BLM in April 1978, and proof of labor to BLM in Oct. 1979, but fails to submit evidence of annual assessment work or notice of intention to hold the mining claim on or before Dec. 30, 1980, BLM properly declares the mining claim abandoned and void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

Roy B. Bradley et al., 59 IBLA 238 (Oct. 28, 1981)

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the document is actually received by the proper BLM office before such date.

James W. Cole, 59 IBLA 280 (Oct. 30, 1981)

The filing of evidence of annual assessment work in the local recording office established under State law does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

Anton J. Meyer, 59 IBLA 311 (Nov. 4, 1981)

If the strict proof of assessment work filing requirements of FLPMA are not met, a mining claim is thereby abandoned, whether the filing is only 1 day late or 100, and regardless of any other reason.

The timely filing of evidence of assessment work with a state or county does not, under sec. 3833.4(b) of the regulations, constitute a justification for failure to meet the filing requirements of FLPMA.

Hollaut Lode, Arthur J. Devine, 59 IBLA 316 (Nov. 4, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of unpatented mining claim located before Oct. 21, 1976, shall file in the proper BLM office on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter, evidence of annual assessment work or a notice of intention to hold the mining claim or the mining claim shall be declared abandoned and void pursuant to 43 CFR 3833.4(a).

Samuel Waldenberg, 59 IBLA 390 (Nov. 10, 1981)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency of which the owner is entitled to notice and an opportunity to rectify prior to a decision finding the claim abandoned and void.

Harvey A. Clifton et al., 60 IBLA 29 (Nov. 16, 1981)

Henry Seibel, Clara Seibel, 63 IBLA 77 (Mar. 30, 1982)

Jack L. Kettler, 68 IBLA 301 (Nov. 19, 1982)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, files proof of annual assessment work or a notice of intention to hold the claim in calendar year 1977, the owner is required by the terms of the statute to file proof of assessment work within each calendar year (on or before Dec. 30) thereafter.

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, and recorded with BLM in 1977, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 30 of the calendar year following the calendar year in which he recorded in the BLM office, i.e., on or after Jan. 1, and on or before Dec. 30, 1978, the claim is properly deemed conclusively abandoned and void.

M. L. Baroid Petroleum Services, 60 IBLA 90 (Nov. 19, 1981)

The presumption that BLM officials properly discharge their duties in receiving and promptly date stamping official filings tendered them is not overcome by unsupported allegations of mining claimants that BLM lost or misprocessed their evidence of assessment work.

Junervanda J. Papagliou, Mildred Lucille Gulick, 60 IBLA 128 (Nov. 24, 1981)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. Unsupported and uncorroborated allegations do not constitute probative evidence.

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, and recorded with BLM in 1977, but which is not accompanied by evidence of assessment work or a notice of intent to hold the claim, is required to file evidence of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979. Failure to

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

so file constitutes conclusive abandonment of the claim and renders it void.

P & P Mining Co., Inc., 60 IBLA 178 (Nov. 25, 1981)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of annual assessment work or notice of intention to hold the claim with the Bureau of Land Management on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

C. F. Turley, Jr., 60 IBLA 237 (Dec. 4, 1981)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

The requirement to file timely copies of evidence of assessment work under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), is not excused by confusion as to the proper office for filing. Where a mining claim is near the dividing line of the Anchorage and Fairbanks districts so that it is virtually impossible to determine the appropriate office from the map at 43 CFR 1821.2-1, a timely filing in either office will satisfy the requirement. However, the statute does not authorize the Department to accept late filings.

Although 43 CFR 3851.3 provides that failure to perform assessment work will render a claim subject to cancellation, the performance of such assessment work does not excuse the failure to file timely evidence of annual assessment work required by 43 U.S.C. § 1744(a) (1976) or relieve the claimant of the mandatory consequence of abandonment of the claim under 43 U.S.C. § 1744(c) (1976), if he fails to make a timely filing.

West Fork Mining Co., 60 IBLA 370 (Dec. 22, 1981)

The owner of an unpatented mining claim must file in each calendar year, on or before Dec. 30, either an affidavit of assessment work performed on the claim or a notice of intention to hold the mining claim. Failure to so file results in a conclusive statutory presumption of abandonment of the claim by the owner.

Northern Stope Supply, 61 IBLA 36 (Dec. 29, 1981)

In order to obtain a temporary deferment of assessment work, a claimant must file a petition for deferment with the authorized officer of the proper office in accordance with 43 CFR 3852.2, and if the petition is based on a "legal impediment" which interdicts the claimant from access to the claim, the complete details of the impediment must be set out with the application. Where the application is deficient on its face for a failure to provide such details, the claimant should be given the opportunity to provide the necessary information to cure the deficiency.

A. J. Maurer, Jr., 61 IBLA 39 (Dec. 31, 1981)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

Sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), requires owners of unpatented mining claims located on or before Oct. 21, 1976, to file evidence of assessment work or notice of intention to hold such claims with BLM by Oct. 22, 1979, and by Dec. 30 of each year thereafter, and further provides that a mining claim is conclusively presumed abandoned in the absence of the required filings. The requirement of filing by Dec. 30 of each year "thereafter" is initiated by the first filing with BLM of such evidence or notice of intention. Where the statutory filing requirements have been met, the failure of such an owner to file such documents by Dec. 30, 1978, following recordation of the location certificate with BLM in 1977, as required by regulation at 43 CFR 3833.2-1(a), is properly treated as a curable deficiency. Where the claimant has submitted this evidence on appeal, he has cured this deficiency.

Ned V. Scott, Jr., 61 IBLA 109 (Jan. 4, 1982)

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, where appellant fails to present evidence to establish that proof of annual assessment work was filed with the Bureau of Land Management, then it is presumed that the officials properly discharged their duties.

Norman Piltz, 61 IBLA 113 (Jan. 6, 1982)

If the owner of a mining claim located on or before Oct. 21, 1976, recorded his claim with BLM in 1977, he was required under 43 CFR 3833.2-1(a) to file a copy of evidence of annual assessment work or a notice of intention to hold the claim on or before Dec. 30, 1978. Because this particular filing is not required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), a decision declaring such a claim abandoned and void for failure to file the required document will be reversed where the owner of the claim complied with the statutory filing requirements and subsequently filed the document required by the regulation.

W. Verne Kight, Eva M. Kight (On Reconsideration), 61 IBLA 216 (Jan. 28, 1982)

While res judicata and collateral estoppel may be appropriately applied by the Board in its decisions, those doctrines need not be employed where the effect would be to impair the correctness and consistency of the Board's decisions and prevent the effectuation of statutory and regulatory policy. Where the Board has overruled part of an earlier Board decision that had reversed a BLM decision for invalidating appellants' mining claims upon an improper basis, res judicata will not protect appellants' claims from a subsequent BLM decision of invalidity grounded on a correct statement of appellants' violation of the recording laws.

Nellie McLaughlin, General Electric Co., 61 IBLA 347 (Feb. 11, 1982)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

A mining claimant appealing a BLM decision declaring his claims abandoned and void for failure to file annual proof of assessment work has the burden of showing that he had actually filed with BLM for the year in question. That burden of proof is increased by the established legal presumption that official acts of public officers are regular. If the burden of proof is not carried, the presumptions of FLPMA remain operative.

Ronald R. Atkins, 61 IBLA 364 (Feb. 16, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary. Filing of a notice of intention to hold mining claims only with BLM does not constitute compliance either with the recordation requirements of the Act or those in 43 CFR 3833.2-3.

Eugene Fox, 62 IBLA 232 (Mar. 11, 1982)

The Federal Land Policy and Management Act of 1976 requires that for each mining claim located prior to Oct. 21, 1976, the initial filing of evidence of assessment work or notice of intention to hold the claim must be made with both the BLM and the local office of the state where the notices of location were filed within 3 years of the enactment of FLPMA.

Martin Sisco et al., 62 IBLA 260 (Mar. 15, 1982)

There is a rebuttable presumption that BLM acts regularly with respect to allegedly filed mining claim documents. That presumption can be overcome only by a showing of substantial evidence tending to disprove the regularity of BLM's action in the particular instance in question; upon such a showing, the Board decides the case without further reference to the presumption and by preponderance of the evidence. Mailing a document is not evidence that BLM ever received it, and does not satisfy the recording requirement nor rebut the presumption of regularity.

Robert L. Rose et al., 63 IBLA 1 (Mar. 25, 1982)

Proof of labor or notice of intention to hold a mining claim must be filed with BLM each calendar year, on or after Jan. 1 and on or before Dec. 30. The requisite filing of either of those documents for calendar year 1980 was not accomplished by appellant's filing a labor affidavit in Oct. 1979 for the 1980 assessment year, and the BLM decision declaring the affected mining claims abandoned and void must be affirmed. The failure to file timely those documents is not curable after the filing deadline.

Erickson Placers, Inc., 63 IBLA 60 (Mar. 30, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management is mandatory, not discretionary.

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

The mailing of evidence of annual assessment work after the due date does not constitute compliance with the requirements of the statute.

Yako Mining, 63 IBLA 206 (Apr. 9, 1982)

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, i.e., on or after Jan. 1 and on or before Dec. 30. Failure to file within the calendar year properly results in a mining claim being declared abandoned and void.

Oregon Portland Cement Co., 66 IBLA 204 (Aug. 13, 1982)

The recordation requirement of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), that evidence of assessment work or notice of intention to hold mining claims be filed where the notice of location of the claim is recorded and in the proper office of BLM is mandatory, not discretionary. Filing of evidence of assessment work only in the county does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Maureen Carr, 67 IBLA 162 (Sept. 21, 1982)

The holder of an oil shale placer mining claim is required to perform $100 of annual assessment work each year for the benefit of such claim. Where there has not been "substantial compliance" with this requirement, such claim is forfeited to the United States. Resumption of work following a substantial breach of compliance does not bar the Government from asserting a forfeiture.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

A petition for deferment of assessment work may only be granted pursuant to 43 CFR 3852.1, where "legal impediments" exist which affect the right of a mining claimant to enter upon the claim. A petition will not be granted where a claimant alleges that it would be financially impractical because of pending legislation or alleges that public sentiment is against such entry.

Minerals Engineering Co., 71 IBLA 402 (Mar. 31, 1983)

The Federal Land Policy and Management Act of 1976 requires that for each mining claim located prior to Oct. 21, 1976, the required filing of evidence of assessment work or notice of intention to hold the claim must be made with both the BLM and local office of the state where the notices of location were filed.

Arthur B. Fields, Sr., 73 IBLA 52 (May 12, 1982)

Under sec. 2 of the Act of June 21, 1949, 30 U.S.C. § 28c (1976), annual assessment work for mining claims may only be deferred for 2 years, and a petition for deferment beyond the authorized 2-year period is properly denied.

J. M. Glenn d.b.a. Northwest Mineral Exploration, 73 IBLA 323 (June 7, 1983)

MINING CLAIMS--Continued

ASSESSMENT WORK--Continued

The Department is not estopped from contesting the validity of a mining claim on a charge of substantial noncompliance with the requirement for performance of annual labor mandated by 30 U.S.C. § 28 (1976) merely because the claimants relied on previous official declarations that the Department had no authority to enforce compliance with the statute, and were thereby misled to believe they could ignore it with impunity and still demand the benefits of the General Mining Law.

The accomplishment of the minimum of the $500 worth of improvements on a mining claim, as required by 30 U.S.C. § 29 (1976), neither terminates nor substantially satisfies the requirement of 30 U.S.C. § 28 (1976) that $100 worth of labor be performed on the claim each year until patent issues. Nor is there substantial compliance with sec. 28 where for considerably more than half of the total number of years in which the performance of annual labor was required, none was done.

In a government contest of an association placer mining claim on a charge of nonperformance of annual labor as required by 30 U.S.C. § 28 (1976), each co-owner of the claim is an indispensable party to the proceeding, and a failure to properly serve and join each such party is fatal to the action, and a decision rendered therein purporting to void the fractional interests of those claimants who were properly served is a mere nullity and of no effect. Union Oil Co. of California (Supp.), 72 I.D. 313 (1965) is overruled and rescinded on this point.

United States v. Energy Resources Technology Land, Inc., et al., 74 IBLA 117 (June 30, 1983)

Where the requirement of filing proof of assessment work or a notice of intention to hold the claim applies, such filing must be made within each calendar year, i.e., on or after Jan. 2, and on or before Dec. 30.

C. G. Rhinehart, 76 IBLA 228 (Oct. 17, 1983)

An application for deferral of the performance of annual assessment work on a group of mining claims by one who asserts partial ownership is properly rejected where, despite litigation in progress between the rival claimants, there is no legal impediment to access and the claims are purportedly being mined by another owner of a partial interest who has filed affidavits of performance of assessment work for that period. Alleged threat of harm by the person in possession is insufficient reason for the Secretary to defer assessment work where a court has issued an order authorizing the applicant's representative to enter the claims for the purpose of accomplishing such work.

Sadie Schoonover, 83 IBLA 133 (Oct. 5, 1984)

Although 6 months passed before the Bureau of Land Management notified claimants that their claims were null and void ab initio, the claimants were not entitled to a refund of the expenses incurred developing the claims. The Bureau of Land Management has no affirmative obligation to mineral locators to promptly check the status of their mining claims.

Bill & Judy Bass et al., 84 IBLA 233 (Dec. 31, 1984)

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS

Generally

In order to establish that a type of stone material is not a common variety under the Act of July 23, 1955, a mining claimant must demonstrate that: (1) the mineral deposit has a unique property, and (2) the unique property gives the deposit a distinct and special value. Where evidence does not establish that slate in a particular deposit has a unique property which imparts a distinct and special value, distinguishable from other slate the deposit is a common variety of stone within the meaning of the Act of July 23, 1955.

Without evidence that quartz has a property giving it a special and distinct value, it is a common variety no longer locatable under the mining laws. The test of "uncommonness" is not met by speculation that attractive bits of quartz could be sold to tourists and rockhounds.

United States v. Joseph B. and Aletha Henri, 46 IBLA 221 (Mar. 27, 1980)

Material which is principally valuable for use as fill, sub-base, ballast, riprap, or barrow, for which ordinary earth or rock may be used, is not locatable under the mining laws and was not locatable prior to July 23, 1955.

United States v. W. G. Nickol, Ira Rose Nickol, 47 IBLA 183 (May 7, 1980)

Without evidence that limestone has a property giving it a special and distinct value, it is a common variety no longer locatable under the United States mining laws. The test of "uncommonness" is not met by speculation that the mineral material might be extracted in blocks of sufficient size as to permit slabs suitable for making table tops or other ornamental use.

United States v. Joseph J. Segna et al., 49 IBLA 73 (July 22, 1980)

Sec. 3 of the Surface Resources Act of July 23, 1955, 69 Stat. 367, 368, 30 U.S.C. § 611 (1976), declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a claim for such material to be sustained as validated by a discovery, the prudent man-marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and reasonably continuously thereafter.

United States v. Albert Martinez et al., 49 IBLA 360 (Aug. 29, 1980) 87 I.D. 386

The Surface Resources Act of July 23, 1955, declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a mining claim for such material located prior to the date of the Act to be sustained, the prudent man-marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and maintained reasonably continuously thereafter.

Under the "prudent man test" in order to qualify as "valuable mineral deposits" the disputed deposits must be of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. To qualify

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

Generally--Continued

as "valuable mineral deposits" under the "marketability test" it must be shown that the minerals can be "extracted, removed and marketed at a profit."

In determining whether or not a mining claim is valid, the marketability test requires that there be, at the time of discovery, a market for the discovered material that is sufficiently profitable to attract the efforts of a person of ordinary prudence. In determining marketability, evidence of sales is only one factor to be considered in the application of the prudent man-marketability test.

United States v. Estella B. Vincenzo et al., 54 IBLA 95 (Apr. 15, 1981)

The mere fact that a mineral deposit is an uncommon variety of stone does not make it per se marketable. The mining claimant must show that the deposit within the claim is marketable at a profit.

United States v. Rosie Vaughn et al., 56 IBLA 247 (July 24, 1981)

In determining whether a deposit of clay is locatable as a valuable mineral deposit under the mining laws, there is a distinction between a deposit considered to be common or ordinary clay, which is not locatable, and a locatable deposit having exceptional qualities useful and marketable for purposes for which common clays cannot be used.

Common clay includes clay usable for structural and other heavy clay products, for pressed or face brick, as well as ordinary brick, tile, and pipe, for pottery, earthenware, stoneware, and cement.

A deposit of bentonite which can profitably be removed and marketed for pelletizing taconite is an exceptional clay locatable under the mining laws, even though blending and additives are necessary to make the deposit suitable for such use.

Even if a mining claimant establishes that a deposit of bentonite is the same quality as other deposits sold for pelletizing taconite, the claimant must establish that his deposit can be marketed for this purpose rather than for a purpose for which common clay can also be used. The claimant must establish that the material on his claim, not some other claim, may be mined, removed, and marketed at a profit.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

The Act of July 23, 1955, which excluded common varieties of minerals from location under the general mining laws after July 23, 1955, did not bar the subsequent location of mining claims for limestone suitable for use in the production of cement. However, in order for such claims to be valid, it is still necessary to show a reasonable prospect that the limestone can be mined, removed, and marketed at a profit in order to satisfy the discovery requirements of the general mining laws.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

Generally--Continued

The standards set forth in United States v. U.S. Minerals Development Corp., 75 I.D. 127 (1968), as modified by McClarty v. Secretary of Interior, 408 F.2d 907 (9th Cir. 1969), are applicable in determining whether a particular substance is a common variety of mineral.

Frank Mellusso, 71 IBLA 178 (Mar. 10, 1983)

Deposits of common varieties of stone were withdrawn from location by sec. 3 of the Act of July 23, 1955, 30 U.S.C. § 611 (1976). The locator of a claim for stone after that date must establish that the mineral deposit has a unique property giving it a distinct and special value reflected in a higher market price or reduced cost of production.

Joanne M. Bassirio v. Western Hills Mining Ass'n et al., 78 IBLA 155 (Dec. 29, 1983)

Special Value

Where deposit of Yavapai schist has pleasant coloration and allegedly can be blasted out and broken in such a manner as to tend to maintain unfeathered edges, it is nevertheless a common variety of building stone and is, therefore, unlocatable, as these characteristics are not unique properties setting it apart from vast amounts of other common stone found throughout the area where the deposit is situated.

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

Whether a deposit of stone is an uncommon variety under sec. 3 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 611 (1976), and therefore locatable under the mining law depends on whether the deposit has a property which gives it a distinct and special value as compared with other deposits of similar materials. It must be shown that the material under consideration has some property which gives it value for purposes for which other materials are not suited, or, if the material is to be used for the same purposes as other materials of common occurrence, that it possesses some property which gives it a special value for such uses, which value may be reflected by the fact that it commands a higher price in the market place.

United States v. Hanie Vaughn et al., 56 IBLA 247 (July 24, 1981)

Whether a deposit of stone is an uncommon variety under sec. 3 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 611 (1976), and therefore locatable under the mining law depends on whether the deposit has a property which gives it a distinct and special value as compared with other deposits of similar materials. It must be shown that the material under consideration has some property which gives it value for purposes for which other materials are not suited, or, if the material is to be used for the same purposes as other materials of common occurrence, that it possesses some property which gives it a special value for such uses, which value may be reflected by the fact that it commands a higher price in the market place or by reduced cost or overhead so that the profit to the claimant would be substantially more.

A deposit of slate and graywacke cannot be determined to be an uncommon variety of mineral solely on the basis of its accessibility or proximity to market (both factors of location), even though such factors may give

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

Special Value--Continued

the deposit a competitive advantage, as they are not unique properties inherent in the deposit but only extrinsic factors.

United States v. Sherman C. Smith, Larry L. Smith, 66 IBLA 182 (Aug. 13, 1982)

Unique Property

Where deposit of Yavapai schist has pleasant coloration and allegedly can be blasted out and broken in such a manner as to tend to maintain unfeathered edges, it is nevertheless a common variety of building stone and is, therefore, unlocatable, as these characteristics are not unique properties setting it apart from vast amounts of other common stone found throughout the area where the deposit is situated.

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

Whether a deposit of stone is an uncommon variety under sec. 3 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 611 (1976), and therefore locatable under the mining law depends on whether the deposit has a property which gives it a distinct and special value as compared with other deposits of similar materials. It must be shown that the material under consideration has some property which gives it value for purposes for which other materials are not suited, or, if the material is to be used for the same purposes as other materials of common occurrence, that it possesses some property which gives it a special value for such uses, which value may be reflected by the fact that it commands a higher price in the market place.

United States v. Hanie Vaughn et al., 56 IBLA 247 (July 24, 1981)

Whether a deposit of stone is an uncommon variety under sec. 3 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 611 (1976), and therefore locatable under the mining law depends on whether the deposit has a property which gives it a distinct and special value as compared with other deposits of similar materials. It must be shown that the material under consideration has some property which gives it value for purposes for which other materials are not suited, or, if the material is to be used for the same purposes as other materials of common occurrence, that it possesses some property which gives it a special value for such uses, which value may be reflected by the fact that it commands a higher price in the market place or by reduced cost or overhead so that the profit to the claimant would be substantially more.

A deposit of slate and graywacke cannot be determined to be an uncommon variety of mineral solely on the basis of its accessibility or proximity to market (both factors of location), even though such factors may give the deposit a competitive advantage, as they are not unique properties inherent in the deposit but only extrinsic factors.

United States v. Sherman C. Smith, Larry L. Smith, 66 IBLA 182 (Aug. 13, 1982)

MINING CLAIMS--Continued

CONTESTS

Where a mining claim contestee fails to appear at a contest hearing and merely sends a message stating that he will not appear, without stating the reasons for his absence, a subsequent motion to reschedule the hearing and reopen the record is properly denied, as the regulations provide that a postponement may be granted only pursuant to a request made no later than the hearing date and stating in detail the reasons why a postponement is necessary.

The asserted inability of a contestee to drive an automobile due to his taking medication is not an extreme emergency which justifies beyond question the granting of a postponement of the hearing where it is not impossible to get to a hearing site by public transportation. Nor is restricted mobility due to arthritis justification for a postponement where the record shows that it is an ongoing condition which could have been anticipated, and that transportation to the hearing site could have been arranged by exercise of proper diligence.

When the Government contests a mining claim on a charge of no discovery, it bears the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made. The Government has established a prima facie case when a mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery.

Where a party fails to appear or participate in a hearing as scheduled even though no order postponing the hearing has been issued, the merits of the case may be reached and decided on the basis of the record as completed at the hearing, despite the absence of evidence in support of the party's case.

New evidence offered on appeal after an initial decision is rendered by an Administrative Law Judge may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. Richard B. Franklin, 45 IBLA 54 (Jan. 14, 1980)

When land is withdrawn from all forms of entry, location, and exploration subsequent to location of a mining claim, the validity of such claim cannot be recognized unless (1) it was perfected by a discovery at the time of withdrawal, and (2) it has been continuously supported by the same discovery to the present; that is, at the time of the hearing.

A decision in 1959 withdrawing charges of lack of discovery is not res judicata as to subsequent inquiry. The earlier decision merely established that claimants' possessory interest in claims had not been extinguished by Act of May 27, 1955, 69 Stat. 67, withdrawing lands from all forms of mining activity. Unless and until patent issues, title to the claims in controversy remains in the United States, and it may inquire into the extent and validity of rights claimed against it.

When the Government contests the validity of a mining claim, it has only the burden of establishing a prima facie case; the burden then shifts to the contestee, who is proponent of a claim or right against the United States, to adduce evidence which by a preponderance affirmatively demonstrates the validity of the claim and thus that the charges are untrue.

Where an alleged point of discovery is inaccessible by reason of caving, responsibility for restoring accessibility for purpose of mineral examination lies with contestees. In no case will the Government's mineral examiner be required to perform discovery work for the claimant, to explore beyond the claimant's exposed

MINING CLAIMS--Continued

CONTESTS--Continued

workings, or to rehabilitate discovery points for the claimant.

Where mineral reports submitted in connection with a previous contest recited only that a valuable mineral had been discovered, but failed to include a mineral examiner's assessment of the quantity and quality of the valuable mineral, marketability, or costs of extraction and transportation, and where the uncontradicted opinion of the Government's witness was that the sampling method was improper, the Administrative Law Judge was correct in according little weight to the reports.

United States v. Richard G. Clegans et al., 45 IBLA 64 (Jan. 17, 1980)

A Forest Service special use permit issued to a state agency does not constitute a withdrawal of the land involved from appropriation under the mining law, and a contest will not lie against a subsequently located mining claim on a charge that a portion of the claim is void to the extent that it includes land embraced by the permit.

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when such minerals were no longer subject to location, the claimant, as proponent of the rule, has the ultimate burden of proof as to validity of the claim. The Government, however, must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on each claim.

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered. If the Government fails to make a sufficient prima facie case against a mining claim, the claimant may move to have the contest dismissed and rest his case. However, when the claimant goes forward with his evidence, the Administrative Law Judge must consider the evidence presented and weigh it in accordance with its probative value. In choosing to rebut the case, the claimant bears the burden of doing so by a preponderance of the evidence and bears the risk of nonpersuasion if he fails.

In a mining contest, a matter not charged in the complaint cannot be used as a ground to invalidate a claim, unless it has been raised at the hearing and the contestee has not objected.

United States v. Clare Williamson and Lapine Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

Where, in the hearing of a mining claim contest in which the presence of a mineral deposit within the limits of a claim is at issue and the claim is accessible, it is established that the Government mineral examiner made no professional examination of certain of the contested claims, the testimony of the Government mineral examiner, without more, is insufficient to establish a prima facie case of invalidity.

The mere fact that mining claims are allegedly located in the same kind of area with the same topography as other claims where there has been no discovery does not, without more, support the conclusion that there is no discovery on the former claims. Geologic inference drawn from such alleged similarities is insufficient by itself to show that no discovery has been made on the claims.

Uncontradicted evidence of nonproduction of a mining claim, which has continued over a period of years,

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MINING CLAIMS--Continued

CONTESTS--Continued

is sufficient, without more, to establish a prima facie case of invalidity of the mining claim.

United States v. Gerald Hess, 46 IBLA 1 (Feb. 13, 1980)

Where a Government contest complaint against a mining claim contains charges which, if proved, would render the claim invalid, and the contestee fails to file an answer to the complaint in accordance with Departmental regulations, the allegations of the complaint will be taken as admitted by the contestee, and the claim is properly declared null and void. The Secretary is without authority to waive the regulations to permit the late filing of an answer.

United States v. Dan Seelinger, 46 IBLA 76 (Feb. 22, (1980)

The BLM may not summarily reject a mineral patent application on the face of the record for reasons related to disputed issues of fact without notice and an opportunity for hearing.

Big Horn Limestone Co., 46 IBLA 98 (Feb. 28, 1980)

When the Government contests a mining claim on a charge of lack of discovery, the Government has the burden of proving a prima facie case; the burden then shifts to the mining claimant to prove by a preponderance of the evidence that discovery exists.

United States v. Ludvig G. Rosenkranz, 46 IBLA 109 (Feb. 29, 1980)

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

United States v. Joseph R. and Alethe Henri, 46 IBLA 221 (Mar. 27, 1980)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

United States v. James S. Sette, 46 IBLA 335 (Apr. 4, 1980)

When the Government contests mining claims on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case. When it has done so, the burden shifts to the claimants to show, by a preponderance of the evidence, that a discovery of a valuable mineral deposit has been made and still exists within the limits of each claim under contest.

The decision of an Administrative Law Judge will not be disturbed on appeal where the preponderance of the evidence supports the result reached, and the

MINING CLAIMS--Continued

CONTESTS--Continued

appellants have not pointed out any error in the decision.

United States v. Roy Peterson & Charles R. Sweet, 47 IBLA 92 (Apr. 23, 1980)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for claimants nor to explore beyond a claimant's workings.

United States v. Robert Chambers, 47 IBLA 102 (Apr. 23, 1980)

Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing.

United States v. William R. Soren, 47 IBLA 226 (May 13, 1980)

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

United States v. George C. Hooker et al., 48 IBLA 22 (May 27, 1980)

The assertion that annual assessment work has not been performed is the assertion of a negative fact. If an examination of the mining claims and the nearby lands does not reveal the accomplishment of the required work, and there is no record of any such work having been performed, then evidence to this effect would be sufficient to establish a prima facie case. It would then devolve upon the claimant to show by a preponderance of the countervailing evidence that he has substantially complied with the statute.

In a Government contest proceeding to determine the validity of a mining claim, the claimant is always the proponent of the rule or order, always the one claiming to have earned the benefit of the mining laws through his compliance therewith. Regardless of whether the issue on which the validity of the claim rests is discovery, mode of location, or performance of assessment work, the relative position and obligation of the contestant and the contestee remain the same.

Where the Government contests the validity of a mining claim for nonperformance of annual assessment work, there is nothing inherent or implied in that action which requires a conclusion that the claim is valid in all other respects, nor may the bringing of such an action be treated as tantamount to an admission by the Government that "property rights in the claim have been established by the making of a valid location."

United States v. Catlin Bohne et al., United States v. Exxon Corp. et al., United States v. Aidabelle Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 248

MINING CLAIMS--Continued

CONTESTS--Continued

When the United States contests a mining claim, it has assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint. The burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case. The United States has established a prima facie case when a qualified Government mining engineer testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable mineral deposit.

It is incumbent upon a mining claimant to keep his discovery points available for inspection by Government mineral examiners. Where he does not, he assumes the risk that the mineral examiner will not be able to verify the discovery of the alleged mineral deposit.

United States v. Ubehebe Lead Mines Co., 49 IBLA 1 (July 15, 1980)

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

United States v. Joseph J. Segna et al., 49 IBLA 73 (July 22, 1980)

Where facts and law are properly set forth and applied in Administrative Law Judge decision holding lode mining claims void for lack of discovery, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

United States v. Keith Lindsey, 49 IBLA 344 (Aug. 25, 1980)

United States v. Russell and Lena Journigan, 59 IBLA 393 (Nov. 10, 1981)

When the Government contests a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome this showing by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of discovery, a prima facie case has been established.

United States v. Charles M. Ledford et al., 49 IBLA 353 (Aug. 29, 1980)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

Where there is not sufficient reason shown to disturb an Administrative Law Judge's finding that the prudent man-marketability test was met as of July 23, 1955, and continuously thereafter by mining claimants who extracted and profitably sold sand and gravel from the claims prior to that date and continuously thereafter, the decision will be sustained on appeal.

The Board of Land Appeals will not order a further hearing in a mining claim contest case where a patent application has been filed merely because the evidentiary record is inadequate to invalidate the claims for lack of a discovery of a valuable mineral deposit, if the claimant is found to have met the discovery test.

United States v. Albert Hartiner et al., 49 IBLA 360 87 I.D. 386 (Aug. 29, 1980)

The motivation of any Government agency in initiating a contest against mining claims is irrelevant. The fact that such contest challenges the validity of certain mining claims and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

Government mineral examiners are not required to perform discovery work for claimants nor to explore beyond a claimant's workings. It is incumbent upon a mining claimant to keep his discovery points available for inspection by Government mineral examiners. Where he does not, he assumes the risk that the mineral examiner will not be able to verify the discovery of the alleged mineral deposit, and his unsupported argument that the samples taken by the examiner are not representative will be rejected.

United States v. E. H. MacLaughlin, Christine MacLaughlin, 50 IBLA 176 (Sept. 30, 1980)

The procedure followed by the Department of the Interior in the initiation of mining contest cases is in compliance with the due process clause of the United States Constitution and the Administrative Procedure Act, 5 U.S.C. § 551 (1976).

United States v. Mary E. Gray, 50 IBLA 209 (Sept. 30, 1980)

When a Bureau of Land Management decision declares mining claims abandoned and void for failure to timely file a copy of evidence of assessment work or notice of intention to hold as required by 43 U.S.C. § 1744 (1976) (FLPMA) and 43 CFR 3833.2-1(a), and on appeal an assertion is made that the material was properly submitted but under a different spelling of the name of the claims, the decision may be set aside and the case remanded for review.

Rudolph S. Dobnik, 50 IBLA 225 (Sept. 30, 1980)

MINING CLAIMS--Continued

CONTESTS--Continued

When the Government contests mining claims on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case. When it has done so, the burden shifts to the claimants to show, by a preponderance of the evidence, that a discovery of a valuable mineral deposit has been made and still exists within the limits of each claim under contest.

The motivation of any Government agency in initiating a contest against mining claims is irrelevant. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

A second hearing of a Government mining contest will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, where he was actually present at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result. A petition to reopen a hearing of a Government mining contest will be denied when the contestee offers no valid justification for the neglect to offer evidence which was or could have been available at the original hearing. A further hearing will not be ordered merely to afford a claimant an additional opportunity to explore and make a discovery.

United States v. Leon R. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

When the Government contests a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and is present within the limits of the claim.

Government mineral examiners are not required to perform discovery work for claimants nor to explore beyond a claimant's discovery points. It is incumbent upon a mining claimant to keep his discovery points available for inspection by Government mineral examiners. Where he does not, he assumes the risk that the mineral examiner will not be able to verify the discovery of the alleged mineral deposit, and his unsupported argument that the samples taken by the examiner are not representative will be rejected.

United States v. Ernest L. and Evelyn B. Brupskill, 51 IBLA 199 (Dec. 5, 1980)

When the Government contests a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and is present within the limits of the claim.

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of discovery, a prima facie case has been established, and if not rebutted, the mining claim is properly declared invalid.

United States v. Paul Watkins, 51 IBLA 255 (Dec. 15, 1980)

MINING CLAIMS--Continued

CONTESTS--Continued

When the United States contests a mining claim it has by practice assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case.

The United States has established a prima facie case of the invalidity of a mining claim when a qualified Government mining examiner testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable deposit.

United States v. W. S. Wood et al., 51 IBLA 301 (Dec. 18, 1980) 87 I.D. 628

Where a Government contest complaint, when filed and received by mineral claimants, correctly identifies all claimants as of that time, the substitution or addition of subsequent transferees is the obligation of those who have acquired such an interest and their failure to so move will not vitiate the effectiveness of an adjudication of the validity of a mining claim.

In order to sustain a charge that land embraced within a mining claim is not held in good faith for mining purposes the evidence relating to the mineral claimant's lack of good faith must be clear.

United States v. Virgil Powell and Melinda Powell, 52 IBLA 256 (Feb. 6, 1981)

Where the Bureau of Land Management is not satisfied with the evidence of discovery submitted by a mineral patent applicant, it may request further information. However, if it concludes that the information presented is insufficient to support a discovery, it may not summarily reject the patent application. It must initiate a contest proceeding.

United States Steel Corp., 52 IBLA 319 (Feb. 19, 1981)

When the Government contests a mining claim on a charge of no discovery of a valuable mineral deposit it assumes the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

A sufficient prima facie case by the Government does not require positive proof that there has been no discovery made or that the mining claim is nonmineral in character. Upon the Government's presentation of a prima facie case, the burden shifts to the claimant to prove by a preponderance of the evidence that he indeed has effected a discovery of a valuable mineral deposit within the limits of the claim.

United States v. Graham R. Corns, 53 IBLA 5 (Feb. 26, 1981)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a

MINING CLAIMS--Continued

CONTESTS--Continued

discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 20, 1981)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

United States v. Earl F. Fox, 53 IBLA 333 (Mar. 26, 1981)

United States v. Blanch P. Day, Wilma Jean Kendall, 56 IBLA 300 (July 29, 1981)

The sufficiency of a Government's prima facie case is dependent upon the direct evidence presented by the Government together with the testimony of Government witnesses elicited in cross-examination.

United States v. Maurice Duval et al., 53 IBLA 341 (Mar. 26, 1981)

Where the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of establishing a discovery of a valuable mineral deposit by a preponderance of the evidence.

United States v. Jesse M. Taggart et al., 53 IBLA 353 (Mar. 30, 1981)

United States v. The Dredge Corp., 54 IBLA 281 (Apr. 28, 1981)

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

United States v. Michael Kuretich et al., 54 IBLA 124 (Apr. 17, 1981)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

Government mineral examiners are not required to perform discovery work for claimants nor to explore beyond a claimant's workings. It is incumbent upon a mining claimant to keep his discovery points available for inspection by Government mineral examiners. Where he does not, he assumes the risk that the mineral examiner will not be able to verify the discovery of the alleged mineral deposit, and his unsupported argument

MINING CLAIMS--Continued

CONTESTS--Continued

that the samples taken by the examiner are not representative will be rejected.

United States v. J. L. Rose and Mary F. Rose, 54 IBLA 355 (May 12, 1981)

Where the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of establishing a discovery of a valuable mineral deposit by a preponderance of the evidence.

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

United States v. Alice W. Rouse et al., 56 IBLA 36 (July 8, 1981)

When the Government contests a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and is present within the limits of the claim.

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of discovery, a prima facie case has been established, and if not rebutted, the mining claim is properly declared invalid.

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

In mining claim contests, the United States has assumed the burden of establishing a prima facie case that no discovery has been made on the mining claims by the contestee; the burden of proof then shifts to the contestee to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of each mining claim. Evidence which may justify further exploration is insufficient either to establish a discovery or to overcome a prima facie case of lack of discovery.

United States v. D. J. Polashek, 57 IBLA 104 (Aug. 25, 1981)

Where, following the contest of a number of mining claims, a decision is rendered by an Administrative Law Judge holding certain claims and portions of claims to be valid and invalidating the remainder for lack of mineral or as embracing excess mineral reserves, and the Government appeals from that decision but the claimant does not, that decision will be set aside and the case remanded for rehearing on the basis of a judicial decision in another case, made while the subject appeal was pending, that there can be no invalidation of mining claims by this Department on a finding that the claimant has acquired claims for far more mineral than the market can absorb within the foreseeable future.

United States v. Oneida Perlite Corp., 57 IBLA 167 (Aug. 27, 1981) 88 I.D. 772

MINING CLAIMS--Continued

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When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

United States v. Verde Mining Co., Inc., et al., 57 IBLA 225 (Aug. 27, 1981)

Government mineral examiners are not required to perform discovery work for claimants nor to explore beyond a claimant's discovery points. It is incumbent upon a mining claimant to keep his discovery points available for inspection by Government mineral examiners. Where he does not, he assumes the risk that the mineral examiner will not be able to verify the discovery of the alleged mineral deposit, and his unsupported argument that the samples taken by the examiner are not representative will be rejected.

United States v. C. J. Anderson, C. Joseph Anderson, 57 IBLA 256 (Aug. 28, 1981)

In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the case on behalf of his client, and service of any document relating to the proceeding shall be made upon such attorney in addition to any other service specifically required by law or by rule, order, or regulation. 43 CFR 4.22(b).

Where a party fails to appear or participate in a hearing as scheduled even though no order postponing the hearing has been issued, the merits of the case may be reached and decided on the basis of the record completed at the hearing, despite the absence of evidence in support of the party's case.

United States v. Claude T. and Sarah E. Orme, 57 IBLA 373 (Sept. 8, 1981)

Notices of locations for various mining claims and millsites filed for recordation under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), must be rejected where the claims and millsites were previously held null and void following Departmental contest proceedings.

J. G. Monack, 58 IBLA 85 (Sept. 22, 1981)

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

Absent a patent application, in a mining contest hearing where the Government's evidence of lack of discovery relates only to insufficient quality and quantity

MINING CLAIMS--Continued

CONTESTS--Continued

of mineralization and the mining claimant produces evidence sufficient to preponderate on those issues, the contest complaint is properly dismissed.

United States v. Malin F. Lewis, 58 IBLA 282 (Oct. 8, 1981)

When the Government contests a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome this showing by a preponderance of the evidence.

United States v. Miguel Nunez, 59 IBLA 134 (Oct. 26, 1981)

Where the facts and the law are properly set forth and applied in an Administrative Law Judge's decision holding a placer mining claim null and void for a lack of discovery of a valuable mineral deposit, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

United States v. Scott Johnson, 59 IBLA 207 (Oct. 27, 1981)

United States v. Jack R. & Ruth Y. Wiese, 77 IBLA 205 (Nov. 22, 1983)

Where the Government contests the validity of a mining claim, it bears only the burden of establishing a prima facie case of lack of discovery; the burden then shifts to the claimant to overcome the Government's showing by a preponderance of the evidence. A prima facie case is established when a Government mineral examiner testifies that he examined the claim and found insufficient evidence of the discovery of a valuable mineral deposit.

United States v. Leon Morse and Thomas Robita, 59 IBLA 268 (Oct. 29, 1981)

Failure to obtain counsel at a hearing into the validity of a mining claim will afford the mining claimant no greater rights on appeal than if he had obtained counsel.

United States v. John Burt et al., 59 IBLA 326 (Nov. 5, 1981)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings.

A mining claim contest hearing will not be reopened to afford the claimants an opportunity to prove a discovery had been made on the claims in the absence of a tender of proof and evidence to show equitable justification for a further proceeding in the case. Also, the case will not be reopened where the Administrative Law Judge has ruled on the credibility of claimants' witnesses on issues going to their

MINING CLAIMS--Continued

CONTESTS--Continued

failure to present a case due to alleged Governmental interference, which is not supported by the record, and there is no persuasive showing of a denial of due process.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

A contestee in Government contests, challenging the validity of his mining claim and millsite, must file answers to the complaints within 30 days of service, failing which BLM properly takes the truth of the allegation in the complaints as admitted without a hearing.

New evidence offered on appeal after BLM has rendered a determination that a mining claim is null and void, following the contestee's failure to answer the contest complaint, may be considered by the Board only to determine if BLM's ruling is so patently erroneous that there should be further inquiry into the facts. Appellant's unsupported suggestion that there might be rich ore on the claim does not justify further inquiry.

United States v. Anton V. Evalt, 62 IBLA 116 (Mar. 4, 1982)

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

United States v. Grovenor B. Montepert et al., 63 IBLA 35 (Mar. 30, 1982)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Once a prima facie case is established, the burden shifts to the claimant to overcome that showing by a preponderance of the evidence.

United States v. Eugene Bowyer et al., 63 IBLA 386 (Apr. 30, 1982)

A prima facie case against the validity of a mining claim is established by the testimony of an expert witness who has examined the mineral deposit on the claims and the costs of mining that deposit, and who concludes that the mineral deposit cannot be mined, removed, and marketed at a profit.

A presumption is raised that mining claimants have failed to discover a valuable mineral deposit if there

MINING CLAIMS--Continued

CONTESTS--Continued

has been little or no development or operations on the claims over a long term. This presumption can be overcome by evidence that the mineral deposits can be mined, removed, and marketed at a profit.

Even if a mining claimant establishes that a deposit of bentonite is the same quality as other deposits sold for pelletizing taconite, the claimant must establish that his deposit can be marketed for this purpose rather than for a purpose for which common clay can also be used. The claimant must establish that the material on his claim, not some other claim, may be mined, removed, and marketed at a profit.

United States v. Kaycee Bentonite Corp., et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

Allegations by a mining claimant that the Government mineral examiner used improper sampling procedures will be given little weight where the claimant introduces no probative evidence establishing that the samples taken by the Government mineral examiner failed to accurately represent the mineral value of the land.

If, after the Government has established a prima facie case of nondiscovery, evidence presented by a mining claimant in a Government contest fails to show that there has been discovery of a valuable mineral deposit, the claim is properly declared invalid regardless of any defects in the Government's case.

United States v. Gary J. Murdock, 65 IBLA 239 (July 9, 1982)

It is proper to declare unpatented mining claims null and void without a hearing where the answer in a private contest complaint was not filed in accordance with the requirements set out in 43 CFR 4.450-6.

Phillips Petroleum Co. v. Melvin Bradshaw et al., 66 IBLA 234 (Aug. 17, 1982)

The Act of July 23, 1955, which excluded common varieties of minerals from location under the general mining laws after July 23, 1955, did not bar the subsequent location of mining claims for limestone suitable for use in the production of cement. However, in order for such claims to be valid, it is still necessary to show a reasonable prospect that the limestone can be mined, removed, and marketed at a profit in order to satisfy the discovery requirements of the general mining laws.

In order for mining claims located in the Mount McKinley National Park to be valid, a discovery of a valuable mineral deposit must be shown to have existed prior to Sept. 28, 1976, the date lands in this park were withdrawn from mineral entry by the Act of Sept. 28, 1976, as well as on the date of the administrative hearing.

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claims were withdrawn from mineral location, the claimant, as proponent of the claims' validity, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a qualifying discovery has been made on the claims.

Uncontradicted evidence of absence of production from mining claims over a period of 18 years prior to the withdrawal of the area from mineral location is sufficient, without more, to establish a prima facie case of invalidity of the claim. This evidence gives

MINING CLAIMS--Continued

CONTESTS--Continued

rise to a presumption that the mineral on the claims could not have been profitably marketed, but claimants may overcome this presumption by proving that they could have extracted and sold the mineral at a profit prior to the withdrawal date with convincing factual evidence of conditions actually prevailing at that time. Where the claimant presents only uncertain, speculative, and conjectural evidence suggesting that it could have sold the mineral at a profit if certain conditions had prevailed on the withdrawal date, it has not overcome the presumption of nonmarketability, and the claims are properly declared null and void.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

When the Government contests a mining claim on a charge of lack of discovery, it is required to produce sufficient evidence to establish a prima facie case against the validity of the claim, and the burden of proof then shifts to the contestees to overcome this showing by a preponderance of the evidence. A prima facie case has been made when a Government mineral examiner testifies that he has examined the claims and found the evidence of mineralization insufficient to support a finding of discovery.

Even if the Government had failed to make a prima facie case against the validity of the claim, evidence presented by the contestee which shows that a discovery had not been made may support a determination of invalidity, because when a contestee introduces evidence, the determination must be made on the basis of the whole record, not just a part of it.

A continuance of a hearing into the validity of a mining claim will only be granted where the mining claimant presents sufficient reason to justify the grant of an additional opportunity to present his case, i.e., where circumstances have placed a substantial constraint upon his ability to obtain or offer samples or other evidence of a discovery. Furthermore, it must appear that the claimant is not using the additional time to make the requisite discovery.

United States v. Michael P. Buckley, Virginia R. Buckley, 66 IBLA 357 (Aug. 27, 1982)

In a mining contest, a matter not charged in the complaint cannot be used as a ground to invalidate a claim, unless it has been raised at the hearing and the contestee has not objected.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

A mining claim which is not supported by the discovery of a valuable mineral deposit at the time of withdrawal of the land is not excepted from the effect of the withdrawal. Neither the subsequent exposure of previously undiscovered deposits nor a subsequent increase in value of a mineral previously exposed can breathe life into such an invalid claim.

United States v. Robert B. Lake, 67 IBLA 48 (Sept. 9, 1982)

It is not reversible error for an Administrative Law Judge to supplement the record by receiving evidence after the close of the hearing in order to render a fully informed initial decision, where the party objecting to the admission of the additional evidence

MINING CLAIMS--Continued

CONTESTS--Continued

is given an opportunity to comment on and challenge such evidence.

United States v. Victor Material Co., 67 IBLA 274 (Sept. 28, 1982)

In an oil shale mining claim contest, the Government bears only the burden of going forward with sufficient evidence to establish a prima facie case of invalidity, and the burden then shifts to the claimant to overcome this showing by a preponderance of the evidence. However, since abandonment and lack of good faith are questions of intent, the Government bears the ultimate burden of proving these charges.

Where evidence creates only inferences of lack of good faith in the location and holding of mining claims and fails to show clearly that these claims were abandoned, these charges are not sustained.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

An Administrative Law Judge in a mining contest may properly preclude testimony at a hearing on remand on issues of geology, quality, quantity, and continuity of ore, and technology of a proposed beneficiation process where findings on such issues have been made by the Judge at an earlier hearing and approved by the Board on appeal, and no offer of proof is submitted to the Board that would compel an altered finding.

Where the Board remands a Government contest for additional evidence needed to ascertain whether a mineral patent applicant has made a discovery, the burden of establishing a prima facie case is properly assigned to the Government.

An Administrative Law Judge has the authority to permit the use of interrogatories and requests for production of documents in a Government mining contest.

United States v. Pittsburgh Pacific Co., 68 IBLA 342 (Nov. 22, 1982) 89 I.D. 586

When the Government contests the mineral character of a 10-acre portion of a placer mining claim, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

United States v. Cecil Bell et al., 68 IBLA 367 (Nov. 22, 1982)

Under 43 CFR 4.450-1, a private contest may be brought to have a claim invalidated for any reason not shown by the records of the BLM. Because compliance with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), can only be resolved by the records of BLM, no private contest may be maintained solely on the basis of that issue.

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Where a statute limits the Department's authority to consider contests between rival mining claimants, the Department has no authority to consider favorably

MINING CLAIMS--Continued

CONTESTS--Continued

an argument that it is a denial of equal protection to recognize the right of a nonmineral claimant to contest a mining claim while denying such an opportunity to a rival mining claimant.

Gold Depository & Loan Co., Inc. v. Mary Brock et al., 69 IBLA 194 (Dec. 15, 1982)

When the Government contests the validity of a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of refuting the Government's case by a preponderance of evidence.

United States v. Richard S. Arbo, 70 IBLA 244 (Jan. 25, 1983)

Absent a patent application, in a mining claim contest hearing there is no requirement that a mining claimant show that a contested claim is valid; rather, the claimant's burden is to preponderate on the issues raised by the evidence.

When the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of refuting the Government's case by a preponderance of the evidence.

United States v. Florence Cannon, 70 IBLA 328 (Feb. 1, 1983)

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case that a discovery has not been made. The mining claimant then has the ultimate burden to establish the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

United States v. Mary Helen Rosenberger, 71 IBLA 195 (Mar. 14, 1983)

Where evidence presented by claimants shows that no significant amounts of gold have been produced either from a lode claim or placer claim over a period of 13 years, a prima facie case of invalidity is created.

Mineral examiners are not required to blast or do any extensive discovery work beyond the workings exposed by the claimants. Where the examiner inspects these workings and takes samples at the points which appeared to have the most mineralization and, as near as possible, to be at a previously designated discovery point, and presents corroborated testimony and evidence showing the absence of any significant amount of gold in those samples, the Government has established a prima facie case of invalidity.

Where lode mining claimants fail to keep their alleged discovery point in a winze free of water, they assume the risk that the Government mineral examiner will not be able to verify the alleged discovery. In these circumstances, claimants may not object to any lack of representativeness of the samples.

Where placer mining claimants refuse to direct Government mineral examiners to representative placer material removed from their claim, and assert that their alleged discovery point is at the bottom of a deep hole in an active river beneath many large boulders, they admit that they have made no discovery on the claim. In these circumstances, the examiner is justified in taking no sample, since none could be representative, and his testimony about the claimants' admission is enough to establish a prima facie case of invalidity.

Evidence that a claim presents an interesting prospect with some potential for the eventual recovery of gold is insufficient to establish that the claim is not invalid.

The Department of the Interior, which retains the authority to enter freely and inspect mining claims, has redelegated this authority to the Forest Service as to lands within the boundaries of national forests. Agents of the Forest Service have the right to enter such claims at any time; no permission need be sought from the claimants.

United States v. Lyle O. Cook et al., 71 IBLA 268 (Mar. 22, 1983)

Where a Government mineral examiner examines a mining claim and takes samples there, and, after considering the amount and value of mineralization and the costs of conducting a mining operation, testifies to the effect that, in his opinion, a prudent person would not be justified in expending his labor and means with a reasonable prospect of success in developing a valuable mine on the claim the Government has established a prima facie case of no discovery.

Where the record of a mining claim contest contains evidence suggesting, but not adequately proving, that the claimant has made a valuable discovery, and where, on appeal, the claimant submits an affidavit alleging facts that, if proven, would strongly support a finding that a discovery has been made, it is appropriate to reopen the record to give the claimant the opportunity to establish these facts.

Where the owner of an interest in a mining claim dies prior to the filing of a contest complaint against the claim, service of the complaint must be made on the claimant's heirs, or any adjudication following from the complaint does not affect the interest held by the heirs.

United States v. Joseph Laczkowski & Sula G. Jones (Montoya), 71 IBLA 364 (Mar. 28, 1983)

A request by a mining claimant to drill on mining claims after the land has been withdrawn from mining is properly denied where the work would be an effort to make a discovery of a valuable mineral deposit within the claim rather than simply a confirmation or corroboration of a discovery prior to the withdrawal.

Evidence presented by the claimant which shows that a discovery had not been made may support a determination of invalidity because when a claimant introduces evidence the determination must be made on the basis of the whole record, not just a part of it.

United States v. T. J. Jones, Robert E. Jones, 72 IBLA 52 (Apr. 12, 1983)

MINING CLAIMS--Continued

CONTESTS--Continued

When the United States contests a mining claim it has by practice assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case.

The United States has established a prima facie case of the invalidity of a mining claim when a qualified Government mining engineer testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable deposit.

United States v. William Lavon Chappell et al., 72 IBLA 88 (Apr. 13, 1983)

It is not the function of the Board of Land Appeals to make an inquiry into the motivation of any Government agency which has initiated a contest against mining claims. The fact that such contest challenges the validity of certain mining claims, and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

When the Government contests the validity of a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of refuting the Government's case by a preponderance of evidence.

United States v. Lee H. Rice, Goldie E. Rice, 73 IBLA 128 (May 23, 1983)

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

INCO Services, 73 IBLA 374 (June 15, 1983)

If a lode mining claim is supported by a discovery, it necessarily follows that the land is mineral in character. If a claim is not supported by a discovery, it is invalid and it would be immaterial whether the land is mineral in character. In any event, the tests for determining the mineral character of land and whether a discovery of a valuable mineral deposit has been made are essentially the same.

In order to become entitled to a mining claim, a claimant must establish the presence of a valuable mineral deposit. 30 U.S.C. § 22 (1976). A valuable mineral deposit exists where the mineral found is of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Castle v. Womble, 19 L.D. 455 (1894). This is the "prudent man test," approved by the U.S. Supreme Court in Chrisman v. Miller, 197 U.S. 313 (1905). It has been refined to require a showing of marketability, i.e., that the mineral can be presently extracted, removed, and marketed at a profit. United States v. Coleman, 390 U.S. 599 (1968). Where a claim is located on land

MINING CLAIMS--Continued

CONTESTS--Continued

subsequently withdrawn from appropriation under the mining laws, the claim must be supported by a discovery at the time of withdrawal, as well as the date of the hearing into its validity. Cameron v. United States, 252 U.S. 450 (1920).

When the Government contests the validity of a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case. If a prima facie case is presented, the mining claimant then has the burden of overcoming this showing by a preponderance of the evidence.

United States v. Eva S. Pool et al., 74 IBLA 37 (June 27, 1983)

Where a stipulation as to the admissibility of various assay results is made by the Government and a mineral contestee, and the contestee clearly asserts his view as to the scope of the stipulation, it is the obligation of the attorney for the Government, if his interpretation differs, to clearly state his view so as to put the contestee on notice as to this conflict. Where this is not done, the stipulation will be enforced in accordance with the contestee's understanding.

United States v. J. Gary Fenzor et al., 74 IBLA 56 (June 29, 1983) 90 I.D. 262

The Department is not estopped from contesting the validity of a mining claim on a charge of substantial noncompliance with the requirement for performance of annual labor mandated by 30 U.S.C. § 28 (1976) merely because the claimants relied on previous official declarations that the Department had no authority to enforce compliance with the statute, and were thereby misled to believe they could ignore it with impunity and still demand the benefits of the General Mining Law.

In a government contest of an association placer mining claim on a charge of nonperformance of annual labor as required by 30 U.S.C. § 28 (1976), each co-owner of the claim is an indispensable party to the proceeding, and a failure to properly serve and join each such party is fatal to the action, and a decision rendered therein purporting to void the fractional interests of those claimants who were properly served is a mere nullity and of no effect. Union Oil Co. of California (Supp.), 72 I.D. 313 (1965) is overruled and rescinded on this point.

Where in a government contest of certain association placer mining claims the contestant charges and proves prima facie that specific 10-acre tracts are nonmineral in character and thus subject to exclusion from the claims, a finding by the Administrative Law Judge that such tracts are mineral in character will be reversed on appeal where the basis for that finding was mere unsupported conjecture by an expert witness that there is "a strong possibility" that beds of rich oil shale underlie those tracts. Such evidence is insufficient to rebut the prima facie showing by a preponderance of evidence.

United States v. Energy Resources Technology Land, Inc., et al., 74 IBLA 117 (June 30, 1983)

If, prior to summary dismissal of a mining contest complaint, a contestee answers without questioning the service, any defect in service will be deemed waived as to such answering contestee.

An owner of a mining claim who purports to represent the interests of other co-owners may only properly represent the interests of other claim holders if such

MINING CLAIMS--Continued

CONTESTS--Continued

owner meets one of the qualifications set out in 43 CFR 1.3(b).

Where the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of establishing a discovery of a valuable mineral deposit by a preponderance of the evidence.

United States v. Norman Montgomery et al., 75 IBLA 358 (Aug. 31, 1983)

The Government has established a prima facie case of the lack of discovery of a valuable mineral deposit on mining claims where a Government mineral examiner testifies that, based on assays of his samples taken from the claims, the mineral deposit is not of sufficient quality to justify expenditure of capital with a reasonable prospect of success in developing a valuable producing mine. Such an opinion is sufficient to establish a prima facie case where it is based in part upon comparison with the minimum acceptable grade of ore at an operating mine and in part upon an analysis of prior reports of exploration of the claims.

A mining claimant has not preponderated on the question of discovery of a valuable mineral deposit where the evidence establishes that further exploratory drilling is required to ascertain the extent of the only mineralized zone with significant potential prior to the investment of capital with a reasonable prospect of success in developing a valuable mine.

United States v. James A. Walper, 77 IBLA 90 (Nov. 14, 1983)

Patentees under the Stock-Raising Homestead Act of 1916 have an adverse interest sufficient to bring a private contest against allegedly invalid mining claims located for minerals reserved to the United States, which claims threaten to destroy the value of the surface of their patented lands.

Where the evidence in a private contest of that part of a placer mining claim embraced in land patented under the Stock-Raising Homestead Act establishes that the 10-acre subdivisions therein are nonmineral in character, the claim is properly declared null and void as to such land.

Joanne M. Mannikio v. Western Hills Mining Ass'n et al., 78 IBLA 155 (Dec. 29, 1983)

When the Government contests the validity of a mining claim on the basis of lack of discovery, it bears only the burden of going forward with sufficient evidence to establish a prima facie case. Once a prima facie case is presented, the claimant must present evidence which is sufficient to overcome the Government's showing on those issues raised.

Where the Government fails to present sufficient evidence to establish a prima facie case, the claimant need not present evidence in order to prevail. If a claimant, however, does present evidence, the determination of the validity of a claim must be made on the basis of the record as a whole, and not just a part of the record. A claimant need not affirmatively establish the existence of a discovery where there has been no prima facie case. The only risk that the

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claimant runs in such a situation is the risk that the evidence as a whole will establish by a preponderance of the evidence that an element of discovery is not present.

United States v. Eva B. Pool et al., 78 IBLA 215 (Jan. 6, 1984)

In a mining contest initiated by the United States, there is no requirement that the contestee offer evidence concerning matters not placed in issue by the United States. Where the Administrative Law Judge incorrectly states a contrary rule, but in practice applies the correct standard, his decision is affirmed.

In a mining contest initiated by the United States where the Government mineral examiners testify they have examined the mineral claims at issue and found no evidence of mineralization to support a discovery, a prima facie case for the Government is established. This showing is not overcome by evidence of ore sample values offered by contestee to show mineralization, where contestee fails to show from which, of 10 claims at issue, the samples were taken.

Cactus Mines Ltd., 79 IBLA 20 (Feb. 3, 1984)

Under 5 U.S.C. § 504 (1982) and 43 CFR 4.603, 48 FR 17596 (Apr. 25, 1983), an adversary adjudication is one required by statute to be conducted by the Secretary under 5 U.S.C. § 554 (1982). Because there is no statutory requirement that a mining claim contest be conducted under 5 U.S.C. § 554 (1982), mining claim contests are not proceedings covered by Equal Access to Justice Act.

Kaycee Bentonite Corp., 79 IBLA 182 (Feb. 28, 1984)
91 I.D. 138

The requirement that a mining claimant show that the mineral discovered on the claim is presently marketable at a profit simply means that, as a present fact, taking into consideration historic price and cost factors as well as the likelihood of their continuance or change, there is a reasonable likelihood of success that a paying mine can be developed.

Where a qualified expert, hired by mining claimants to evaluate contested claims, informs a Government mineral examiner that certain claims have no mineral values, the mineral examiner has no affirmative obligation to sample those claims. Testimony of the Government mineral examiner as to this conversation, unless impeached in cross-examination, is sufficient to establish a prima facie case that those claims are invalid.

Where the Government has acquired a lease of lands embraced in a mining claim, and the evidence establishes that, during the term of this lease, access to lower workings has become impossible, it is the responsibility of the Government to restore access to the conditions existing prior to lease in order to permit sampling of a mineral deposit when the claimant alleges that values existed at depths which are no longer accessible. Where the Government fails to do so, the claimant's assertions of values at depth must be presumed to be true.

United States v. Janet P. Copple et al., 81 IBLA 109 (May 30, 1984)

MINING CLAIMS--Continued

CONTESTS--Continued

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quality of the minerals insufficient to support a finding of discovery based on conventional methods of mining, a prima facie case is established. A contestee may overcome the prima facie case by probative evidence that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing the quality and quantity of minerals found by specialized mining methods.

United States v. Carl Dressenhaus et al., 81 IBLA 252 (June 8, 1984)

Where the United States contests a mining claim for lack of discovery of a valuable deposit, it has the burden of going forward to establish a prima facie case as to that charge; the mining claimant has the ultimate burden of overcoming, by a preponderance of the evidence, the Government's case. A prima facie case is established by the testimony of an expert witness who has examined the mineral deposits on the claim and the costs of mining those deposits, and concludes that the mineral deposits cannot be mined, removed, and marketed at a profit.

United States v. Albert O. Hansen et al., 81 IBLA 271 (June 8, 1984)

In a mining claim contest, the Government establishes a prima facie case of invalidity sufficient to shift the burden of proving otherwise to the claimant where the Government mineral examiner testifies that he has examined the claim and can find no evidence of mineralization or where he cannot examine the claim because it is covered with snow and ice.

United States v. Albert F. Parker et al., 82 IBLA 344 (Sept. 12, 1984) 91 I.D. 271

Where the Government contests a mining claim on a charge of lack of discovery, it is required to produce sufficient evidence to establish a prima facie case against the validity of the claim, and the burden of proof then shifts to the contestees to overcome this showing by a preponderance of the evidence. A prima facie case has been made when a Government mineral examiner testifies that he has examined the claim and found the evidence of mineralization insufficient to support a finding of discovery.

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by the contestees shows that there has not been a discovery, it may be used in reaching a decision that the claim is invalid because of a lack of discovery, regardless of any defects in the Government's prima facie case.

United States v. Oscar E. & Gary K. Anderson, 83 IBLA 170 (Oct. 15, 1984)

There is a clear distinction between "exploration" and "development" as these terms relate to discovery under the mining laws. Prior to the "discovery" of a valuable mineral deposit, mining activities such as mapping a deposit and drilling further to determine the

MINING CLAIMS--Continued

CONTESTS--Continued

extent and grade of the mineralization, constitute exploration work.

United States v. Harvin C. Ramsey et al., 84 IBLA 66 (Nov. 30, 1984)

DETERMINATION OF VALIDITY

When land is withdrawn from all forms of entry, location, and exploration subsequent to location of a mining claim, the validity of such claim cannot be recognized unless (1) it was perfected by a discovery at the time of withdrawal, and (2) it has been continuously supported by the same discovery to the present; that is, at the time of the hearing.

A decision in 1959 withdrawing charges of lack of discovery is not res judicata as to subsequent inquiry. The earlier decision merely established that claimants' possessory interest in claims had not been extinguished by Act of May 27, 1955, 69 Stat. 67, withdrawing lands from all forms of mining activity. Unless and until patent issues, title to the claims in controversy remains in the United States, and it may inquire into the extent and validity of rights claimed against it.

Where an alleged point of discovery is inaccessible by reason of caving, responsibility for restoring accessibility for purpose of mineral examination lies with contestees. In no case will the Government's mineral examiner be required to perform discovery work for the claimant, to explore beyond the claimant's exposed workings, or to rehabilitate discovery points for the claimant.

United States v. Richard G. Clemens et al., 45 IBLA 64 (Jan. 17, 1980)

Mining claims are properly declared null and void ab initio when they are located during a period when the lands are withdrawn from entry under the mining laws. However, under 30 U.S.C. § 38 (1976), if a person or predecessors-in-interest have held and worked the claims for a period of time equal to that prescribed by the state statute of limitations for adverse possession of mining claims, during which period the land was open to mineral location, that person is deemed to have made proper locations. Whether the locations are valid depends on whether discoveries have been made on each claim within the meaning of the mining laws.

Dolores Claes and Wesley E. Race, et al., 45 IBLA 232 (Feb. 6, 1980)

When land is withdrawn from location under the mining laws subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal to be valid.

If a mining claimant locates a group of claims, he must establish discovery for each claim that he seeks to validate.

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when such minerals were no longer subject to location, the claimant, as proponent of the rule, has the ultimate burden of proof as to validity of the claim. The Government, however, must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on each claim.

Land is mineral in character when known conditions engender the belief that the land contains mineral of

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

such quantity and quality as to render its extraction profitable and justify expenditures to that end. The charge that the lands embraced by a mining claim are not mineral in character can raise two discrete issues. First, it can challenge the validity of the entire claim. Alternatively, it can be applied to placer claims which are supported by a discovery, with the effect that the claimant must show that each 10 acres of the claim are mineral in character.

The charge of invalidity due to the presence of excess reserves admits that the mineral, gas mineral, exists within additional claims, but raises the contention that because of the quantity of mineral present in unchallenged claims owned by the mineral claimant, the mineral in the challenged claims would have no market and thus is essentially valueless.

A valid mining claim for lands previously withdrawn from location must be supported by discovery as of the date of withdrawal and a showing that marketability has continued since discovery and the minerals can presently be profitably extracted.

United States v. Clara Williamson and Lapine Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

The BLM may not summarily reject a mineral patent application on the face of the record for reasons related to disputed issues of fact without notice and an opportunity for hearing.

Big Horn Limestone Co., 46 IBLA 98 (Feb. 28, 1980)

If a mining claim is located after Oct. 21, 1976, and the locator fails to record the claims with the proper State Office of the Bureau of Land Management within 90 days afterward, the Department must conclusively deem the claims abandoned and declare them null and void. The fact that the claimant was not notified of the rejection of his filings soon enough to enable him to relocate the claims prior to a time when any intervening claims of right may have arisen does not permit the Department to withhold the consequences of invalidity mandated by the statute.

George D. Duffy, 46 IBLA 127 (Feb. 29, 1980)

Material which is principally valuable for use as fill, sub-base, ballast, riprap or barrow, for which ordinary earth or rock may be used, is not locatable under the mining laws and was not locatable prior to July 23, 1955.

United States v. Joseph B. and Aletha Henri, 46 IBLA 221 (Mar. 27, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), unless the required copy of the official record of location is filed in the proper BLM office within 90 days from the date of location, a mining claim, located after Oct. 21, 1976, is properly deemed abandoned and void.

A question as to the date of location of a mining claim is to be resolved according to state law, pursuant to 43 CFR 3833.0-5(b).

R. J. Holmes, 46 IBLA 316 (Apr. 4, 1980)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Jacqueline E. Nelson, 47 IBLA 12 (Apr. 10, 1980)

Clarence E. Fitzgerald, 55 IBLA 31 (May 28, 1981)

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

Sherman C. Smith, Michael Mitchell, Jr., 58 IBLA 188 (Sept. 28, 1981)

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

John S. Fleming, 65 IBLA 357 (July 20, 1982)

Joe Barron, Sr., et al., 65 IBLA 387 (July 23, 1982)

Robert J. Kipp, L. E. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

E. Joan Bryan, Michael Babatich, 76 IBLA 192 (Oct. 6, 1983)

John F. Malone, Vicki L. Malone, 84 IBLA 5 (Nov. 26, 1984)

A discovery exists where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. This "prudent man" test has been refined and complemented by the "marketability" test requiring a showing that the mineral in question can be presently extracted, removed, and marketed at a profit.

United States v. W. G. Nickel, Eva Rose Nickel, 47 IBLA 183 (May 7, 1980)

Where, in a hearing undertaken pursuant to a contest complaint alleging the invalidity of various mining claims, the contestee affirmatively states that there is no discovery on certain of the claims, the contestee will not be heard on appeal to assert that there was a discovery on those claims.

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

Where a claim's validity is dependent upon the extent of a mineralized deposit, and where no evidence has been submitted relating to the geologic factors upon which expert opinion evidence was premised, it is proper to dismiss the Government's contest, without prejudice.

United States v. George C. Hooker et al., 48 IBLA 22 (May 27, 1980)

In a Government contest proceeding to determine the validity of a mining claim, the claimant is always the proponent of the rule or order, always the one claiming to have earned the benefit of the mining laws through his compliance therewith. Regardless of whether the

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

issue on which the validity of the claim rests is discovery, mode of location, or performance of assessment work, the relative position and obligation of the contestant and the contestee remain the same.

Where the Government contests the validity of a mining claim for nonperformance of annual assessment work, there is nothing inherent or implied in that action which requires a conclusion that the claim is valid in all other respects, nor may the bringing of such an action be treated as tantamount to an admission by the Government that "property rights in the claim have been established by the making of a valid location."

United States v. Catlin Bohne et al., United States v. Exxon Corp. et al., United States v. Aldabelle Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 248

In order to establish the existence of a discovery on a lode mining claim, there must be found within the limits of the claim a vein or lode of rock in place, bearing mineral of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

Evidence in a mining claim contest showing only that further exploration might be warranted is insufficient to establish the discovery of a valuable mineral deposit.

Exhaustion of an ore deposit or a change in economic conditions which makes mining unprofitable may cause the loss of a previous discovery on a mining claim.

United States v. Ubehebe Lead Mines Co., 49 IBLA 1 (July 15, 1980)

The Board adopts a decision of an Administrative Law Judge holding mining claims null and void for lack of discovery of a valuable deposit of an uncommon variety of limestone, where nondiscovery is established by the totality of the evidence.

United States v. Joseph J. Segna et al., 49 IBLA 73 (July 22, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner.

George W. Cole, 49 IBLA 128 (July 28, 1980)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Where a mining claim located on land withdrawn at the time of location is declared void ab initio, such a location, and the decision declaring such a location void, do not affect the status of any location of the same land made prior to the withdrawal; nor can such a location, made by a party with an interest in the prior

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

location, reestablish or protect rights to the prior claim.

Jack C. Franks, 49 IBLA 162 (July 30, 1980)

The Board adopts a decision of an Administrative Law Judge holding a placer mining claim null and void for lack of discovery of a valuable mineral deposit within the limits of the claim, where nondiscovery clearly is established by the evidence of record.

United States v. Charles R. Ledford et al., 49 IBLA 353 (Aug. 29, 1980)

Sec. 3 of the Surface Resources Act of July 23, 1955, 69 Stat. 367, 368, 30 U.S.C. § 611 (1976), declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a claim for such material to be sustained as validated by a discovery, the prudent man-marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and reasonably continuously thereafter.

The prudent man test of discovery has been satisfied where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. The marketability refinement of the prudent man test of discovery requires that the mineral locator must show that by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, the mineral deposit is of such value that it can be mined, removed and disposed of at a profit.

United States v. Albert Martinez et al., 49 IBLA 360 (Aug. 29, 1980) 87 I.D. 386

Mineralization which only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit. Where it is shown that a contestee does not have a discovery at the time of the hearing, it is not necessary for contestant to establish invalidity by showing a lack of discovery at the date of an earlier withdrawal from mineral location.

United States v. Lee Western, Inc., Garth Black, 50 IBLA 95 (Sept. 17, 1980)

In a Government contest of a mining claim for which an application for patent has been filed, the Government assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that the claims are valid. A claimant establishes the validity of his claims by a preponderance of the evidence where the claimant's witness, testifying to the validity of the contested claims, is found to be more credible.

United States v. Cornelius E. Harris, 50 IBLA 110 (Sept. 24, 1980)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

The motivation of any Government agency in initiating a contest against mining claims is irrelevant. The fact that such contest challenges the validity of certain mining claims and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

United States v. R. H. MacLaughlin, Christine MacLaughlin, 50 IBLA 176 (Sept. 30, 1980)

Mining claims located on land at a time the land is withdrawn from appropriation under the United States mining laws properly are declared null and void ab initio.

Marvin Mack, Betty K. Mack, 51 IBLA 30 (Oct. 30, 1980)

The motivation of any Government agency in initiating a contest against mining claims is irrelevant. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

United States v. Leon E. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

Under Andrus v. Shell Oil Co., ___ U.S. ___, 64 L.Ed.2d 593 (1980), 48 U.S.L.W. 4603 (June 2, 1980), oil shale is a prospectively valuable mineral and therefore present marketability need not be shown to demonstrate discovery.

To demonstrate a sufficient discovery of oil shale under Freeman v. Summers, 52 L.D. 201 (1927), a mining claimant must show that mineral was disclosed on or before Feb. 25, 1920, in such situation and such formation that he can follow the deposit to depth with reasonable assurance that paying minerals will be found. An isolated bit of mineral, not connected with or leading to substantial prospective values, is not a sufficient discovery.

Under Freeman v. Summers, an exposure of the Parachute Creek member, even though of limited extent, can be geologically inferred to embrace sufficient quantity of high grade oil shale so as to constitute a valuable mineral deposit.

United States v. Cameron Catlin Bohne et al., United States v. Exxon Corp. et al., United States v. Aidabelle Brown et al. (Supp.), 51 IBLA 97 (Nov. 5, 1980)
87 I.D. 535

When the United States contests a mining claim it has by practice assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case.

The United States has established a prima facie case of the invalidity of a mining claim when a qualified Government mining examiner testifies that he has

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

examined the claim and found the mineral values insufficient to support the discovery of a valuable deposit.

United States v. W. S. Wood et al., 51 IBLA 301 (Dec. 18, 1980) 87 I.D. 628

The Secretary of the Interior is charged with seeing that valid mining claims are recognized, invalid ones eliminated, and the rights of the public preserved.

United States v. Ernest Hughes et al., 52 IBLA 83 (Jan. 9, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.4, filing recordation documents in a Bureau of Land Management District Office, rather than the proper State Office, the day of the expiration of the 90-day statutory deadline for recordation does not constitute timely recordation. In such circumstances, the BLM State Office properly rejected the recordation upon receipt of the documents after the 90-day deadline had passed.

Jose G. Gonzalez, 52 IBLA 270 (Feb. 6, 1981)

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quantity and quality as to render its extraction profitable and justify expenditures to that end. The charge that the land embraced by a mining claim is not mineral in character is a normal adjunct to a charge of no discovery.

United States v. Graham R. Corns, 53 IBLA 5 (Feb. 26, 1981)

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

Where the land on which the mining claim is located is subsequently withdrawn, the validity of the claim must be determined both as of the date of the withdrawal and the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though the requirement of discovery was satisfied at a later date.

Where, as to certain claims, the Administrative Law Judge finds that the contestee preponderates on the issue of discovery, it is proper to dismiss the Government's contest as to those claims.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

Where demand is limited to a very few consumers who supply their needs from their own sources so that the market is "closed" or "captive," a mining claimant must prove that willing consumers exist to whom the

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

claimant could have reasonably expected to sell at a profit. Failure to make that showing will result in a finding that the mineral deposit has no economic value and does not qualify as a discovery.

The holding of a mining claim as a reserve for future development without present marketability does not impart validity to the claim.

United States v. Jesse H. Taggart et al., 53 IBLA 353 (Mar. 30, 1981)

Where the Board is in agreement with the result reached in an Administrative Law Judge's decision in a mining claim contest and the Administrative Law Judge has correctly summarized the facts and properly evaluated the evidence in light of the applicable law, the Board may adopt the decision.

Evidence in a mining claim contest showing only that further exploration might be warranted is insufficient to establish the discovery of a valuable mineral deposit.

United States v. William J. Smith, Sr., et al., 54 IBLA 12 (Apr. 6, 1981)

The Surface Resources Act of July 23, 1955, declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a mining claim for such material located prior to the date of the Act to be sustained, the prudent man-marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and maintained reasonably continuously thereafter.

Under the "prudent man test" in order to qualify as "valuable mineral deposits" the disputed deposits must be of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. To qualify as "valuable mineral deposits" under the "marketability test" it must be shown that the minerals can be "extracted, removed and marketed at a profit."

In determining whether or not a mining claim is valid, the marketability test requires that there be, at the time of discovery, a market for the discovered material that is sufficiently profitable to attract the efforts of a person of ordinary prudence. In determining marketability, evidence of sales is only one factor to be considered in the application of the prudent man-marketability test.

United States v. Estella M. Kincanon et al., 54 IBLA 95 (Apr. 15, 1981)

Recordation of an unpatented mining claim does not render valid any claim which would not otherwise be valid under applicable law. Acceptance by BLM of recordation documents does not constitute a recognition of the validity of the claim and BLM is not estopped to declare the claim null and void where it was located on land withdrawn from mining location at the time of the location.

William C. Reiman, Richard H. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

No discovery of a valuable mineral deposit is demonstrated where the amounts of mineral yielded by a claim are so small that mining could not be expected to produce an economic return in any way commensurate with the labor and cost involved in extracting, transporting, and processing the mineralization.

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

United States v. Michael Kuretich et al., 54 IBLA 124 (Apr. 17, 1981)

Where, in a contest on an application for a mineral patent, it is determined that no discovery has been made on a claim, the necessary result of this determination is that the mining claim is invalid and must be so declared.

United States v. Ralph F. Frogley, Melvin S. Hilers, 54 IBLA 321 (Apr. 30, 1981)

There has been no discovery of a valuable mineral deposit within a lode mining claim unless there has been physically exposed within the limits of the claim a vein or lode-bearing mineral of such quality and quantity as to justify the expenditure of money for the development of a mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

In evaluating a mineral deposit within a mining claim geologic inference may be used where the deposit has been adequately physically exposed. However, geologic inference cannot be used as a substitute for evidence which sufficiently shows the existence of an ore body or bodies necessary to warrant a prudent man to develop a valuable mine; geologic inference may not be used to infer mineralization throughout a vein area where the evidence shows a few spots of high mineralization, but the mineralized areas are spotty and discontinuous.

United States v. Alice W. Bouse et al., 56 IBLA 36 (July 8, 1981)

While it may be appropriate in some cases to refer a matter for a hearing before an Administrative Law Judge to determine whether a mining claim, the location notice for which is dated after withdrawal of the land, is based on an amended location and thus survives withdrawal of the land for mining purposes, the allowance of a request for a hearing is within the discretion of the Board, and this discretion is likely to be employed to deny the request for hearing where the appellant has failed to provide the Board with any evidence to support the allegation that the amended location can be proved.

Under the "equal-footing" doctrine, a state has title to lands beneath its navigable rivers, and this

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

Board has no jurisdiction to determine the validity of such riverbed mining claims asserted under state law. However, where an unpatented mining claim is filed for record with the Bureau of Land Management pursuant to the Federal mining law and the public records disclose that all public lands embraced in the claim had been withdrawn from mining location before the claimant located the mining claim, the filing is properly rejected by BLM and the claim declared null and void ab initio.

Gary Willis, 56 IBLA 217 (July 22, 1981)

In order to meet the marketability test a mining claimant need not rely on his own successful marketing efforts to prove marketability of material from the claim. The test may be satisfied if successful marketing by others has sufficiently established that claimant's comparable material is itself marketable.

United States v. Mamie Vaughn et al., 56 IBLA 247 (July 24, 1981)

A mining claim located on land previously withdrawn from appropriation under the mining laws for an Indian reservation is null and void ab initio.

Steve Foster, Floor Brewster, 56 IBLA 282 (July 28, 1981)

Pursuant to the Departmental Manual 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to ANCSA and Secretary's Order No. 3029, as amended, lands selected by a Native corporation must be conveyed by the Bureau of Land Management notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

Oregon Portland Cement Co., 6 ANCAB 65 (Aug. 25, 1981) 88 I.D. 760

Albert Hanan et al; J. A. Jack and Sons, Inc.; and Hemphill Brothers, Inc., 6 ANCAB 111 (Sept. 29, 1981)

When land is withdrawn from location under the mining laws subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal to be valid.

In mining claim contests, the United States has assumed the burden of establishing a prima facie case that no discovery has been made on the mining claims by the contestee; the burden of proof then shifts to the contestee to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of each mining claim. Evidence which may justify further exploration is insufficient either to establish a discovery or to overcome a prima facie case of lack of discovery.

A prima facie case of lack of discovery of a valuable mineral deposit is established when a mineral examiner testifies for the United States that he examined each claim and could find no evidence showing the

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

discovery of a valuable mineral deposit. Mineral examiners are not required to perform discovery work for claimants or to explore beyond a claimant's workings.

United States v. D. J. Polashek, 57 IBLA 104 (Aug. 25, 1981)

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quantity and quality as to render its extraction profitable and justify expenditures to that end. The charge that the land embraced by a mining claim is not mineral in character is a normal adjunct to a charge of no discovery.

United States v. Verde Mining Co., Inc., et al., 57 IBLA 225 (Aug. 27, 1981)

In a Government contest of a mining claim for which an application for patent has been filed, the Government assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that the claim is valid.

United States v. C. J. Anderson, C. Joseph Anderson, 57 IBLA 256 (Aug. 28, 1981)

Where the Board is in agreement with the result reached in an Administrative Law Judge's decision in a mining claim contest and where the Administrative Law Judge has correctly summarized the facts and properly evaluated the evidence in light of the applicable law, the Board may adopt the decision.

United States v. Claude T. and Sarah E. Orme, 57 IBLA 373 (Sept. 8, 1981)

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

Absent a patent application, in a mining contest hearing where the Government's evidence of lack of discovery relates only to insufficient quality and quantity of mineralization and the mining claimant produces evidence sufficient to preponderate on those issues, the contest complaint is properly dismissed.

United States v. Ralph W. Lewis, 58 IBLA 282 (Oct. 8, 1981)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

The prudent man test cannot be satisfied by a claimant's assertion that he is willing to accept a meager income from the claim. Determination of the validity of a mining claim can rest only on objective criteria, not subjective considerations.

United States v. Scott Johnson, 59 IBLA 207 (Oct. 27, 1981)

The discovery of a valuable mineral deposit is essential to a valid mining claim. There must be exposed within the limits of a lode mining claim a vein or lode of rock in place bearing mineral of such quantity and quality that a prudent person would expend time and means with a reasonable prospect of success in developing a valuable mine.

The "marketability test" is a refinement of the "prudent man test" and requires that extraction, removal, and marketing costs be considered, as such factors directly bear on the question whether a person of ordinary prudence would be justified in the further expenditure of time and means to develop a paying mine.

Where a mining claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claims must be tested by the value of the mineral deposit as of the date of withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

Where the Government contests the validity of a mining claim, it bears only the burden of establishing a prima facie case of lack of discovery; the burden then shifts to the claimant to overcome the Government's showing by a preponderance of the evidence. A prima facie case is established when a Government mineral examiner testifies that he examined the claim and found insufficient evidence of the discovery of a valuable mineral deposit.

United States v. Leon Morse and Thomas Rokita, 59 IBLA 268 (Oct. 29, 1981)

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

When land is withdrawn from location under the mining law subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal.

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claim were withdrawn from mineral location, the claimant, as proponent of the rule, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a discovery has been made on the claim.

Where the Government has established a prima facie case of invalidity of a mining claim because of a lack of discovery and the claimant testifies that he has not produced from his claim but was only investigating the market, and offers no evidence of marketability beyond speculation of future profitability, the claimant has failed to carry his burden of showing that a discovery is present within the limits of his claim.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

An "amended location" of a mining claim is a subsequent location intended to further the rights acquired by the earlier locator while making some change in the location, such as changing the name of the claim or its owners of record (as where the original claim has been sold) or excluding excess acreage. In contrast to a "relocation," an "amended location" does relate back to the date of the filing of the original notice of location, so that the filer does receive the rights associated with the earlier location, including its superiority to subsequent withdrawals, to the extent that the amended location merely furthers rights acquired by a prior subsisting location, and does not include any new land. The owner of a claim, determined to be an amended location of a claim originally located on or before Oct. 21, 1976, is required to comply with the provisions of 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(a) insofar as these provisions deal with claims located on or before Oct. 21, 1976.

Gary S. Pospejak, 63 IBLA 326 (Apr. 27, 1982)

Mining claims are properly declared invalid where the mining claimants fail to show that the mineral deposits on the claims can be mined, removed, and marketed at a profit.

A prima facie case against the validity of a mining claim is established by the testimony of an expert witness who has examined the mineral deposit on the claims and the costs of mining that deposit, and who concludes that the mineral deposit cannot be mined, removed, and marketed at a profit.

A presumption is raised that mining claimants have failed to discover a valuable mineral deposit if there has been little or no development or operations on the claims over a long term. This presumption can be overcome by evidence that the mineral deposits can be mined, removed, and marketed at a profit.

A mining claimant has not made a discovery of a valuable mineral deposit where further exploration is necessary to determine whether there is a reasonable prospect of success in developing a valuable mine.

Even if a mining claimant establishes that a deposit of bentonite is the same quality as other deposits sold for pelletizing taconite, the claimant must establish that his deposit can be marketed for

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

this purpose rather than for a purpose for which common clay can also be used. The claimant must establish that the material on his claim, not some other claim, may be mined, removed, and marketed at a profit.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

Thus, pursuant to 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to ANCSA and Secretary's Order No. 3029, as amended, lands selected by a Native corporation must be conveyed by BLM notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D. 293

A mining claimant has not made a discovery of a valuable mineral deposit where further exploration is necessary to determine whether there is a reasonable prospect of success in developing a valuable mine.

Allegations by a mining claimant that the Government mineral examiner used improper sampling procedures will be given little weight where the claimant introduces no probative evidence establishing that the samples taken by the Government mineral examiner failed to accurately represent the mineral value of the land.

If, after the Government has established a prima facie case of nondiscovery, evidence presented by a mining claimant in a Government contest fails to show that there has been discovery of a valuable mineral deposit, the claim is properly declared invalid regardless of any defects in the Government's case.

The standard of discovery applied in a Government contest is far stricter than that applied in a contest between rival claimants. The mere presence of slight amounts of gold on a placer mining claim does not satisfy the requirement of a discovery of a valuable mineral deposit under the mining laws, even if the showings would justify further exploration.

United States v. Gary J. Murdock, 65 IBLA 239 (July 9, 1982)

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

Where contestees present uncontroverted evidence showing that, over a period of 4 years, they and a partner have extracted 26 or 27 ounces of gold from their

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

claim using a suction dredge, and where the Government has made no showing that suction dredge mining would be insufficient to support a valid claim, the contest is properly dismissed without prejudice to the initiation of another contest complaint.

United States v. Clifford L. & Mary A. Williams, 65 IBLA 346 (July 16, 1982)

Where there are factual questions relating to whether a refiling subsequent to a withdrawal was in the nature of an "amended location" or whether it constituted a "relocation," the matter will be referred for a hearing to allow the claimant the opportunity to show that the subsequent filing is an amended location, and that it is thus the successor in an unbroken chain of title dating back to the original location.

Fairfield Mining Co., Inc., 66 IBLA 115 (Aug. 10, 1982)

The Act of July 23, 1955, which excluded common varieties of minerals from location under the general mining laws after July 23, 1955, did not bar the subsequent location of mining claims for limestone suitable for use in the production of cement. However, in order for such claims to be valid, it is still necessary to show a reasonable prospect that the limestone can be mined, removed, and marketed at a profit in order to satisfy the discovery requirements of the general mining laws.

In order for mining claims located in the Mount McKinley National Park to be valid, a discovery of a valuable mineral deposit must be shown to have existed prior to Sept. 28, 1976, the date lands in this park were withdrawn from mineral entry by the Act of Sept. 28, 1976, as well as on the date of the administrative hearing.

Where the Government contests mining claims on a charge of lack of discovery of a valuable mineral deposit prior to the date when the lands embraced by the claims were withdrawn from mineral location, the claimant, as proponent of the claims' validity, has the ultimate burden of proof. The Government must initially present sufficient evidence to establish a prima facie case. The burden then shifts to the claimant to show by a preponderance of credible evidence that a qualifying discovery has been made on the claims.

Uncontradicted evidence of absence of production from mining claims over a period of 18 years prior to the withdrawal of the area from mineral location is sufficient, without more, to establish a prima facie case of invalidity of the claim. This evidence gives rise to a presumption that the mineral on the claims could not have been profitably marketed, but claimants may overcome this presumption by proving that they could have extracted and sold the mineral at a profit prior to the withdrawal date with convincing factual evidence of conditions actually prevailing at that time. Where the claimant presents only uncertain, speculative, and conjectural evidence suggesting that it could have sold the mineral at a profit if certain conditions had prevailed on the withdrawal date, it has not overcome the presumption of nonmarketability, and the claims are properly declared null and void.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

A discovery of a valuable mineral deposit does not exist where the available evidence is of such a character that a person of ordinary prudence would only be justified in conducting further exploration of the claims before making a commitment to develop a profitable mine. There must be physically exposed within the limits of the claim the vein or lode bearing mineral of such quality and such quantity as to justify the expenditure of money for development of a mine and the extraction of the mineral.

When the Government contests a mining claim on a charge of lack of discovery, it is required to produce sufficient evidence to establish a prima facie case against the validity of the claim, and the burden of proof then shifts to the contestees to overcome this showing by a preponderance of the evidence. A prima facie case has been made when a Government mineral examiner testifies that he has examined the claims and found the evidence of mineralization insufficient to support a finding of discovery.

To the extent that a mining claim is situated on land which was withdrawn from entry under the mining laws, the claimant must not only show that the discovery of a valuable mineral deposit presently exists but also that the claim was valid as of the date of the withdrawal. If the claim was not valid at the time of the withdrawal, it was not excepted from the effect of the withdrawal. The claim could not become valid thereafter by any additional exploratory work or through an increase of mineral value due to a change in the market.

Lack of development alone may support a finding of invalidity, unless there is direct evidence in the record that the material from the mine is marketable, i.e., that the mineral can be mined, removed, and marketed at a profit.

Even if the Government had failed to make a prima facie case against the validity of the claim, evidence presented by the contestee which shows that a discovery had not been made may support a determination of invalidity, because when a contestee introduces evidence, the determination must be made on the basis of the whole record, not just a part of it.

The validity of a mining claim cannot depend on the inference of richer ore or wider veins than those which are already physically exposed.

The value of a mineral deposit claimed under the mining laws must be determined by objective rather than subjective criteria. An otherwise invalid mine cannot be bootstrapped into validity because the material may be used in some other profitable business in which a claimant may be engaged.

United States v. Michael D. Beckley, Virginia R. Beckley, 66 IBLA 357 (Aug. 27, 1982)

A mining claim which is not supported by the discovery of a valuable mineral deposit at the time of withdrawal of the land is not excepted from the effect of the withdrawal. Neither the subsequent exposure of previously undiscovered deposits nor a subsequent increase in value of a mineral previously exposed can breathe life into such an invalid claim.

United States v. Robert E. Lara, 67 IBLA 48 (Sept. 9, 1982)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

The discovery of a valuable mineral deposit is essential to a valid claim. Under the "prudent man test," in order to qualify as a valuable mineral deposit, the discovered deposits must be of such a character that "a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine."

The "marketability test," a refinement of the "prudent man test," requires a claimant to show that a mineral can be extracted, removed, and marketed at a profit. The latter does not set forth a distinct standard, but rather is regarded as complementary to the "prudent man test." Factors such as the cost of extraction, removal, and marketing are relevant considerations to determine whether a person of ordinary prudence would be justified in the further expenditure of time and means to develop a paying mine.

A prima facie case of no discovery is established when a Government mineral examiner testifies that he examined the claim and found insufficient evidence of the discovery of a valuable mineral deposit.

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case of the evidence that a discovery has not been made and does not exist within the boundaries of the claim. The mining claimant has the ultimate burden to overcome the case by establishing the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

A Government mineral examiner in determining the validity of a mining claim need only examine the claim to verify whether the claimants have made a discovery. He is not required to perform discovery work, to explore or sample beyond the claimants' workings, or to rehabilitate alleged discovery cuts to establish the Government's prima facie case of no discovery. It is incumbent upon a mining claimant to keep discovery points available for inspection by a Government mineral examiner.

Discovery required by the mining laws means more than a showing only of isolated bits of mineral not connected with or leading to substantial values. To constitute a discovery on a lode claim there must be exposed within the limits of the claim a vein or lode of mineral-bearing rock in place, possessing in and of itself a present value for mining purposes.

Where a mining or millsite claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the mining claim was not supported at the date of the withdrawal by a discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

Any exposure of the rich oil shale formation known as the Parachute Creek member can be geologically inferred to embrace sufficient quantity of high grade oil shale and, therefore, to constitute a valuable mineral deposit on an oil shale placer mining claim. However, exposure of a surface deposit of lean oil shale is inadequate to demonstrate the existence of

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

rich deposits at depth in the absence of evidence showing that it is part of a deposit that can be followed to depth within the lateral limits of the claim.

The Department is not barred by the equitable doctrines of laches or waiver from declaring oil shale placer mining claims null and void, since, until patent issues, it has the power and duty to invalidate adverse interests in public lands as required by governing laws.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

Occasional assays of material from a mining claim showing high values of gold are not conclusive evidence of a qualifying discovery. Other factors must be considered, such as the extent of the mineral deposits, the number of samples assayed showing only a trace of mineral, and the nature of the samples yielding the high values. To be meaningful, the samples must be representative of the mineral deposit, not simply selective showings of the best mineralization.

A distinction is properly recognized between a "valuable mineral" and a "valuable mineral deposit." To establish the existence of a valuable mineral deposit on a lode claim there must be evidence of continuous mineralization along the course of a vein or lode and the mere showing of disconnected pods of mineral concentration, even of high values, does not suffice by itself.

United States v. Slater A. Judd, Jr., 68 IBLA 137 (Oct. 29, 1982)

Owners of unpatented mining claims located within tracts conveyed to an Alaska Native Corporation pursuant to the Alaska Native Claims Settlement Act held not to be entitled to a Departmental adjudication of the validity of their claims prior to conveyance.

Edward D. Moore, Van Moore, A. L. Anderson, 68 IBLA 174 (Nov. 4, 1982)

An Administrative Law Judge in a mining contest may properly preclude testimony at a hearing on remand on issues of geology, quality, quantity, and continuity of ore, and technology of a proposed beneficiation process where findings on such issues have been made by the Judge at an earlier hearing and approved by the Board on appeal, and no offer of proof is submitted to the Board that would compel an altered finding.

Where the Board remands a Government contest for additional evidence needed to ascertain whether a mineral patent applicant has made a discovery, the burden of establishing a prima facie case is properly assigned to the Government.

United States v. Pittsburgh Pacific Co., 68 IBLA 342 (Nov. 22, 1982) 89 I.D. 586

Sec. 22(c) of the Alaska Native Claims Settlement Act permits the conveyance of land that is subject to unpatented mining claims located prior to Aug. 31, 1971, to a regional Native corporation. The possessory interest of the mining claimant in the claims is protected, although limited, as a valid existing right by sec. 22(c) and 43 CFR 2650.3-2.

Theodore J. Albasy, 69 IBLA 160 (Dec. 13, 1982) 89 I.D. 619

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

The requirements for location of a mining claim on the public domain are governed by relevant statutes of the state wherein the claim is located to the extent they do not conflict with Federal mining law. Where recordation of a certificate of location within 90 days of location of a claim is a required element of a mining claim location under state law and the certificate of location is not recorded until 2 years after segregation of the land from appropriation under the mining law, the claim is properly declared null and void ab initio as having been located on the land at a time when it is not open to location, regardless of the fact that claimant may have conducted preliminary activities on the land prior to segregation.

Thomas Stoelting et al., 70 IBLA 231 (Jan. 25, 1983)

A discovery of a valuable mineral deposit does not exist where the available evidence is of such a character that a person of ordinary prudence would only be justified in conducting further exploration of the claims before making a commitment to develop a profitable mine. There must be physically exposed within the limits of the claim the vein or lode bearing mineral of such quality and such quantity as to justify the expenditure of money for development of a mine and the extraction of the mineral.

United States v. Richard S. Arbo, 70 IBLA 244 (Jan. 25, 1983)

Pursuant to the Departmental Manual, 601 DM 2, requirements in Secretary's Order No. 3029, as to adjudication of Federally created interests, do not apply to unpatented mining claims and the Bureau of Land Management is not required to adjudicate mining claims before conveyance. Pursuant to the ANCSA and Secretary's Order No. 3029, as amended, lands selected by a Native corporation must be conveyed by the Bureau of Land Management notwithstanding the existence of an unpatented mining claim within such lands which has not been adjudicated for validity under the general mining laws.

Doyon Ltd., 70 IBLA 302 (Jan. 28, 1983)

Absent a patent application, in a mining claim contest hearing there is no requirement that a mining claimant show that a contested claim is valid; rather, the claimant's burden is to preponderate on the issues raised by the evidence.

When the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of refuting the Government's case by a preponderance of the evidence.

United States v. Florence Cannon, 70 IBLA 328 (Feb. 1, 1983)

An amended location notice generally relates back to the date of the original location notice, that is, to the extent that an amended location merely furthers rights acquired by a prior subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights prior to the filing of the amended location and subsequent to the original location will not invalidate the claims.

Rhinehart Berg, 71 IBLA 131 (Mar. 9, 1983)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

A mining claim located on land segregated and closed to mineral entry by notation of an application for withdrawal in the official BLM records is null and void ab initio.

J. Pat Kaufman, 71 IBLA 183 (Mar. 10, 1983)

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case that a discovery has not been made. The mining claimant then has the ultimate burden to establish the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

United States v. Mary Helen Rosenberger, 71 IBLA 195 (Mar. 10, 1983)

Where evidence presented by claimants shows that no significant amounts of gold have been produced either from a lode claim or placer claim over a period of 13 years, a prima facie case of invalidity is created.

Mineral examiners are not required to blast or do any extensive discovery work beyond the workings exposed by the claimants. Where the examiner inspects these workings and takes samples at the points which appeared to have the most mineralization and, as near as possible, to be at a previously designated discovery point, and presents corroborated testimony and evidence showing the absence of any significant amount of gold in those samples, the Government has established a prima facie case of invalidity.

Where lode mining claimants fail to keep their alleged discovery point in a winze free of water, they assume the risk that the Government mineral examiner will not be able to verify the alleged discovery. In these circumstances, claimants may not object to any lack of representativeness of the samples.

Where placer mining claimants refuse to direct Government mineral examiners to representative placer material removed from their claim, and assert that their alleged discovery point is at the bottom of a deep hole in an active river beneath many large boulders, they admit that they have made no discovery on the claim. In these circumstances, the examiner is justified in taking no sample, since none could be representative, and his testimony about the claimants' admission is enough to establish a prima facie case of invalidity.

Evidence that a claim presents an interesting prospect with some potential for the eventual recovery of gold is insufficient to establish that the claim is not invalid.

The Department of the Interior, which retains the authority to enter freely and inspect mining claims, has redelegated this authority to the Forest Service as to lands within the boundaries of national forests. Agents of the Forest Service have the right to enter such claims at any time; no permission need be sought from the claimants.

United States v. Lyle O. Cook et al., 71 IBLA 268 (Mar. 22, 1983)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

Where a Government mineral examiner examines a mining claim and takes samples there, and, after considering the amount and value of mineralization and the costs of conducting a mining operation, testifies to the effect that, in his opinion, a prudent person would not be justified in expending his labor and means with a reasonable prospect of success in developing a valuable mine on the claim the Government has established a prima facie case of no discovery.

Where the record of a mining claim contest contains evidence suggesting, but not adequately proving, that the claimant has made a valuable discovery, and where, on appeal, the claimant submits an affidavit alleging facts that, if proven, would strongly support a finding that a discovery has been made, it is appropriate to reopen the record to give the claimant the opportunity to establish these facts.

United States v. Joseph Laczkovski & Kyle G. Jones (Mostney), 71 IBLA 364 (Mar. 28, 1983)

When the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge. A prima facie case has been made when a Government mineral examiner testifies that he has examined the exposed workings on a claim and has found the evidence of mineralization insufficient to support a finding of discovery of a valuable mineral deposit. The mining claimant has the ultimate burden of refuting the Government's case by a preponderance of evidence.

A discovery exists where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

Where the land on which a mining claim is located is subsequently withdrawn from entry under the mining laws, the validity of the claim must be determined as of the date of the withdrawal through the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not become valid thereafter even by the satisfaction of the discovery requirement at a later date.

Evidence presented by the claimant which shows that a discovery had not been made may support a determination of invalidity because when a claimant introduces evidence the determination must be made on the basis of the whole record, not just a part of it.

United States v. T. J. Jones, Robert E. Jones, 72 IBLA 52 (Apr. 12, 1983)

When the United States contests a mining claim it has by practice assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case.

The United States has established a prima facie case of the invalidity of a mining claim when a qualified Government mining engineer testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable deposit.

United States v. William Lavon Chappell et al., 72 IBLA 88 (Apr. 13, 1983)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

The validity of mining claims located for deposits of tar sand must be established under the general principles of the mining laws, including those related to abandonment and performance of annual assessment work. Congress provided no special recognition of tar sand as a valuable mineral deposit. If tar sand mining claims are found to be placer locations for lode deposits, the owner may apply for conversion to a combined hydrocarbon lease under 30 U.S.C. § 226(k) if the claims are otherwise valid.

Oren Development Co. v. Leo Calder (On Reconsideration), A-26604 (Apr. 25, 1983) 90 I.D. 223

The discovery of a valuable mineral deposit is essential to a valid claim. Under the "prudent man test," in order to qualify as a valuable mineral deposit, the discovered deposits must be of such a character that "a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine."

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case on the evidence that a discovery has not been made and does not exist within the boundaries of the claim. The mining claimant has the ultimate burden to overcome the case by establishing the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

United States v. Connor et al., 72 IBLA 254 (Apr. 27, 1983)

A mining claim located on land previously withdrawn from appropriation under the mining laws pursuant to the authority of sec. 17(d)(1) of the Alaska Native Claims Settlement Act is null and void ab initio.

Allan Kaiser, 72 IBLA 387 (May 5, 1983)

It is not the function of the Board of Land Appeals to make an inquiry into the motivation of any Government agency which has initiated a contest against mining claims. The fact that such contest challenges the validity of certain mining claims, and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

A previous determination by the Department of the Interior in a proceeding different from a mining claim contest that land was mineral in character is not evidence of a discovery of a valuable mineral deposit in a mining contest.

A discovery of a valuable mineral deposit does not exist where the available evidence is of such a character that a person of ordinary prudence would only be justified in conducting further exploration of the claims before making a commitment to develop a profitable mine. There must be physically exposed within the limits of the claim the vein or lode bearing

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

mineral of such quality and such quantity as to justify the expenditure of money for development of a mine and the extraction of the mineral.

The prudent man test cannot be satisfied by a claimant's assertion that he is willing to accept a meager income from the claim. Determination of the validity of a mining claim can rest only on objective criteria, not subjective considerations.

United States v. Lee H. Rice, Goldie E. Rice, 73 IBLA 128 (May 23, 1983)

A mining claim located on land segregated from all forms of appropriation, including locations under the mining law, by a small tract classification order is null and void ab initio.

Ernest L. Brevington, 73 IBLA 167 (May 24, 1983)

In order to become entitled to a mining claim, a claimant must establish the presence of a valuable mineral deposit. 30 U.S.C. § 22 (1976). A valuable mineral deposit exists where the mineral found is of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Castle v. Womble, 19 L.D. 455 (1894). This is the "prudent man test," approved by the U.S. Supreme Court in Chrisman v. Miller, 197 U.S. 313 (1905). It has been refined to require a showing of marketability, i.e., that the mineral can be presently extracted, removed, and marketed at a profit. United States v. Coleman, 390 U.S. 599 (1968). Where a claim is located on land subsequently withdrawn from appropriation under the mining laws, the claim must be supported by a discovery at the time of withdrawal, as well as the date of the hearing into its validity. Cameron v. United States, 252 U.S. 450 (1920).

When the Government contests the validity of a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case. If a prima facie case is presented, the mining claimant then has the burden of overcoming this showing by a preponderance of the evidence.

United States v. Eva M. Pool et al., 74 IBLA 37 (June 27, 1983)

The accomplishment of the minimum of the $500 worth of improvements on a mining claim, as required by 30 U.S.C. § 29 (1976), neither terminates nor substantially satisfies the requirement of 30 U.S.C. § 28 (1976) that $100 worth of labor be performed on the claim each year until patent issues. Nor is there substantial compliance with sec. 28 where for considerably more than half of the total number of years in which the performance of annual labor was required, none was done.

A discovery of oil shale can be based upon a surface exposure or outcrop of even "lean" kerogen content provided that, based upon geologic inference, such exposure reasonably may be followed within the limits of the claim to rich deposits at depth. Unless part of the Parachute Creek member of the Green River Formation, however, rock which will not yield 3 gallons of oil per ton cannot be regarded as "oil shale," as distinguished from other common forms of oil-bearing rock, and surface exposures of such material will not constitute a discovery of oil shale.

United States v. Energy Resources Technology Land, Inc., et al., 74 IBLA 117 (June 30, 1983)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

Where protests to a mineral patent application are denied and an appeal is taken, protestants have the burden of affirmatively establishing that patent should not issue and that BLM's decision was in error.

The quantum of evidence necessary to prove a discovery does not change because the land on which the claim is located may have other values. Bad faith in locating a claim, however, where proved, requires invalidation of a claim even where it is supported by a discovery.

In re Pacific Coast Molybdenum Co., 75 IBLA 16 (Aug. 5, 1983) 90 I.D. 352

The Government has established a prima facie case of the lack of discovery of a valuable mineral deposit on mining claims where a Government mineral examiner testifies that, based on assays of his samples taken from the claims, the mineral deposit is not of sufficient quality to justify expenditure of capital with a reasonable prospect of success in developing a valuable producing mine. Such an opinion is sufficient to establish a prima facie case where it is based in part upon comparison with the minimum acceptable grade of ore at an operating mine and in part upon an analysis of prior reports of exploration of the claims.

A mining claimant has not preponderated on the question of discovery of a valuable mineral deposit where the evidence establishes that further exploratory drilling is required to ascertain the extent of the only mineralized zone with significant potential prior to the investment of capital with a reasonable prospect of success in developing a valuable mine.

United States v. James A. Walker, 77 IBLA 90 (Nov. 14, 1983)

When land is withdrawn from location under the mining law subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal.

United States v. Jack R. & Ruth V. Niece, 77 IBLA 205 (Nov. 22, 1983)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

Deposits of common varieties of stone were withdrawn from location by sec. 3 of the Act of July 23, 1955, 30 U.S.C. § 611 (1976). The locator of a claim for stone after that date must establish that the mineral deposit has a unique property giving it a

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

distinct and special value reflected in a higher market price or reduced cost of production.

Where the evidence in a private contest of that part of a placer mining claim embraced in land patented under the Stock-Raising Homestead Act establishes that the 10-acre subdivisions therein are nonmineral in character, the claim is properly declared null and void as to such land.

Joanne M. Nannini v. Western Hills Mining Ass'n et al., 78 IBLA 155 (Dec. 29, 1983)

When the Government contests the validity of a mining claim on the basis of lack of discovery, it bears only the burden of going forward with sufficient evidence to establish a prima facie case. Once a prima facie case is presented, the claimant must present evidence which is sufficient to overcome the Government's showing on those issues raised.

Where the Government fails to present sufficient evidence to establish a prima facie case, the claimant need not present evidence in order to prevail. If a claimant, however, does present evidence, the determination of the validity of a claim must be made on the basis of the record as a whole, and not just a part of the record. A claimant need not affirmatively establish the existence of a discovery where there has been no prima facie case. The only risk that the claimant runs in such a situation is the risk that the evidence as a whole will establish by a preponderance of the evidence that an element of discovery is NOT present.

United States v. Eva B. Pool et al., 78 IBLA 215 (Jan. 6, 1984)

A placer mining claim located for gold on land previously withdrawn from appropriation under the mining laws relating to metalliferous minerals by Public Land Order No. 4522, dated Sept. 13, 1968, is null and void ab initio.

Charles B. Phillips, 78 IBLA 320 (Jan. 24, 1984)

A mining claim located on land segregated and closed to mineral entry by notation of an application for withdrawal in the official BLM records is null and void ab initio.

Lamar & Christine Burnett, 78 IBLA 349 (Jan. 25, 1984)

Lamar Burnett et ux., 84 IBLA 166 (Dec. 19, 1984)

In a mining contest initiated by the United States, there is no requirement that the contestee offer evidence concerning matters not placed in issue by the United States. Where the Administrative Law Judge incorrectly states a contrary rule, but in practice applies the correct standard, his decision is affirmed.

In a mining contest initiated by the United States where the Government mineral examiners testify they have examined the mineral claims at issue and found no evidence of mineralization to support a discovery, a prima facie case for the Government is established. This showing is not overcome by evidence of ore sample values offered by contestee to show mineralization, where contestee fails to show from which, of 10 claims at issue, the samples were taken.

Cactus Mines Ltd., 79 IBLA 20 (Feb. 3, 1984)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

The validity of a mining claim on the issue of discovery of a valuable mineral deposit is not legally cognizable in a bond protest proceeding initiated by the surface owner under a Stock-Raising Homestead Act patent. Such a validity determination requires initiation of a contest with notice to the claimant and an opportunity for a hearing.

Robert R. Michael et ux., 79 IBLA 255 (Mar. 5, 1984)

The requirement that a mining claimant show that the mineral discovered on the claim is presently marketable at a profit simply means that, as a present fact, taking into consideration historic price and cost factors as well as the likelihood of their continuance or change, there is a reasonable likelihood of success that a paying mine can be developed.

Where the Government has acquired a lease of lands embraced in a mining claim, and the evidence establishes that, during the term of this lease, access to lower workings has become impossible, it is the responsibility of the Government to restore access to the conditions existing prior to lease in order to permit sampling of a mineral deposit when the claimant alleges that values existed at depths which are no longer accessible. Where the Government fails to do so, the claimant's assertions of values at depth must be presumed to be true.

United States v. Janet R. Copple et al., 81 IBLA 109 (May 30, 1984)

Where a mineral claimant has located a group of claims, he must show a discovery on each claim. Geologic inference alone may not be used to show the existence of a mineral deposit; there must be an exposure of minerals of value.

United States v. Carl Dresselhaus et al., 81 IBLA 252 (June 8, 1984)

Where the United States contests a mining claim for lack of discovery of a valuable deposit, it has the burden of going forward to establish a prima facie case as to that charge; the mining claimant has the ultimate burden of overcoming, by a preponderance of the evidence, the Government's case. A prima facie case is established by the testimony of an expert witness who has examined the mineral deposits on the claim and the costs of mining those deposits, and concludes that the mineral deposits cannot be mined, removed, and marketed at a profit.

United States v. Albert O. Hannan et al., 81 IBLA 271 (June 8, 1984)

In a mining claim contest, the Government establishes a prima facie case of invalidity sufficient to shift the burden of proving otherwise to the claimant where the Government mineral examiner testifies that he has examined the claim and can find no evidence of mineralization or where he cannot examine the claim because it is covered with snow and ice.

Assay reports have limited probative value concerning the existence of a valuable mineral deposit on a mining claim when they are not supported by sufficient evidence to show how and where the samples were taken.

In a placer mining claim contest, a claimant overcomes the Government's prima facie case of invalidity based on the absence of significant visible gold in pan samples where he submits evidence of samples with gold

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

values above the cutoff identified by the Government mineral examiner for a successful placer mining operation.

In a mining claim contest, where a mineral claimant presents more persuasive evidence than the Government with respect to the location of a mining claim on the ground by testimony with respect to the location of certain monuments placed on the ground by the locators of the claim such that the claim encompasses significant mineralization, he overcomes the Government's prima facie case of invalidity based on the absence of mineralization.

United States v. Albert P. Parker et al., 82 IBLA 344 (Sept. 12, 1984) 91 I.D. 271

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

Where the Government contests a mining claim on a charge of lack of discovery, it is required to produce sufficient evidence to establish a prima facie case against the validity of the claim, and the burden of proof then shifts to the contestees to overcome this showing by a preponderance of the evidence. A prima facie case has been made when a Government mineral examiner testifies that he has examined the claim and found the evidence of mineralization insufficient to support a finding of discovery.

United States v. Oscar R. & Gary R. Anderson, 83 IBLA 170 (Oct. 15, 1984)

There is a clear distinction between "exploration" and "development" as these terms relate to discovery under the mining laws. Prior to the "discovery" of a valuable mineral deposit, mining activities such as mapping a deposit and drilling further to determine the extent and grade of the mineralization, constitute exploration work.

United States v. Marvin C. Hanger et al., 84 IBLA 66 (Nov. 30, 1984)

DISCOVERY

General

Where previous BLM mineral reports recited only that a valuable mineral had been discovered, but failed to include a mineral examiner's assessment of the quantity and quality of the mineral, marketability, or costs of extraction and transportation, the decision below holding the claims invalid because of lack of discovery was correct. "Valuable mineral" is not synonymous with "valuable mineral deposit." A valuable mineral deposit is an occurrence of mineralization of such quantity and quality that a person of ordinary prudence would be justified in the expenditure of time and money in the development of a mine and the extraction of the mineral.

United States v. Richard G. Clemens et al., 45 IBLA 64 (Jan. 17, 1980)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

A discovery of valuable minerals under Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

When land is withdrawn from location under the mining laws subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal to be valid.

If a mining claimant locates a group of claims, he must establish discovery for each claim that he seeks to validate.

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quantity and quality as to render its extraction profitable and justify expenditures to that end. The charge that the lands embraced by a mining claim are not mineral in character can raise two discrete issues. First, it can challenge the validity of the entire claim. Alternatively, it can be applied to placer claims which are supported by a discovery, with the effect that the claimant must show that each 10 acres of the claim are mineral in character.

United States v. Clara Williamson and Lapine Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

Where, in the hearing of a mining claim contest in which the presence of a mineral deposit within the limits of a claim is at issue and the claim is accessible, it is established that the Government mineral examiner made no professional examination of certain of the contested claims, the testimony of the Government mineral examiner, without more, is insufficient to establish a prima facie case of invalidity.

Uncontradicted evidence of nonproduction of a mining claim, which has continued over a period of years, is sufficient, without more, to establish a prima facie case of invalidity of the mining claim.

United States v. Gerald Hess, 46 IBLA 1 (Feb. 13, 1980)

A discovery of valuable mineral exists where the claim contains mineralization of sufficient quality and quantity to justify further expenditure of labor and means, with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of lack of discovery, the Government has the burden of proving a prima facie case; the burden then shifts to the mining claimant to prove by a preponderance of the evidence that discovery exists.

Minute amounts of mineralization may justify further exploration without establishing discovery.

Discovery of gold sufficient to validate a mining claim must be made on the claim itself, despite gold discovery on land nearby which might induce a reasonable prospector to continue searching for a valuable mineral deposit on the claim.

United States v. Ludwig G. Rosenkranz, 46 IBLA 109 (Feb. 29, 1980)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

A discovery of a valuable mineral deposit has been made where locatable minerals have been found within the limits of a claim and the evidence is such that a person of ordinary prudence would be justified in the further expenditure of his labor and means in a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of no discovery, it has by practice assumed the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

The sale of decorative building stone from the surface of a lode mining claim cannot support a claimant's contention that a valuable mineral discovery has been made on such lode claim, decorative stone being locatable only under the provisions of the placer mining laws, 30 U.S.C. § 161 (1976), and only where such stone is shown to be an "uncommon variety" within the meaning of 30 U.S.C. § 611 (1976). A lode mining claim will not support a finding that decorating stone has been discovered, since that deposit was locatable only under the placer mining laws.

The purpose of 30 U.S.C. § 38 (1976) whereby a person or association may establish a right to patent lands which said person or association has held and worked for a period equal to the statute of limitations is to obviate proving formal compliance with requirements for locating a claim, but it does not dispense with proof of discovery.

United States v. Joseph B. and Aletha Henri, 46 IBLA 221 (Mar. 27, 1980)

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for claimants nor to explore beyond a claimant's workings.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made.

It is a cardinal principle of mining law that mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineral might be found to justify mining development does not constitute a valuable mineral deposit.

Discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. Discovery of gold and other minerals sufficient to support a mining claim must be made on the claim itself, notwithstanding discovery of gold on nearby land which might persuade a reasonable prospector to continue his search for a valuable mineral deposit on the claim.

United States v. James S. Sette, 46 IBLA 335 (Apr. 4, 1980)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit. A valuable mineral deposit has not been found simply because the facts might warrant further search for such a deposit.

When the Government contests mining claims on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case. When it has done so, the burden shifts to the claimants to show, by a preponderance of the evidence, that a discovery of a valuable mineral deposit has been made and still exists within the limits of each claim under contest.

United States v. Roy Peterson & Charles R. Sweet, 47 IBLA 92 (Apr. 23, 1980)

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made. Government mineral examiners are not required to perform discovery work for claimants nor to explore beyond a claimant's workings.

To constitute a discovery on a lode mining claim there must be physically exposed within the limits of the claim a lode or vein bearing mineral of such quality and in such quantity as to warrant a man of ordinary prudence in the expenditure of his labor and means, with a reasonable prospect of success, in attempting to develop a valuable mine; it is not enough to show that the exposed mineralization is sufficient to warrant holding a claim with a reasonable hope that at some time in the future the land embraced therein may become valuable for mining.

While geologic inference based upon knowledge of the degree of mineralization prevalent within the surrounding area cannot substitute for the actual exposure of a vein or lode within a claim, it may be relied upon as an aid to calculate the extent and potential value of the mineral deposit, once a vein or lode bearing minable material has been exposed. To establish the existence of a valuable mineral deposit on a lode claim, there must be evidence of continuous mineralization along the course of the vein or lode; the mere showing of disconnected pods of mineral concentration, even of high values, does not satisfy the test.

United States v. Robert Chambers, 47 IBLA 102 (Apr. 23, 1980)

Material which is principally valuable for use as fill, sub-base, ballast, riprap, or barrow, for which ordinary earth or rock may be used, is not locatable under the mining laws and was not locatable prior to July 23, 1955.

United States v. W. G. Nickol, Eva Rose Nickol, 47 IBLA 183 (May 7, 1980)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

Where, in a hearing undertaken pursuant to a contest complaint alleging the invalidity of various mining claims, the contestee affirmatively states that there is no discovery on certain of the claims, the contestee will not be heard on appeal to assert that there was a discovery on those claims.

Where a claim's validity is dependent upon the extent of a mineralized deposit, and where no evidence has been submitted relating to the geologic factors upon which expert opinion evidence was premised, it is proper to dismiss the Government's contest, without prejudice.

United States v. George C. Hooker et al., 48 IBLA 22 (May 27, 1980)

In order to establish the existence of a discovery on a lode mining claim, there must be found within the limits of the claim a vein or lode of rock in place, bearing mineral of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

Evidence in a mining claim contest showing only that further exploration might be warranted is insufficient to establish the discovery of a valuable mineral deposit.

Exhaustion of an ore deposit or a change in economic conditions which makes mining unprofitable may cause the loss of a previous discovery on a mining claim.

When land is withdrawn from the operation of the mining laws subject to valid existing rights, as was the Death Valley National Monument on Sept. 28, 1976, the validity of a mining claim located prior to the withdrawal must be established as of the date of the withdrawal as well as of the date of the hearing.

United States v. Phelps Dodge Lead Mines Co., 49 IBLA 1 (July 15, 1980)

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

United States v. Joseph J. Segna et al., 49 IBLA 73 (July 22, 1980)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a prudent person would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

United States v. Charles M. Ledford et al., 49 IBLA 353 (Aug. 29, 1980)

United States v. Ernest L. and Evelyn B. Brunskill, 51 IBLA 199 (Dec. 5, 1980)

United States v. Paul Watkins, 51 IBLA 255 (Dec. 15, 1980)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

The prudent man test of discovery has been satisfied where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. The marketability refinement of the prudent man test of discovery requires that the mineral locator must show that by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, the mineral deposit is of such value that it can be mined, removed and disposed of at a profit.

United States v. Albert Martinez et al., 49 IBLA 360 (Aug. 29, 1980) 87 I.D. 386

Mineralization which only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit. Where it is shown that a contestee does not have a discovery at the time of the hearing, it is not necessary for contestant to establish invalidity by showing a lack of discovery at the date of an earlier withdrawal from mineral location.

United States v. Lee Western, Inc., Garth Black, 50 IBLA 95 (Sept. 17, 1980)

In determining whether a claimant has made a discovery, the present costs of mining, removing, and marketing the minerals involved are properly considered.

United States v. Cornelius E. Mannix, 50 IBLA 110 (Sept. 24, 1980)

Discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. Discovery of gold and other minerals sufficient to support a mining claim must be made on the claim itself, notwithstanding discovery of gold on nearby land which might persuade a reasonable prospector to continue his search for a valuable mineral deposit on the claim.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

United States v. R. W. MacLaughlin, Christine MacLaughlin, 50 IBLA 176 (Sept. 30, 1980)

Discovery has been achieved when one finds a mineral deposit of such quantity and quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

When the Government contests mining claims on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

facie case. When it has done so, the burden shifts to the claimants to show, by a preponderance of the evidence, that a discovery of a valuable mineral deposit has been made and still exists within the limits of each claim under contest.

The prudent man test is an objective not a subjective standard. The value that an ordinary person would expect to receive for his labor must be taken into account, while the willingness of a claimant to subsist on unusually low remuneration must be disregarded.

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization may be found to justify mining or development does not constitute a valuable mineral deposit. A valuable mineral deposit has not been found simply because the facts might warrant further search for such a deposit.

In evaluating a mineral deposit geologic inference may be used where the deposit has been adequately physically exposed. However, it cannot be used as a substitute for evidence sufficiently showing the existence of an ore body or bodies necessary to warrant a prudent man to develop a valuable mine.

United States v. Leon R. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

To demonstrate a sufficient discovery of oil shale under Freeman v. Sawyers, 52 L.D. 201 (1927), a mining claimant must show that mineral was disclosed on or before Feb. 25, 1920, in such situation and such formation that he can follow the deposit to depth with reasonable assurance that paying minerals will be found. An isolated bit of mineral, not connected with or leading to substantial prospective values, is not a sufficient discovery.

United States v. Cameron Catlin Bohne et al., United States v. Exxon Corp. et al., United States v. Aigabelle Brown et al. (Supp.), 51 IBLA 97 (Nov. 5, 1980) 87 I.D. 535

The discovery of a "valuable mineral deposit" has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

Evidence which will not justify development of a claim but may justify further exploration is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

Where land is withdrawn from the operation of the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. In addition, even though there may have been a proper discovery at the time of a withdrawal or at some other time in the past, a mining claim cannot be considered valid unless the claim is at present supported by a sufficient discovery. The loss of the discovery, either through exhaustion of the minerals, changes in economic conditions, or other circumstances, results in the loss of the location.

United States v. W. S. Wood et al., 51 IBLA 301 (Dec. 18, 1980) 87 I.D. 628

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

Where qualified mineral examiners testify that they examined and took samples from areas exposed by a mining claimant while working his claims, and where this examination and the assay of those samples reveal that mineralization in those areas was so slight as to be worth only a fraction of the costs of extracting it and was therefore insufficient to warrant exploitation, a prima facie case of invalidity of the claim is established. Where the claimant testifies that his claims were only a good prospect which would justify intensive exploration, this prima facie showing is not rebutted, and the claims are properly declared invalid.

United States v. Estate of Alfred B. Hayes et al., 52 IBLA 164 (Jan. 21, 1981)

Where, on appeal, a mining claimant submits arguments similar or identical to those presented before the Administrative Law Judge after the hearing had been concluded and the decision of the Administrative Law Judge correctly summarizes the facts and applies the applicable law, the decision of the Administrative Law Judge will be adopted by the Board.

United States v. Virgil Prowell and Melinda Prowell, 52 IBLA 256 (Feb. 6, 1981)

When the Government contests a mining claim on a charge of no discovery of a valuable mineral deposit it assumes the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit, i.e., a valuable mineral deposit has not been found simply because the facts might warrant a search for such a deposit.

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quantity and quality as to render its extraction profitable and justify expenditures to that end. The charge that the land embraced by a mining claim is not mineral in character is a normal adjunct to a charge of no discovery.

United States v. Graham R. Cobbs, 53 IBLA 5 (Feb. 26, 1981)

A discovery of a valuable mineral deposit exists under the Federal mining laws where the minerals found are of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

Where the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence. Where the opinion of contestee's expert that discovery of gold was made is not supported by clear evidence that the claim holds sufficient quantities of gold to make mining profitable, the Board will affirm an Administrative Law Judge's finding of invalidity.

United States v. John McDowell, 53 IBLA 270 (Mar. 24, 1981)

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

The "prudent man test" is met only where it appears that the mineralization on the claim has been physically exposed and is valuable enough to yield a fair market value in excess of the costs of extraction, removal, and sale. Evidence of mineralization which would justify further exploration, but not development, does not suffice to meet the discovery requirement.

Where the land on which the mining claim is located is subsequently withdrawn, the validity of the claim must be determined both as of the date of the withdrawal and the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though the requirement of discovery was satisfied at a later date.

Where, as to certain claims, the Administrative Law Judge finds that the contestee preponderates on the issue of discovery, it is proper to dismiss the Government's contest as to those claims.

The apex law gives the owner of a properly located claim on a vein the right to an indefinite extension on the dip of the vein beyond the vertical planes through the side lines of his claim. For a claim to be properly located there must be a discovery within the limits of the claim. The apex law cannot be utilized to establish the validity of another claim absent an independent showing of a valid discovery.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a prudent person would be justified in the further expenditure of his labor and

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

means, with a reasonable prospect of success in developing a valuable mine.

United States v. Earl F. Fox, 53 IBLA 333 (Mar. 26, 1981)

United States v. J. L. Moss and Mary F. Moss, 54 IBLA 355 (May 12, 1981)

Where the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of establishing a discovery of a valuable mineral deposit by a preponderance of the evidence.

United States v. Jesse M. Taggart et al., 53 IBLA 353 (Mar. 30, 1981)

United States v. Morgan Montgomery et al., 75 IBLA 358 (Aug. 31, 1983)

Where the Board is in agreement with the result reached in an Administrative Law Judge's decision in a mining claim contest and the Administrative Law Judge has correctly summarized the facts and properly evaluated the evidence in light of the applicable law, the Board may adopt the decision.

Government mineral examiners are not required to perform discovery work for mining claimants or to explore beyond a claimant's discovery points. It is incumbent on a mining claimant to keep discovery points available for inspection by a Government mineral examiner.

Evidence in a mining claim contest showing only that further exploration might be warranted is insufficient to establish the discovery of a valuable mineral deposit.

Assay reports have limited probative value concerning the existence of a valuable mineral deposit on a mining claim when they are not supported by sufficient evidence to show how and where the samples were taken and how the samples were treated.

United States v. William J. Smith, Sr., et al., 54 IBLA 12 (Apr. 6, 1981)

No discovery of a valuable mineral deposit is demonstrated where the amounts of mineral yielded by a claim are so small that mining could not be expected to produce an economic return in any way commensurate with the labor and cost involved in extracting, transporting, and processing the mineralization.

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

A Government mineral examiner is under no duty to undertake discovery work or to explore beyond the current workings of a claim.

Evidence of mineralization which may justify further exploration, but not development of actual mining

MINING CLAIMS--Continued

DISCOVERY--Continued

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operations, is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

The prudent man rule, rather than the comparative value rule, is the proper test for determining the existnece of a discovery of a valuable mineral deposit under the general mining law.

United States v. Michael Kuretich et al., 54 IBLA 124 (Apr. 17, 1981)

Where the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of establishing a discovery of a valuable mineral deposit by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of a discovery, the Government will have established a prima facie case of the lack of a discovery.

United States v. The Dredge Corp., 54 IBLA 281 (Apr. 28, 1981)

Where, in a contest on an application for a mineral patent, it is determined that no discovery has been made on a claim, the necessary result of this determination is that the mining claim is invalid and must be so declared.

United States v. Ralph F. Progley, Melvin S. Filers, 54 IBLA 321 (Apr. 30, 1981)

There has been no discovery of a valuable mineral deposit within a lode mining claim unless there has been physically exposed within the limits of the claim a vein or lode-bearing mineral of such quality and quantity as to justify the expenditure of money for the development of a mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

Where the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of establishing a discovery of a valuable mineral deposit by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of a discovery, the Government will have established a prima facie case of the lack of a discovery.

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

In evaluating a mineral deposit within a mining claim geologic inference may be used where the deposit has been adequately physically exposed. However, geologic inference cannot be used as a substitute for evidence which sufficiently shows the existence of an

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

ore body or bodies necessary to warrant a prudent man to develop a valuable mine; geologic inference may not be used to infer mineralization throughout a vein area where the evidence shows a few spots of high mineralization, but the mineralized areas are spotty and discontinuous.

United States v. Alice W. Bouse et al., 56 IBLA 36 (July 8, 1981)

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

A discovery of valuable mineral exists where the claim contains mineralization of sufficient quality and quantity to justify a prudent man in the further expenditure of labor and means, with a reasonable prospect of success in developing a valuable mine.

United States v. John McDowell and Miguel Nunez, 56 IBLA 100 (July 15, 1981)

A discovery of valuable minerals under Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

United States v. Blanch P. Day, Wilma Jean Kendall, 56 IBLA 300 (July 29, 1981)

When land is withdrawn from location under the mining laws subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal to be valid.

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a prudent person would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

Evidence of mineralization which may justify further exploration, but not development of actual mining operations, is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

United States v. D. J. Polashek, 57 IBLA 104 (Aug. 25, 1981)

MINING CLAIMS--Continued

DISCOVERY--Continued

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A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a prudent person would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral value insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quantity and quality as to render its extraction profitable and justify expenditures to that end. The charge that the land embraced by a mining claim is not mineral in character is a normal adjunct to a charge of no discovery.

United States v. Verde Mining Co., Inc., et al., 57 IBLA 225 (Aug. 27, 1981)

A discovery of a valuable mineral deposit exists under the Federal mining laws where the minerals found are of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit, i.e., a valuable mineral deposit has not been found simply because the facts might warrant a search for such a deposit.

United States v. C. J. Anderson, C. Joseph Anderson, 57 IBLA 256 (Aug. 28, 1981)

Where the Board is in agreement with the result reached in an Administrative Law Judge's decision in a mining claim contest and where the Administrative Law Judge has correctly summarized the facts and properly evaluated the evidence in light of the applicable law, the Board may adopt the decision.

United States v. Claude T. and Sarah E. Orme, 57 IBLA 373 (Sept. 8, 1981)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a prudent person would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit. A valuable mineral deposit has not been found simply because the facts might warrant further search for such a deposit.

United States v. Miguel Nunez, 59 IBLA 134 (Oct. 26, 1981)

The prudent man test cannot be satisfied by a claimant's assertion that he is willing to accept a meager income from the claim. Determination of the validity of a mining claim can rest only on objective criteria, not subjective considerations.

United States v. Scott Johnson, 59 IBLA 207 (Oct. 27, 1981)

The discovery of a valuable mineral deposit is essential to a valid mining claim. There must be exposed within the limits of a lode mining claim a vein or lode of rock in place bearing mineral of such quantity and quality that a prudent person would expend time and means with a reasonable prospect of success in developing a valuable mine.

The "marketability test" is a refinement of the "prudent man test" and requires that extraction, removal, and marketing costs be considered, as such factors directly bear on the question whether a person of ordinary prudence would be justified in the further expenditure of time and means to develop a paying mine.

Where a mining claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claims must be tested by the value of the mineral deposit as of the date of withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Leon Boyce and Thomas Rokita, 59 IBLA 268 (Oct. 29, 1981)

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

The "prudent man test" is met generally where it appears that mineralization on the claim has been physically exposed and evidence shows the mineral deposit is valuable enough to yield a fair market value in excess of the costs of extraction, removal, and sale. Evidence

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

of mineralization which would justify further exploration, but not development, does not suffice to meet the discovery requirement.

United States v. Ernest C. Downs and Goldfield Four Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

A discovery of valuable minerals under the Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

When land is withdrawn from location under the mining law subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal.

Where the Government has established a prima facie case of invalidity of a mining claim because of a lack of discovery and the claimant testifies that he has not produced from his claim but was only investigating the market, and offers no evidence of marketability beyond speculation of future profitability, the claimant has failed to carry his burden of showing that a discovery is present within the limits of his claim.

United States v. Grovenor B. Montaport et al., 63 IBLA 35 (Mar. 30, 1982)

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Once a prima facie case is established, the burden shifts to the claimant to overcome that showing by a preponderance of the evidence.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established.

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a prudent person would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. This generally requires a showing of marketability--that the deposit in question can be extracted, removed, and marketed at a profit at present.

United States v. Eugene Bowyer et al., 63 IBLA 388 (Apr. 30, 1982)

Mining claims are properly declared invalid where the mining claimants fail to show that the mineral deposits on the claims can be mined, removed, and marketed at a profit.

A prima facie case against the validity of a mining claim is established by the testimony of an expert witness who has examined the mineral deposit on the claims and the costs of mining that deposit, and who concludes that the mineral deposit cannot be mined, removed, and marketed at a profit.

A presumption is raised that mining claimants have failed to discover a valuable mineral deposit if there has been little or no development or operations on the

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

claims over a long term. This presumption can be overcome by evidence that the mineral deposits can be mined, removed, and marketed at a profit.

A mining claimant has not made a discovery of a valuable mineral deposit where further exploration is necessary to determine whether there is a reasonable prospect of success in developing a valuable mine.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

Where a qualified mineral examiner testifies that he examined and took samples from the only exposed areas on contested mining claims, that his examination and the assay of those samples revealed no mineralization, and that he was of the opinion that a prudent person would not spend time, effort, and money believing he had a reasonable prospect of developing a valuable mine, a prima facie case of invalidity of the claims is established. Where the claimant submits unverified reports of mineralization and testifies that little work and no sampling have been done on the claims since he restaked them, the prima facie showing is not rebutted, and the claims are properly declared invalid.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

A mining claimant has not made a discovery of a valuable mineral deposit where further exploration is necessary to determine whether there is a reasonable prospect of success in developing a valuable mine.

The standard of discovery applied in a Government contest is far stricter than that applied in a contest between rival claimants. The mere presence of slight amounts of gold on a placer mining claim does not satisfy the requirement of a discovery of a valuable mineral deposit under the mining laws, even if the showings would justify further exploration.

United States v. Gary J. Murdock, 65 IBLA 239 (July 9, 1982)

A Bureau of Land Management determination that mining claims located in a wilderness study area constitute valid existing rights under sec. 701(h) of the Federal Land Policy and Management Act of 1976, made in conjunction with a review of a proposed mine plan of operation, is an integral part of the review process, serving to identify the applicable standard governing regulation of mining activities on the claims. Where the claim operator withdraws the mine plan and indicates that he plans no activity on the claims, an appeal of the initial BLM determination must be dismissed because, in absence of the proposed operations, the determination is no longer ripe for review.

Douglas McFarland, Sierra Club, Desert Survivors, 65 IBLA 380 (July 20, 1982)

A discovery of valuable minerals under the Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be extracted, removed, and

MINING CLAIMS--Continued

DISCOVERY--Continued

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marketed at a profit presently, and could have been as of the date the lands were withdrawn from mineral entry.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

A discovery of a valuable mineral deposit does not exist where the available evidence is of such a character that a person of ordinary prudence would only be justified in conducting further exploration of the claims before making a consitment to develop a profitable mine. There must be physically exposed within the limits of the claim the vein or lode bearing mineral of such quality and such quantity as to justify the expenditure of money for development of a mine and the extraction of the mineral.

To the extent that a mining claim is situated on land which was withdrawn from entry under the mining laws, the claimant must not only show that the discovery of a valuable mineral deposit presently exists but also that the claim was valid as of the date of the withdrawal. If the claim was not valid at the time of the withdrawal, it was not excepted from the effect of the withdrawal. The claim could not become valid thereafter by any additional exploratory work or through an increase of mineral value due to a change in the market.

Lack of development alone may support a finding of invalidity, unless there is direct evidence in the record that the material from the mine is marketable, i.e., that the mineral can be mined, removed, and marketed at a profit.

United States v. Michael D. Beckley, Virginia R. Beckley, 66 IBLA 357 (Aug. 27, 1982)

A mining claim which is not supported by the discovery of a valuable mineral deposit at the time of withdrawal of the land is not excepted from the effect of the withdrawal. Neither the subsequent exposure of previously undiscovered deposits nor a subsequent increase in value of a mineral previously exposed can breathe life into such an invalid claim.

United States v. Robert B. Lara, 67 IBLA 48 (Sept. 9, 1982)

The discovery of a valuable mineral deposit is essential to a valid claim. Under the "prudent man test," in order to qualify as a valuable mineral deposit, the discovered deposits must be of such a character that "a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine."

The "marketability test," a refinement of the "prudent man test," requires a claimant to show that a mineral can be extracted, removed, and marketed at a profit. The latter does not set forth a distinct standard, but rather is regarded as complementary to the "prudent man test." Factors such as the cost of extraction, removal, and marketing are relevant considerations to determine whether a person of ordinary prudence would be justified in the further expenditure of time and means to develop a paying mine.

A prima facie case of no discovery is established when a Government mineral examiner testifies that he examined the claim and found insufficient evidence of the discovery of a valuable mineral deposit.

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears

MINING CLAIMS--Continued

DISCOVERY--Continued

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only the burden of establishing a prima facie case of the evidence that a discovery has not been made and does not exist within the boundaries of the claim. The mining claimant has the ultimate burden to overcome the case by establishing the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

A Government mineral examiner in determining the validity of a mining claim need only examine the claim to verify whether the claimants have made a discovery. He is not required to perform discovery work, to explore or sample beyond the claimants' workings, or to rehabilitate alleged discovery cuts to establish the Government's prima facie case of no discovery. It is incumbent upon a mining claimant to keep discovery points available for inspection by a Government mineral examiner.

Discovery required by the mining laws means more than a showing only of isolated bits of mineral not connected with or leading to substantial values. To constitute a discovery on a lode claim there must be exposed within the limits of the claim a vein or lode of mineral-bearing rock in place, possessing in and of itself a present value for mining purposes.

Where a mining or millsite claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. If the mining claim was not supported at the date of the withdrawal by a discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Perry L. Jones, Chet C. Smith, 67 IBLA 225 (Sept. 23, 1982)

Any exposure of the rich oil shale formation known as the Parachute Creek member can be geologically inferred to embrace sufficient quantity of high grade oil shale and, therefore, to constitute a valuable mineral deposit on an oil shale placer mining claim. However, exposure of a surface deposit of lean oil shale is inadequate to demonstrate the existence of rich deposits at depth in the absence of evidence showing that it is part of a deposit that can be followed to depth within the lateral limits of the claim.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

Occasional assays of material from a mining claim showing high values of gold are not conclusive evidence of a qualifying discovery. Other factors must be considered, such as the extent of the mineral deposits, the number of samples assayed showing only a trace of mineral, and the nature of the samples yielding the high values. To be meaningful, the samples must be representative of the mineral deposit, not simply selective showings of the best mineralization.

A distinction is properly recognized between a "valuable mineral" and a "valuable mineral deposit." To establish the existence of a valuable mineral deposit on a lode claim there must be evidence of continuous mineralization along the course of a vein or lode and the mere showing of disconnected pods of

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

mineral concentration, even of high values, does not suffice by itself.

United States v. Slater A. Judd, Jr., 68 IBLA 137 (Oct. 29, 1982)

Isolated showings of high gold and silver values are not sufficient by themselves to establish the discovery of a valuable mineral deposit.

United States v. Albert J. Wells, 69 IBLA 363 (Jan. 3, 1983)

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit, i.e., a valuable mineral deposit has not been found simply because the facts might warrant a search for such a deposit.

A discovery of a valuable mineral deposit does not exist where the available evidence is of such a character that a person of ordinary prudence would only be justified in conducting further exploration of the claims before making a commitment to develop a profitable mine. There must be physically exposed within the limits of the claim the vein or lode bearing mineral of such quality and such quantity as to justify the expenditure of money for development of a mine and the extraction of the mineral.

United States v. Richard S. Arbo, 70 IBLA 244 (Jan. 25, 1983)

When the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge; however, the mining claimant has the ultimate burden of refuting the Government's case by a preponderance of the evidence.

United States v. Florence Cannon, 70 IBLA 328 (Feb. 1, 1983)

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case that a discovery has not been made. The mining claimant then has the ultimate burden to establish the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

United States v. Mary Belen Rosenberger, 71 IBLA 195 (Mar. 14, 1983)

Where evidence presented by claimants shows that no significant amounts of gold have been produced either from a lode claim or placer claim over a period of 13 years, a prima facie case of invalidity is created.

Mineral examiners are not required to blast or do any extensive discovery work beyond the workings exposed by the claimants. Where the examiner inspects these workings and takes samples at the points which appeared to have the most mineralization and, as near

MINING CLAIMS--Continued

DISCOVERY--Continued

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as possible, to be at a previously designated discovery point, and presents corroborated testimony and evidence showing the absence of any significant amount of gold in those samples, the Government has established a prima facie case of invalidity.

Where lode mining claimants fail to keep their alleged discovery point in a mine free of water, they assume the risk that the Government mineral examiner will not be able to verify the alleged discovery. In these circumstances, claimants may not object to any lack of representativeness of the samples.

Where placer mining claimants refuse to direct Government mineral examiners to representative placer material removed from their claim, and assert that their alleged discovery point is at the bottom of a deep hole in an active river beneath many large boulders, they admit that they have made no discovery on the claim. In these circumstances, the examiner is justified in taking no sample, since none could be representative, and his testimony about the claimants' admission is enough to establish a prima facie case of invalidity.

Evidence that a claim presents an interesting prospect with some potential for the eventual recovery of gold is insufficient to establish that the claim is not invalid.

The Department of the Interior, which retains the authority to enter freely and inspect mining claims, has redelegated this authority to the Forest Service as to lands within the boundaries of national forests. Agents of the Forest Service have the right to enter such claims at any time; no permission need be sought from the claimants.

United States v. Lyle O. Cook et al., 71 IBLA 268 (Mar. 22, 1983)

When the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge. A prima facie case has been made when a Government mineral examiner testifies that he has examined the exposed workings on a claim and has found the evidence of mineralization insufficient to support a finding of discovery of a valuable mineral deposit. The mining claimant has the ultimate burden of refuting the Government's case by a preponderance of evidence.

A discovery exists where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

Where the land on which a mining claim is located is subsequently withdrawn from entry under the mining laws, the validity of the claim must be determined as of the date of the withdrawal through the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not become valid thereafter even by the satisfaction of the discovery requirement at a later date.

Evidence of mineralization which may justify further exploration, but not development of a mine, does not establish the discovery of a valuable mineral deposit.

MINING CLAIMS--Continued

DISCOVERY--Continued

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Isolated showings of high gold values are not sufficient by themselves to establish the discovery of a valuable mineral deposit.

United States v. T. J. Jones, Robert E. Jones, 72 IBLA 52 (Apr. 12, 1983)

The discovery of a "valuable mineral deposit" has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

Evidence which will not justify development of a claim but may justify further exploration is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

Where land is withdrawn from the operation of the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. In addition, even though there may have been a proper discovery at the time of the withdrawal or at some other time in the past, a mining claim cannot be considered valid unless the claim is at present supported by a sufficient discovery.

United States v. William Lavon Chappell et al., 72 IBLA 88 (Apr. 13, 1983)

The discovery of a valuable mineral deposit is essential to a valid claim. Under the "prudent man test," in order to qualify as a valuable mineral deposit, the discovered deposits must be of such a character that "a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine."

Where the Government contests the validity of a mining claim on a charge of lack of discovery, it bears only the burden of establishing a prima facie case on the evidence that a discovery has not been made and does not exist within the boundaries of the claim. The mining claimant has the ultimate burden to overcome the case by establishing the discovery of a valuable mineral deposit within the limits of the claim by a preponderance of the evidence. The contestee in a mineral contest must prevail, if at all, upon the strength of his own case, rather than upon any weakness of the Government's case.

United States v. Connor et al., 72 IBLA 254 (Apr. 27, 1983)

A previous determination by the Department of the Interior in a proceeding different from a mining claim contest that land was mineral in character is not evidence of a discovery of a valuable mineral deposit in a mining contest.

A discovery of a valuable mineral deposit does not exist where the available evidence is of such a character that a person of ordinary prudence would only be justified in conducting further exploration of the claims before making a commitment to develop a profitable mine. There must be physically exposed within the limits of the claim the vein or lode bearing

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mineral of such quality and such quantity as to justify the expenditure of money for development of a mine and the extraction of the mineral.

The prudent man test cannot be satisfied by a claimant's assertion that he is willing to accept a meager income from the claim. Determination of the validity of a mining claim can rest only on objective criteria, not subjective considerations.

United States v. Lee H. Rice, Goldie E. Rice, 73 IBLA 128 (May 23, 1983)

In order to become entitled to a mining claim, a claimant must establish the presence of a valuable mineral deposit. 30 U.S.C. § 22 (1976). A valuable mineral deposit exists where the mineral found is of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Castle v. Womble, 19 L.D. 455 (1894). This is the "prudent man test," approved by the U.S. Supreme Court in Chrisman v. Miller, 197 U.S. 313 (1905). It has been refined to require a showing of marketability, i.e., that the mineral can be presently extracted, removed, and marketed at a profit. United States v. Coleman, 390 U.S. 599 (1968). Where a claim is located on land subsequently withdrawn from appropriation under the mining laws, the claim must be supported by a discovery at the time of withdrawal, as well as the date of the hearing into its validity. Cameron v. United States, 252 U.S. 450 (1920).

When the Government contests the validity of a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case. If a prima facie case is presented, the mining claimant then has the burden of overcoming this showing by a preponderance of the evidence.

United States v. Eva M. Pool et al., 74 IBLA 37 (June 27, 1983)

The requirement that a mining claimant show that the mineral discovered on the claim is presently marketable at a profit simply means a mining claimant must show that, as a present fact, taking into consideration historic price and cost factors as well as the likelihood of their continuance or change, there is a reasonable likelihood of success that a paying mine can be developed.

The quantum of evidence necessary to prove a discovery does not change because the land on which the claim is located may have other values. Bad faith in locating a claim, however, where proved, requires invalidation of a claim even where it is supported by a discovery.

In re Pacific Coast Molybdenum Co., 75 IBLA 16 (Aug. 5, 1983) 90 I.D. 352

The Government has established a prima facie case of the lack of discovery of a valuable mineral deposit on mining claims where a Government mineral examiner testifies that, based on assays of his samples taken from the claims, the mineral deposit is not of sufficient quality to justify expenditure of capital with a reasonable prospect of success in developing a valuable producing mine. Such an opinion is sufficient to establish a prima facie case where it is based in part upon comparison with the minimum acceptable grade of ore at an operating mine and in part upon

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

an analysis of prior reports of exploration of the claims.

A mining claimant has not preponderated on the question of discovery of a valuable mineral deposit where the evidence establishes that further exploratory drilling is required to ascertain the extent of the only mineralized zone with significant potential prior to the investment of capital with a reasonable prospect of success in developing a valuable mine.

United States v. James A. Walper, 77 IBLA 90 (Nov. 14, 1983)

When land is withdrawn from location under the mining law subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal.

United States v. Jack R. & Ruth V. Riece, 77 IBLA 205 (Nov. 22, 1983)

Deposits of common varieties of stone were withdrawn from location by sec. 3 of the Act of July 23, 1955, 30 U.S.C. § 611 (1976). The locator of a claim for stone after that date must establish that the mineral deposit has a unique property giving it a distinct and special value reflected in a higher market price or reduced cost of production.

Joanne M. Massirio v. Western Hills Mining Ass'n et al., 78 IBLA 155 (Dec. 29, 1983)

When the Government contests the validity of a mining claim on the basis of lack of discovery, it bears only the burden of going forward with sufficient evidence to establish a prima facie case. Once a prima facie case is presented, the claimant must present evidence which is sufficient to overcome the Government's showing on those issues raised.

Where the Government fails to present sufficient evidence to establish a prima facie case, the claimant need not present evidence in order to prevail. If a claimant, however, does present evidence, the determination of the validity of a claim must be made on the basis of the record as a whole, and not just a part of the record. A claimant need not affirmatively establish the existence of a discovery where there has been no prima facie case. The only risk that the claimant runs in such a situation is the risk that the evidence as a whole will establish by a preponderance of the evidence that an element of discovery is not present.

United States v. Eva M. Pool et al., 78 IBLA 215 (Jan. 6, 1984)

The validity of a mining claim on the issue of discovery of a valuable mineral deposit is not legally cognizable in a bond protest proceeding initiated by the surface owner under a Stock-Raising Homestead Act patent. Such a validity determination requires initiation of a contest with notice to the claimant and an opportunity for a hearing.

Robert M. Michael et ux., 79 IBLA 255 (Mar. 5, 1984)

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

Where lands have been withdrawn from mineral entry, any mining location on such land which is not then supported by a discovery of a valuable mineral deposit must be deemed invalid, even if such a discovery is made at a later date.

United States v. Janet B. Copple et al., 81 IBLA 109 (May 30, 1984)

The discovery of a "valuable mineral deposit" has been made where a claimant establishes the presence of locatable minerals and the evidence is of such a character that a person of ordinary prudence would be justified in the expenditure of his labors and means, with a reasonable prospect of success in developing a valuable mine. The record must establish that the locatable mineral can be mined, removed, and marketed at a profit.

United States v. Albert O. Husman et al., 81 IBLA 271 (June 8, 1984)

In a mining claim contest, the Government establishes a prima facie case of invalidity sufficient to shift the burden of proving otherwise to the claimant where the Government mineral examiner testifies that he has examined the claim and can find no evidence of mineralization or where he cannot examine the claim because it is covered with snow and ice.

Assay reports have limited probative value concerning the existence of a valuable mineral deposit on a mining claim when they are not supported by sufficient evidence to show how and where the samples were taken.

In a placer mining claim contest, a claimant overcomes the Government's prima facie case of invalidity based on the absence of significant visible gold in pan samples where he submits evidence of samples with gold values above the cutoff identified by the Government mineral examiner for a successful placer mining operation.

In a mining claim contest, where a mineral claimant presents more persuasive evidence than the Government with respect to the location of a mining claim on the ground by testimony with respect to the location of certain monuments placed on the ground by the locators of the claim such that the claim encompasses significant mineralization, he overcomes the Government's prima facie case of invalidity based on the absence of mineralization.

United States v. Albert F. Parker et al., 82 IBLA 344 (Sept. 12, 1984)
91 I.D. 271

The failure of an expert witness, such as a Government mineral examiner, to remain current with all the literature concerning practices in his field may affect the weight but not the admissibility of his testimony. The trier of fact who presides at a hearing has an opportunity to observe witnesses and is in the best position to judge the weight to be accorded the testimony of the expert.

The burden of the mining claimant is to produce a preponderance of credible evidence to overcome the Government's prima facie case against the validity of the claim. The trier of fact is not required to believe or give any weight to testimony which is inherently incredible. Therefore, when there is a gross disparity in the assay results of samples taken from the same points in a mining claim, and the trier of fact gives more weight to the test results which he finds are more credible, and his finding is supported

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

by substantial evidence, the Board will not disturb that finding.

There is a clear distinction between "exploration" and "development" as these terms relate to discovery under the mining laws. Prior to the "discovery" of a valuable mineral deposit, mining activities such as mapping a deposit and drilling further to determine the extent and grade of the mineralization, constitute exploration work.

United States v. Marvin C. Ramsey et al., 84 IBLA 66 (Nov. 30, 1984)

Geologic Inference

The mere fact that mining claims are allegedly located in the same kind of area with the same topography as other claims where there has been no discovery does not, without more, support the conclusion that there is no discovery on the former claims. Geologic inference drawn from such alleged similarities is insufficient by itself to show that no discovery has been made on the claims.

United States v. Gerald Ness, 46 IBLA 1 (Feb. 13, 1980)

While geologic inference based upon knowledge of the degree of mineralization prevalent within the surrounding area cannot substitute for the actual exposure of a vein or lode within a claim, it may be relied upon as an aid to calculate the extent and potential value of the mineral deposit, once a vein or lode bearing minable material has been exposed. To establish the existence of a valuable mineral deposit on a lode claim, there must be evidence of continuous mineralization along the course of the vein or lode; the mere showing of disconnected pods of mineral concentration, even of high values, does not satisfy the test.

United States v. Robert Chambers, 47 IBLA 102 (Apr. 23, 1980)

In evaluating a mineral deposit geologic inference may be used where the deposit has been adequately physically exposed. However, it cannot be used as a substitute for evidence sufficiently showing the existence of an ore body or bodies necessary to warrant a prudent man to develop a valuable mine.

United States v. Leon R. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

Under Freeman v. Summers, 52 L.D. 201 (1927), an exposure of the Parachute Creek member, even though of limited extent, can be geologically inferred to embrace sufficient quantity of high grade oil shale so as to constitute a valuable mineral deposit.

United States v. Cameron Catlin Bohne et al., United States v. Exxon Corp., et al., United States v. Aidabelle Brown et al. (Supp.), 51 IBLA 97 (Nov. 5, 1980)
87 I.D. 535

MINING CLAIMS--Continued

DISCOVERY--Continued

Geologic Inference--Continued

Geological inference alone cannot support a finding of discovery.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

In evaluating a mineral deposit within a mining claim geologic inference may be used where the deposit has been adequately physically exposed. However, geologic inference cannot be used as a substitute for evidence which sufficiently shows the existence of an ore body or bodies necessary to warrant a prudent man to develop a valuable mine; geologic inference may not be used to infer mineralization throughout a vein area where the evidence shows a few spots of high mineralization, but the mineralized areas are spotty and discontinuous.

United States v. Alice W. Rouse et al., 56 IBLA 36 (July 8, 1981)

The validity of a mining claim cannot depend on the inference of richer ore or wider veins than those which are already physically exposed.

United States v. Michael D. Beckley, Virginia R. Beckley, 66 IBLA 357 (Aug. 27, 1982)

Any exposure of the rich oil shale formation known as the Parachute Creek member can be geologically inferred to embrace sufficient quantity of high grade oil shale and, therefore, to constitute a valuable mineral deposit on an oil shale placer mining claim. However, exposure of a surface deposit of lean oil shale is inadequate to demonstrate the existence of rich deposits at depth in the absence of evidence showing that it is part of a deposit that can be followed to depth within the lateral limits of the claim.

"Oil shale." Rock containing less than 3 gallons per ton of kerogen is not distinguishable from average shale or limestone in the earth's crust and is therefore not "oil shale." Discovery of such shale on a mining claim, without more, does not provide any basis for inferring the presence of oil shale at depth.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

While geologic inference cannot be used to show the existence of a mineral deposit, where an exposure exists which shows high and relatively consistent values, geologic inference can be used to infer sufficient quantity of similar quality mineralization beyond the actual exposed areas, such that a prudent man would be justified in expending labor and means with a reasonable prospect of success in developing a paying mine.

Where the evidence of record shows that the results obtained by surface sampling are unreliable as a basis upon which to predicate estimates of a value at depth, such sample cannot serve as a factual predicate for inferring an extension beyond the exposed area.

United States v. J. Gary Feezor et al., 74 IBLA 56 (June 29, 1983) 90 I.D. 262

MINING CLAIMS--Continued

DISCOVERY--Continued

Geologic Inference--Continued

A discovery of oil shale can be based upon a surface exposure or outcrop of even "lean" kerogen content provided that, based upon geologic inference, such exposure reasonably may be followed within the limits of the claim to rich deposits at depth. Unless part of the Parachute Creek member of the Green River Formation, however, rock which will not yield 3 gallons of oil per ton cannot be regarded as "oil shale," as distinguished from other common forms of oil-bearing rock, and surface exposures of such material will not constitute a discovery of oil shale.

United States v. Energy Resources Technology Land, Inc., et al., 74 IBLA 117 (June 30, 1983)

Where a mineral claimant has located a group of claims, he must show a discovery on each claim. Geologic inference alone may not be used to show the existence of a mineral deposit; there must be an exposure of minerals of value.

United States v. Carl Dresselhaus et al., 81 IBLA 252 (June 8, 1984)

Marketability

A discovery of valuable minerals under Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

Although a favorable showing of actual sales may demonstrate marketability, lack of sales is not necessarily conclusive on the issue of marketability. Lack of sales may be overcome, after all the evidence is heard, by a preponderance of the evidence showing that a prudent person could have extracted and marketed the mineral profitably.

A valid mining claim for lands previously withdrawn from location must be supported by discovery as of the date of withdrawal and a showing that marketability has continued since discovery and the minerals can presently be profitably extracted.

United States v. Claro Williamson and Lapine Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

Material which is principally valuable for use as fill, sub-base, ballast, riprap or barrow, for which ordinary earth or rock may be used, is not locatable under the mining laws and was not locatable prior to July 23, 1955.

United States v. Joseph R. and Aletha Henri, 46 IBLA 221 (Mar. 27, 1980)

A discovery exists where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

This "prudent man" test has been refined and complemented by the "marketability" test requiring a showing that the mineral in question can be presently extracted, removed, and marketed at a profit.

United States v. W. G. Nickol, Eva Rose Nickol, 47 IBLA 183 (May 7, 1980)

Sec. 3 of the Surface Resources Act of July 23, 1955, 69 Stat. 367, 368, 30 U.S.C. § 611 (1976), declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a claim for such material to be sustained as validated by a discovery, the prudent man-marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and reasonably continuously thereafter.

The prudent man test of discovery has been satisfied where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. The marketability refinement of the prudent man test of discovery requires that the mineral locator must show that by reason of accessibility, bona fides in development, proximity to market, existence of present demand, and other factors, the mineral deposit is of such value that it can be mined, removed and disposed of at a profit.

Where there is not sufficient reason shown to disturb an Administrative Law Judge's finding that the prudent man-marketability test was met as of July 23, 1955, and continuously thereafter by mining claimants who extracted and profitably sold sand and gravel from the claims prior to that date and continuously thereafter, the decision will be sustained on appeal.

The Board of Land Appeals will not order a further hearing in a mining claim contest case where a patent application has been filed merely because the evidentiary record is inadequate to invalidate the claims for lack of a discovery of a valuable mineral deposit, if the claimant is found to have met the discovery test.

United States v. Albert Martinez et al., 49 IBLA 360 (Aug. 29, 1980) 87 I.D. 386

The Supreme Court has determined that a finding of present marketability as of Feb. 25, 1920, is not a prerequisite to a determination that oil shale deposits are valuable mineral deposits within the meaning of the general mining laws, and has excepted oil shale claims from the general rules of discovery for mining claims.

Frederick W. Larson v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

Under Andrus v. Shell Oil Co., ___ U.S. ___, 64 L.Ed.2d 593 (1980), 48 U.S.L.W. 4603 (June 2, 1980), oil shale is a prospectively valuable mineral and therefore present marketability need not be shown to demonstrate discovery.

United States v. Cameron Catlin Bohee et al., United States v. Exxon Corp. et al., United States v. Aidabelle Brown et al. (Supp.), 51 IBLA 97 (Nov. 5, 1980) 87 I.D. 535

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

A mineral claimant whose claims embrace deposits of both common and uncommon varieties of minerals cannot aggregate the profits returned from mining the common variety and those netted from mining the uncommon variety to show a qualifying discovery.

United States v. Virgil Provell and Melinda Provell, 52 IBLA 256 (Feb. 6, 1981)

A discovery of a valuable mineral deposit exists under the Federal mining laws where the minerals found are of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

United States v. John McDowell, 53 IBLA 270 (Mar. 24, 1981)

United States v. C. J. Anderson, C. Joseph Anderson, 57 IBLA 256 (Aug. 28, 1981)

Where demand is limited to a very few consumers who supply their needs from their own sources so that the market is "closed" or "captive," a mining claimant must show a reasonable likelihood that the consumers will buy the material from the claim at a profit to the mining claimant. Where such a showing is made, a contest complaint is properly dismissed.

United States v. Maurice Duval et al., 53 IBLA 341 (Mar. 26, 1981)

A mining claimant may demonstrate present marketability by a favorable showing of such factors as the accessibility of the deposit, proximity to the market, the existence of a present demand, and bona fide efforts to develop the claim and compete in the market.

Where demand is limited to a very few consumers who supply their needs from their own sources so that the market is "closed" or "captive," a mining claimant must prove that willing consumers exist to whom the claimant could have reasonably expected to sell at a profit. Failure to make that showing will result in a finding that the mineral deposit has no economic value and does not qualify as a discovery.

The holding of a mining claim as a reserve for future development without present marketability does not impart validity to the claim.

United States v. Jesse H. Taggart et al., 53 IBLA 353 (Mar. 30, 1981)

The Surface Resources Act of July 23, 1955, declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a mining claim for such material located prior to the date of the Act to be sustained, the prudent man-marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and maintained reasonably continuously thereafter.

Under the "prudent man test" in order to qualify as "valuable mineral deposits" the disputed deposits must be of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

success, in developing a valuable mine. To qualify as "valuable mineral deposits" under the "marketability test" it must be shown that the minerals can be "extracted, removed and marketed at a profit."

In determining whether or not a mining claim is valid, the marketability test requires that there be, at the time of discovery, a market for the discovered material that is sufficiently profitable to attract the efforts of a person of ordinary prudence. In determining marketability, evidence of sales is only one factor to be considered in the application of the prudent man-marketability test.

United States v. Estella B. Kingsnor et al., 54 IBLA 95 (Apr. 15, 1981)

A mining claimant will not have satisfied his burden of proof with respect to marketability where the evidence indicates a superabundance of the mineral of commercial quality such that supply exceeds demand and the claimant fails to show that his mineral deposit possesses a unique advantage over other deposits from potentially competitive sources.

United States v. The Dredge Corp., 54 IBLA 281 (Apr. 28, 1981)

Establishing the marketability of a mineral deposit requires more than a showing that the mineral is theoretically marketable or intrinsically valuable. The claimant must demonstrate present continuing demand for the output of his mine.

United States v. Alice M. Rouse et al., 56 IBLA 36 (July 8, 1981)

The mere fact that a mineral deposit is an uncommon variety of stone does not make it per se marketable. The mining claimant must show that the deposit within the claim is marketable at a profit.

In order to meet the marketability test a mining claimant need not rely on his own successful marketing efforts to prove marketability of material from the claim. The test may be satisfied if successful marketing by others has sufficiently established that claimant's comparable material is itself marketable.

United States v. Maxie Vaughn et al., 56 IBLA 247 (July 24, 1981)

A discovery of valuable minerals under Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in the further expenditure of labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

United States v. Blanch P. Day, Wilma Jean Kendall, 56 IBLA 300 (July 29, 1981)

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

Land may be considered "chiefly valuable for building stone" where the building stone values of the mineral deposit sought are greater than any other mineral values or nonmineral values for which the land may be appropriated.

United States v. Richard P. Hankins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

A discovery of valuable minerals under the Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be presently extracted, removed, and marketed at a profit.

United States v. Grovenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a prudent person would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. This generally requires a showing of marketability--that the deposit in question can be extracted, removed, and marketed at a profit at present.

United States v. Eugene Bowyer et al., 63 IBLA 388 (Apr. 30, 1982)

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

Where contestees present uncontroverted evidence showing that, over a period of 4 years, they and a partner have extracted 26 or 27 ounces of gold from their claim using a suction dredge, and where the Government has made no showing that suction dredge mining would be insufficient to support a valid claim, the contest is properly dismissed without prejudice to the initiation of another contest complaint.

United States v. Clifford L. & Mary A. Williams, 65 IBLA 346 (July 16, 1982)

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

A discovery of valuable minerals under the Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Discovery requires a showing that the mineral can be extracted, removed, and marketed at a profit presently, and could have been as of the date the lands were withdrawn from mineral entry.

United States v. Alaska Limestone Corp., 66 IBLA 316 (Aug. 25, 1982)

The value of a mineral deposit claimed under the mining laws must be determined by objective rather than subjective criteria. An otherwise invalid mine cannot be bootstrapped into validity because the material may be used in some other profitable business in which a claimant may be engaged.

United States v. Michael D. Buckley, Virginia R. Buckley, 66 IBLA 357 (Aug. 27, 1982)

Although a favorable showing of actual sales may demonstrate marketability, lack of sales is not necessarily conclusive on the issue of marketability. Lack of sales may be overcome, after all the evidence is heard, by a preponderance of the evidence showing that a prudent person could have extracted and marketed the mineral profitably.

United States v. Victor Material Co., 67 IBLA 274 (Sept. 28, 1982)

The requirement that a mining claimant show that the mineral discovered on the claim is presently marketable at a profit simply means a mining claimant must show that, as a present fact, taking into consideration historic price and cost factors as well as the likelihood of their continuance or change, there is a reasonable likelihood of success that a paying mine can be developed.

In re Pacific Coast Molybdenum Co., 75 IBLA 16 (Aug. 5, 1983) 90 I.D. 352

The requirement that a mining claimant show that the mineral discovered on the claim is presently marketable at a profit simply means that, as a present fact, taking into consideration historic price and cost factors as well as the likelihood of their continuance or change, there is a reasonable likelihood of success that a paying mine can be developed.

United States v. Janet B. Copple et al., 81 IBLA 109 (May 30, 1984)

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

United States v. Oscar E. & Gary K. Anderson, 83 IBLA 170 (Oct. 15, 1984)

MINING CLAIMS--Continued

ENVIRONMENT

A finding that proposed mining operations will not have a significant impact on the human environment, and that hence no environmental impact statement is required, will be affirmed on appeal where the record establishes that relevant areas of environmental concern have been identified, particularly the effect of excessive stream turbidity due to sediment runoff on fish populations and habitat and local water use, and the determination is the reasonable result of the environmental analysis in light of proposed measures to minimize the environmental impact.

William E. Tucker et al., 82 IBLA 324 (Sept. 7, 1984)

EXCESS RESERVES

The charge of invalidity due to the presence of excess reserves admits that the mineral, qua mineral, exists within additional claims, but raises the contention that because of the quantity of mineral present in unchallenged claims owned by the mineral claimant, the mineral in the challenged claims would have no market and thus is essentially valueless.

United States v. Clark Williamson and Lapine Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

Where, following the contest of a number of mining claims, a decision is rendered by an Administrative Law Judge holding certain claims and portions of claims to be valid and invalidating the remainder for lack of mineral or as embracing excess mineral reserves, and the Government appeals from that decision but the claimant does not, that decision will be set aside and the case remanded for rehearing on the basis of a judicial decision in another case, made while the subject appeal was pending, that there can be no invalidation of mining claims by this Department on a finding that the claimant has acquired claims for far more mineral than the market can absorb within the foreseeable future.

United States v. Oneida Perlite Corp., 57 IBLA 167 (Aug. 27, 1981) 88 I.D. 772

EXTRALATERAL RIGHTS

A withdrawal from the operation of the general mining laws does not deprive a claimant of the right to exercise extralateral rights within the withdrawn lands if those extralateral rights are derived from ownership of valid lode mining claims located prior to the withdrawal. The ownership of ores and minerals by virtue of extralateral rights stemming from valid lode mining claims located prior to withdrawal is not divested by the withdrawal.

Anthony Juskiewicz, 79 IBLA 267 (Mar. 7, 1984)

Where a lode mining claim is located partially on withdrawn or patented land, it is not null and void ab initio to the extent of its inclusion of such lands. A locator whose discovery is on lands open to location may extend the end lines and side lines of his claim across withdrawn or patented land to define the extralateral rights to lodes or veins which apex within the claim.

Western Nuclear, Inc., 82 IBLA 67 (July 12, 1984)

MINING CLAIMS--Continued

EXTRALATERAL RIGHTS--Continued

Where a lode mining claim is located partially on withdrawn land, it is not null and void ab initio to the extent of its inclusion of such lands. A locator whose discovery is on lands opened to location may extend the end lines and side lines of his claim across withdrawn or patented land to define the extralateral rights to lodes or veins which apex within the claim.

Conasco American, Inc., 84 IBLA 209 (Dec. 27, 1984)

HEARINGS

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of the assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard G. Clemens et al., 45 IBLA 64 (Jan. 17, 1980)

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered. If the Government fails to make a sufficient prima facie case against a mining claim, the claimant may move to have the contest dismissed and rest his case. However, when the claimant goes forward with his evidence, the Administrative Law Judge must consider the evidence presented and weigh it in accordance with its probative value. In choosing to rebut the case, the claimant bears the burden of doing so by a preponderance of the evidence and bears the risk of nonpersuasion if he fails.

United States v. Clara Williamson and Lopins Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

Evidence submitted on appeal after an initial decision in a mining contest may not be relied upon in making a final decision but may only be considered to determine if the hearing should be reopened.

United States v. Ludwig G. Rosenkranz, 46 IBLA 109 (Feb. 29, 1980)

United States v. Alice W. Rouse et al., 56 IBLA 36 (July 8, 1981)

The Government has established a prima facie case when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

United States v. Joseph R. and Aletha Henri, 46 IBLA 221 (Mar. 27, 1980)

Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Alva F. Rockwell and Alva A. Rockwell, 47 IBLA 272 (May 13, 1980)

Max Weiss, 49 IBLA 332 (Aug. 25, 1980)

Wayne M. Mann, 54 IBLA 8 (Apr. 6, 1981)

MINING CLAIMS--Continued

HEARINGS--Continued

Lamar Burnett et ux., 84 IBLA 166 (Dec. 19, 1984)

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

United States v. George C. Hooker et al., 48 IBLA 22 (May 27, 1980)

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing is required only where there is a disputed question of fact. Where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

John J. Schaabel, 50 IBLA 201 (Sept. 30, 1980)

Hackay Bar Corp., 69 IBLA 148 (Dec. 13, 1982)

The procedure followed by the Department of the Interior in the initiation of mining contest cases is in compliance with the due process clause of the United States Constitution and the Administrative Procedure Act, 5 U.S.C. § 551 (1976).

To warrant a further hearing in a mining claim contest, based upon asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Evidence of a past discovery is not sufficient by itself to indicate that a different result might now be obtained.

United States v. Mary E. Gray, 50 IBLA 209 (Sept. 30, 1980)

Where a Government contest complaint, when filed and received by mineral claimants, correctly identifies all claimants as of that time, the substitution or addition of subsequent transferees is the obligation of those who have acquired such an interest and their failure to so move will not vitiate the effectiveness of an adjudication of the validity of a mining claim.

United States v. Virgil Prowell and Melinda Prowell, 52 IBLA 256 (Feb. 6, 1981)

Notice and an opportunity for a hearing is required only where there is a disputed question of fact and where validity of a millsite location turns on the legal effect to be given facts of record concerning the status of the land when the millsite was located, no hearing is required.

John C. and Martha M. Thomas d.b.a. Tungsten Mining Co., 53 IBLA 182 (Mar. 17, 1981)

Evidence submitted on appeal after an initial decision in a mining contest may not be relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. J. L. Hogg and Mary F. Hogg, 54 IBLA 355 (May 12, 1981)

MINING CLAIMS--Continued

HEARINGS--Continued

To warrant a further hearing in a mining claim contest based upon an asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Vague and unsupported assertions of mineralization do not establish equitable justification for reopening the hearing.

United States v. Arnim Speckert, 55 IBLA 340 (June 26, 1981)

Mining claims located on land previously withdrawn from mineral entry are null and void ab initio. However, where there are factual questions relating to whether action taken subsequent to a withdrawal is in the nature of an amendment to a previous location or whether it constitutes a relocation, the mineral claimant will be granted the opportunity to show that the subsequent action was a permissible amendment.

R. E. Polk, Gene L. Brown, 57 IBLA 117 (Aug. 25, 1981)

Mining claimants who have not complied with the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976 have no due process right to an evidentiary hearing before the Department of the Interior to show that their actual intent not to abandon rebuts that section's conclusive presumption of abandonment, since the Department is duty-bound to enforce the conclusiveness of the statute's presumption whenever noncompliance has occurred, and any such hearing would be valueless.

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

A mining claimant is not entitled to a hearing before his claim can be declared invalid for having been located on land which is segregated from location.

Sherman C. Smith, Michael Mitchell, Jr., 58 IBLA 188 (Sept. 28, 1981)

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

Absent a patent application, in a mining contest hearing where the Government's evidence of lack of discovery relates only to insufficient quality and quantity of mineralization and the mining claimant produces evidence sufficient to preponderate on those issues, the contest complaint is properly dismissed.

United States v. Malin W. Lewis, 58 IBLA 282 (Oct. 8, 1981)

Where the Government contests the validity of a mining claim, it bears only the burden of establishing a prima facie case of lack of discovery; the burden then shifts to the claimant to overcome the Government's showing by a preponderance of the evidence. A prima facie case is established when a Government mineral examiner testifies that he examined the claim and found insufficient evidence of the discovery of a valuable mineral deposit.

United States v. Leon Norce and Thomas Bokita, 59 IBLA 268 (Oct. 29, 1981)

Failure to obtain counsel at a hearing into the validity of a mining claim will afford the mining claimant no greater rights on appeal than if he had obtained counsel.

To warrant a further hearing in a mining claim contest based upon asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Evidence of a past discovery is not sufficient by itself to warrant a further hearing.

United States v. John Burt et al., 59 IBLA 326 (Nov. 5, 1981)

A mining claim content hearing will not be reopened to afford the claimants an opportunity to prove a discovery had been made on the claims in the absence of a tender of proof and evidence to show equitable justification for a further proceeding in the case. Also, the case will not be reopened where the Administrative Law Judge has ruled on the credibility of claimants' witnesses on issues going to their failure to present a case due to alleged Governmental interference, which is not supported by the record, and there is no persuasive showing of a denial of due process.

United States v. Ernest C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

Where a contest complaint charges that no qualifying discovery of mineral has been made, an answer which alleges that there are "good values" and exposed veins on the claim is sufficient to raise a justiciable issue to be resolved at a hearing.

Rich Knoblock, 61 IBLA 297 (Feb. 3, 1982)

The Government is under no obligation to provide counsel for a mining claimant at an administrative hearing. Failure of the claimant to have counsel at a hearing into the validity of mining claims will afford the claimant no greater rights on appeal than if he had obtained counsel.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

If, after the Government has established a prima facie case of nondiscovery, evidence presented by a mining claimant in a Government contest fails to show that there has been discovery of a valuable mineral deposit, the claim is properly declared invalid regardless of any defects in the Government's case.

To warrant a further hearing in a mining claim contest based upon an asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Vague and unsupported assertions of mineralization do not establish a basis for reopening the hearing. Because under 30 U.S.C. § 23 (1976) a mining claimant must make a discovery of a valuable mineral deposit prior to the location of the claim, it is presumed that when the validity of his claim is challenged,

MINING CLAIMS--Continued

HEARINGS--Continued

the mining claimant need only come forward with the evidence of discovery which he has already made.

United States v. Gary J. Murdock, 65 IBLA 239 (July 9, 1982)

Even if the Government had failed to make a prima facie case against the validity of the claim, evidence presented by the contestee which shows that a discovery had not been made may support a determination of invalidity, because when a contestee introduces evidence, the determination must be made on the basis of the whole record, not just a part of it.

A continuance of a hearing into the validity of a mining claim will only be granted where the mining claimant presents sufficient reason to justify the grant of an additional opportunity to present his case, i.e., where circumstances have placed a substantial constraint upon his ability to obtain or offer samples or other evidence of a discovery. Furthermore, it must appear that the claimant is not using the additional time to make the requisite discovery.

United States v. Michael D. Beckley, Virginia B. Beckley, 66 IBLA 357 (Aug. 27, 1982)

It is not reversible error for an Administrative Law Judge to supplement the record by receiving evidence after the close of the hearing in order to render a fully informed initial decision, where the party objecting to the admission of the additional evidence is given an opportunity to comment on and challenge such evidence.

United States v. Victor Material Co., 67 IBLA 274 (Sept. 28, 1982)

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard S. Arbo, 70 IBLA 244 (Jan. 25, 1983)

Absent a patent application, in a mining claim contest hearing there is no requirement that a mining claimant show that a contested claim is valid; rather, the claimant's burden is to preponderate on the issues raised by the evidence.

United States v. Florence Cannon, 70 IBLA 328 (Feb. 1, 1983)

Where the record of a mining claim contest contains evidence suggesting, but not adequately proving, that the claimant has made a valuable discovery, and where, on appeal, the claimant submits an affidavit alleging facts that, if proven, would strongly support a finding that a discovery has been made, it is appropriate to reopen the record to give the claimant the opportunity to establish these facts.

United States v. Joseph Laczkowski & Eula G. Jones (Montney), 71 IBLA 364 (Mar. 28, 1983)

MINING CLAIMS--Continued

HEARINGS--Continued

Evidence presented by the claimant which shows that a discovery had not been made may support a determination of invalidity because when a claimant introduces evidence the determination must be made on the basis of the whole record, not just a part of it.

United States v. T. J. Jones, Robert E. Jones, 72 IBLA 52 (Apr. 12, 1983)

The record established at the hearing in a mining claim contest is the sole basis for determining the validity of a claim.

United States v. Lee H. Rice, Goldie E. Rice, 73 IBLA 128 (May 23, 1983)

Where a notice of intent to hold a hearing pursuant to 30 U.S.C. § 621(b) and 43 CFR 3736.1(b), when transmitted and received by the locators of the claims at issue, correctly identifies all locators of record as of that time, the substitution or addition of subsequent transferees is the obligation of those who have acquired such an interest and their failure to participate in the hearing will not vitiate that hearing.

Gregg M. Millar, 74 IBLA 205 (July 18, 1983)

No hearing is required to declare a mining claim invalid when it is shown that at the time of location of the claims the land was not open to location.

Larry McBaster et al., 76 IBLA 370 (Oct. 25, 1983)

In a mining contest initiated by the United States, there is no requirement that the contestee offer evidence concerning matters not placed in issue by the United States. Where the Administrative Law Judge incorrectly states a contrary rule, but in practice applies the correct standard, his decision is affirmed.

In a mining contest initiated by the United States where the Government mineral examiners testify they have examined the mineral claims at issue and found no evidence of mineralization to support a discovery, a prima facie case for the Government is established. This showing is not overcome by evidence of ore sample values offered by contestee to show mineralization, where contestee fails to show from which, of 10 claims at issue, the samples were taken.

Cactus Mines Ltd., 79 IBLA 20 (Feb. 3, 1984)

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by the contestees shows that there has not been a discovery, it may be used in reaching a decision that the claim is invalid because of a lack of discovery, regardless of any defects in the Government's prima facie case.

United States v. Oscar E. & Gary K. Anderson, 83 IBLA 170 (Oct. 15, 1984)

MINING CLAIMS--Continued

LANDS SUBJECT TO

A Forest Service special use permit issued to a state agency does not constitute a withdrawal of the land involved from appropriation under the mining law, and a contest will not lie against a subsequently located mining claim on a charge that a portion of the claim is void to the extent that it includes land embraced by the permit.

United States v. Clare Williamson and Lapine Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Jacqueline E. Nelson, 47 IBLA 12 (Apr. 10, 1980)

Clarence E. Fitzgerald, 55 IBLA 31 (May 28, 1981)

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

Sherman C. Smith, Michael Mitchell, Jr., 58 IBLA 188 (Sept. 28, 1981)

Thomas Gillespie, 65 IBLA 10 (June 17, 1982)

John S. Fleming, 65 IBLA 357 (July 20, 1982)

Joe Karren, Sr., et al., 65 IBLA 387 (July 23, 1982)

Robert J. King, L. K. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

Hanson Properties, Inc., 74 IBLA 364 (July 28, 1983)

M. Joan Bryan, Michael Babatich, 76 IBLA 192 (Oct. 6, 1983)

John F. Malone, Vicki L. Malone, 84 IBLA 5 (Nov. 26, 1984)

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Water and Power Resources Service has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Florence Adkisson, 47 IBLA 121 (Apr. 28, 1980)

Land which has been patented without a reservation of minerals to the United States is not available for the location of mining claims, and mining claims located on such land after it is so patented are null and void ab initio, and an attempted recordation of such mining claims is properly refused by the Bureau of Land Management.

Jonathan Carr, 49 IBLA 17 (July 15, 1980)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Where a mining claim located on land withdrawn at the time of location is declared void ab initio, such a location, and the decision declaring such a location void, do not affect the status of any location of the same land made prior to the withdrawal; nor can such a location, made by a party with an interest in the prior

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

location, reestablish or protect rights to the prior claim.

Jack C. Franks, 49 IBLA 162 (July 30, 1980)

Land which has been patented without a reservation of minerals to the United States is not available for the location of mining claims, and BLM properly rejects a copy of a notice of location of a lode claim insofar as it covers patented land. However, BLM should not reject the notice insofar as it concerns unpatented lands, provided that the claim conforms to the rules governing lode claims after being amended to exclude the patented areas.

Samuel A. Chessbrough, 49 IBLA 249 (Aug. 18, 1980)

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

George H. Pennimore et al., 50 IBLA 280 (Oct. 6, 1980)

The Outer Continental Shelf Lands Act, as amended, 43 U.S.C. §§ 1331-56 (Supp. II 1978), provides the exclusive authority for the development of minerals on the outer continental shelf. Mining claims situated on the outer continental shelf assertedly located pursuant to the placer provisions of the general mining law, 30 U.S.C. §§ 35-36 (1976), must be declared null and void.

Ford MacElvain, 50 IBLA 303 (Oct. 7, 1980) 87 I.D. 478

Mining claims located on lands subject to valid, ongoing, and pre-existing rights-of-way granted to the State of Idaho pursuant to the Federal Aid Highway Act, 23 U.S.C. § 317 (1976), to use the lands for materials for highway construction, are null and void ab initio.

James F. Percord, Wayne A. Reddekopp, 50 IBLA 414 (Oct. 24, 1980)

Mining claims located on land at a time the land is withdrawn from appropriation under the United States mining laws properly are declared null and void ab initio.

Marvin Mack, Betty K. Mack, 51 IBLA 30 (Oct. 30, 1980)

Land which has been conveyed to a state without a reservation of minerals to the United States is not available for the location of mining claims, and a mining claim located on such land after it is so patented is null and void ab initio.

Don P. Smith, 51 IBLA 71 (Oct. 31, 1980)

A single discovery of mineral within a placer mining claim does not conclusively establish the mineral character of all the land included in the location. Whether the land embraced in the claim is mineral in character is an issue which remains open to investigation and determination by the Department until patent issues. The contestee must establish that each 10-acre tract within the entire claim is mineral in character,

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

failing in which any nonmineral 10-acre tract is properly excluded from the patent application.

United States v. Cameron Catlin Bohne et al., United States v. Exxon Corp. et al., United States v. Aidabelle Brown et al. (Supp.), 51 IBLA 97 (Nov. 5, 1980) 87 I.D. 535

Land which has been patented without a reservation of minerals to the United States is not available for the location of mining claims and BLM properly refuses recordation of such claims.

Silver Spot Metals, Inc., 51 IBLA 212 (Dec. 10, 1980)

Mining claims located on lands which are withdrawn for reclamation purposes under the first form are null and void ab initio. A first-form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding the repeal of the statute authorizing the initiation of such withdrawals.

Sam McCormack, 52 IBLA 56 (Jan. 6, 1981)

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by the Pickett Act, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by the terms of 43 U.S.C. § 142 (1970) which provided that withdrawn lands shall remain open to location for metalliferous minerals.

Where BLM filed an application for a protective withdrawal pursuant to Exec. Order No. 10355 which would reserve the subject land from all forms of appropriation including location and entry under the mining laws and the application was duly noted on the official status plats, the lands were segregated from the date of notation to the extent that the withdrawal, if effected, would prevent such forms of appropriation. A protective withdrawal is not a temporary withdrawal under the Pickett Act, 43 U.S.C. § 141 (1970), and is not limited by the terms of 43 U.S.C. § 142 (1970) which provides that temporarily withdrawn lands shall remain open to location for metalliferous minerals.

A mining claim located on land which was segregated and closed to mineral entry is properly declared null and void ab initio.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981) 88 I.D. 31

BLM's decision declaring mining claims null and void ab initio will be vacated where it appears that the claims were located on lands which were open to mineral entry on the date of location.

Mining claims located on lands withdrawn from mineral entry are null and void ab initio.

American Resources, Ltd., 52 IBLA 290 (Feb. 9, 1981)

Land which has been patented without a reservation of minerals to the United States is not available for location of mining claims, and mining claims located on such land after it is so patented are null and void ab initio.

Ariel C. MacDonald et al., 52 IBLA 384 (Feb. 19, 1981)

Donald W. Hoar, 81 IBLA 74 (May 23, 1984)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

Donly Gray, 82 IBLA 46 (July 11, 1984)

Portions of mining claims located on lands on which the minerals have been withdrawn from mineral entry are properly declared null and void ab initio; however, where the case record does not support a finding that all the claims in issue are partially situated on such land, the case will be remanded for readjudication.

Earl and Jewell Rightmire, 53 IBLA 125 (Mar. 5, 1981)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands segregates the lands from all subsequent appropriation, including location under the mining laws; however, the application to select has no segregative effect when at the time the application is filed, the land is withdrawn from all forms of appropriation under the public land laws, including selections by a state.

John C. and Martha W. Thomas d.b.a. Tungsten Mining Co., 53 IBLA 182 (Mar. 17, 1981)

A mining claim located on land at a time when the land is segregated from mining location by a proposed withdrawal confers no rights on the locator and is properly declared null and void ab initio.

Allen L. Brannon, Sr., 53 IBLA 251 (Mar. 19, 1981)

A mining claim located on lands which are withdrawn for reclamation purposes under the first form is null and void ab initio. A first form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, not withstanding the repeal of the statute authorizing the initiation of such withdrawals.

A mining claim located on lands previously withdrawn from appropriation under the mining laws is null and void ab initio. Lands included in a withdrawal remain withdrawn until there is a formal revocation or modification of the order of withdrawal. It is immaterial whether the lands are presently being used for the purpose for which they were withdrawn and whether a future revocation of the withdrawal is being considered.

William C. Reisan, Richard B. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

A mining claim located after Aug. 11, 1955, is properly declared null and void ab initio when at the time of location the claim is located on lands withdrawn for power development or powersites and such lands are under examination and survey by a prospective licensee of the Federal Power Commission under an uncanceled preliminary permit. This preliminary permit, issued under the Federal Power Act and authorizing the prospective licensee to conduct its examination and survey, may not have been renewed in the case of such prospective licensee more than once.

Robert A. Pettigrew, 54 IBLA 257 (Apr. 28, 1981)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

Where an executive order issued subsequent to the Pickett Act of June 25, 1910, as amended, 43 U.S.C. §§ 141, 142 (1970), does not specifically close all lands withdrawn under any authority other than the Act, the said lands are open to exploration, discovery, occupation, and purchase under the mining laws of the United States so far as the same apply to metalliferous minerals.

Western Nuclear, Inc., 55 IBLA 20 (May 26, 1981)

Land which has been patented without a reservation of minerals to the United States is not available for the location of placer mining claims, and BLM properly may reject documents submitted for recordation of a mining claim insofar as they cover patented land.

D. Estremado, 55 IBLA 49 (May 29, 1981)

Under the "equal-footing" doctrine, a state has title to lands beneath its navigable rivers, and this Board has no jurisdiction to determine the validity of such riverbed mining claims asserted under state law. However, where an unpatented mining claim is filed for record with the Bureau of Land Management pursuant to the Federal mining law and the public records disclose that all public lands embraced in the claim had been withdrawn from mining location before the claimant located the mining claim, the filing is properly rejected by BLM and the claim declared null and void ab initio.

Gary Willis, 56 IBLA 217 (July 22, 1981)

A mining claim located on land previously withdrawn from appropriation under the mining laws for an Indian reservation is null and void ab initio.

Steve Foster, Elmer Brewster, 56 IBLA 282 (July 28, 1981)

Mining claims located on land previously withdrawn from mineral entry are null and void ab initio. However, where there are factual questions relating to whether action taken subsequent to a withdrawal is in the nature of an amendment to a previous location or whether it constitutes a relocation, the mineral claimant will be granted the opportunity to show that the subsequent action was a permissible amendment.

R. M. Polk, Gene L. Brown, 57 IBLA 117 (Aug. 25, 1981)

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required preliminary to a decision holding that such claims are invalid.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

John A. Ross, Maxine Lidke, 73 IBLA 16 (May 5, 1983)

R. W. Copeland, 75 IBLA 87 (Aug. 11, 1983)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void.

Richard Thorpe, Anne Thorpe, 59 IBLA 176 (Oct. 26, 1981)

George M. Fennimore et al., 63 IBLA 214 (Apr. 12, 1982)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands, where the filing is regular on its face, segregates the lands from all subsequent appropriation, including location and entry under the mining laws and a millsite located while the land is so segregated is null and void ab initio.

John C. and Martha W. Thomas, d.b.a. Tungsten Mining Co. (On Reconsideration), 59 IBLA 364 (Nov. 9, 1981)

Lands which in 1929 were included in an oil and gas permit issued under the Mineral Leasing Act of 1920, were not subject to mining location, and mining claims located on such lands are invalid ab initio.

Ernest Higbee et al., 60 IBLA 267 (Dec. 17, 1981)

Where the public records of the Department indicate that land is not open to entry, even if the notation is in error, any mining claim thereafter located is null and void ab initio until the records are changed to indicate that the land is available.

Junior L. Dennis, 61 IBLA 8 (Dec. 29, 1981)

A mining claim located on lands subject to a valid, ongoing, and preexisting material site granted pursuant to the Federal Highway Act of Nov. 9, 1921, 23 U.S.C. § 18 (1946), now the Federal Aid Highway Act, 23 U.S.C. § 317 (1976), is null and void ab initio.

Land which has been patented without a reservation of minerals to the United States is not available for location of mining claims, and mining claims located on such land after it is so patented are null and void ab initio.

Ralph Bennett, 61 IBLA 116 (Jan. 6, 1982)

Mining claims located on land which was segregated and closed to mineral entry are properly declared null and void.

Robert E. Rudio, Verne Andrews, 61 IBLA 220 (Jan. 28, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio. BLM properly declares mining claims null and void to the extent that they were located in the Sawtooth National Recreation Area after Aug. 22, 1972, the date on which the recreation area was established and the lands withdrawn from mining location.

Clayton S. Hale, 62 IBLA 35 (Feb. 24, 1982)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Land which has been patented without a reservation of minerals to the United States is not available for location of mining claims, and mining claims located on such land after it is so patented are null and void ab initio.

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

A mining claim which is located after the land has been withdrawn from mineral entry is properly declared null and void.

James W. Gough, 65 IBLA 59 (June 23, 1982)

Where mining claims were originally located on land which was withdrawn from mineral location, the claims will be declared null and void ab initio.

Fairfield Mining Co., Inc., 66 IBLA 115 (Aug. 10, 1982)

Mining claims located on land after the land was segregated and closed to mineral entry are properly declared null and void.

J & B Mining Co., Inc., 66 IBLA 279 (Aug. 18, 1982)

J & B Mining Co., Inc., 69 IBLA 73 (Nov. 30, 1982)

A decision rejecting an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration of lands within a reclamation withdrawal to mineral entry and location will be reversed on appeal where the record fails to disclose any objection to granting the application or any way in which it is contrary to the public interest.

Joe Ashburn, 66 IBLA 328 (Aug. 25, 1982)

To the extent that a mining claim is situated on land which was withdrawn from entry under the mining laws, the claimant must not only show that the discovery of a valuable mineral deposit presently exists but also that the claim was valid as of the date of the withdrawal. If the claim was not valid at the time of the withdrawal, it was not excepted from the effect of the withdrawal. The claim could not become valid thereafter by any additional exploratory work or through an increase of mineral value due to a change in the market.

United States v. Michael D. Beckley, Virginia B. Beckley, 66 IBLA 357 (Aug. 27, 1982)

A mining claim located on lands previously withdrawn from appropriation under the mining laws is null and void ab initio. Lands included in a withdrawal remain withdrawn until there is a formal revocation or modification of the order of withdrawal. It is immaterial whether the lands are presently being used for the purpose for which they were withdrawn and whether a future revocation of the withdrawal is being considered.

Ronald W. Rapp, 67 IBLA 32 (Sept. 7, 1982)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

The effect of the issuance to the State of Alaska of a patent without a mineral reservation is to transfer the legal title from the United States, and to remove from the jurisdiction of this Department the consideration of all disputed questions concerning rights to the land, including questions as to the alleged superiority of a mining claim to the State selection. Where the lands on which the claim is situated have been patented to the State, BLM properly refused recordation of the claim, since it has no jurisdiction over the claim.

Harry J. Pike, 67 IBLA 100 (Sept. 14, 1982)

The lands underlying a nonnavigable lake are not available for the location of mining claims where the uplands have been patented without reservation of minerals to the United States or where the uplands in the public domain have been appropriated.

Lawrence F. Raun et al., 67 IBLA 239 (Sept. 24, 1982)

Where land has been reconveyed to the United States and the reconveyance reserves the minerals to the grantor, the United States has no authority to recognize a claim for the minerals under the mining laws, 30 U.S.C. § 22 (1976), because the minerals are not owned by the United States. Such a claim is properly declared null and void, regardless of whether or not a claimant performed assessment work or paid taxes on the land.

John B. Craig, Helen V. Craig, 68 IBLA 11 (Oct. 18, 1982)

A mining claim located on land which has been segregated from mineral location is properly declared null and void ab initio. In making such a finding it may be necessary to draw the distinction between an amended location of a claim which predated the withdrawal and a relocation or new location made subsequently.

B. J. Wall, 68 IBLA 122 (Oct. 27, 1982)

Mining claims are properly declared null and void ab initio when they are located on land which, on the date of location, was included in an application for withdrawal from appropriation under the public land laws, including the mining laws and the mineral leasing laws.

Louise Woodall, 69 IBLA 108 (Nov. 30, 1982)

Where mining claims were originally located on land which was withdrawn from mineral location, the claims are null and void ab initio.

Charles Degitz, 69 IBLA 145 (Dec. 9, 1982)

A mining claim located prior to Aug. 11, 1955, on land withdrawn for a powersite is null and void ab initio.

Mackay Bar Corp., 69 IBLA 148 (Dec. 13, 1982)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

A mining claim located on land after the land was segregated and closed to mineral entry, by notation of receipt of an application for withdrawal, is properly declared null and void ab initio.

Lester R. Holt, 69 IBLA 180 (Dec. 15, 1982)

Philip A. Cramer, 74 IBLA 1 (June 21, 1983)

Mining claims located for a nonmetalliferous mineral on land which is withdrawn from mineral location for nonmetalliferous minerals are properly declared null and void ab initio. Such claims are not preserved by a recitation in the location notices that the claims were located for "bentonite and other minerals" where the claimant himself admits that there has been no evaluation of the claims "for other minerals besides bentonite," which is nonmetalliferous.

L. H. Grooms, 70 IBLA 228 (Jan. 24, 1983)

Where an Act of Congress authorizes the setting aside of lands for particular public purposes, and does not either expressly continue or prohibit the operation of the general mining laws, the intent of Congress in that respect must be gathered from the Act itself, or by historical interpretation of this Department of that Act and similar Acts relating to lands of the same status.

Land within the Grand Canyon Game Preserve is not open to the location of mining claims, and mining claims located on land after it was included in the preserve are properly declared null and void ab initio.

If land has been withdrawn from mining, an erroneous public land record does not open the land to entry. A mining claim located on withdrawn land is null and void even if the land records erroneously indicate that the land is open.

Pathfinder Mines Corp., 70 IBLA 264 (Jan. 26, 1983)
90 I.D. 10

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

A mining claim located on land segregated and closed to mineral entry by notation of an application for withdrawal in the official BLM records is null and void ab initio.

J. Pat Kaufman, 71 IBLA 183 (Mar. 10, 1983)

Where land has been reconveyed to the United States and the reconveyance reserves the minerals to the grantor, the United States has no authority to recognize a claim for the minerals under the mining laws, 30 U.S.C. § 22 (1976), because the minerals are not owned by the United States. Such a claim is properly declared null and void ab initio.

John F. Panak et al., 71 IBLA 334 (Mar. 28, 1983)

Where the land on which a mining claim is located is subsequently withdrawn from entry under the mining laws, the validity of the claim must be determined as of the date of the withdrawal through the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not become

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

valid thereafter even by the satisfaction of the discovery requirement at a later date.

United States v. T. J. Jones, Robert B. Jones, 72 IBLA 52 (Apr. 12, 1983)

No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 43 CFR 3842.1-2.

Owyhee Calcium Products, Inc., 72 IBLA 235 (Apr. 26, 1983)

A mining claim located on land previously withdrawn from appropriation under the mining laws pursuant to the authority of sec. 17(d)(1) of the Alaska Native Claims Settlement Act is null and void ab initio.

Allan Kaiser, 72 IBLA 387 (May 5, 1983)

Unless the statute creating the area specifically provides otherwise, areas within the national park system are not open for location of mining claims.

The provision of the Wilderness Act of 1964, 16 U.S.C. § 1133(d)(3) (1976), which allows mining claims to be located in "wilderness areas" until Dec. 31, 1983, applies only to mining activities within national forest lands designated as wilderness. It is not applicable to lands such as the Buffalo National River which are part of the national park system, not national forest lands.

H. E. Bingham et al., 73 IBLA 19 (May 9, 1983)

Tom Brown, 74 IBLA 34 (June 27, 1983)

Where an act of Congress directs segregation of certain lands from "all forms of entry under the public land laws," the question of whether such a segregation prohibits mineral entry under the general mining laws is answered by determining congressional intent from the act itself, the legislative history of the act and, in addition, from historical interpretations of the Department concerning the act or other similar acts.

"Notation rule." Under the notation rule, where land is segregated from mineral entry under the general mining laws and that segregation is noted on the official Bureau of Land Management records, mineral location is foreclosed until the record is changed to reflect that the land is no longer segregated.

A mining claim located on land which has been segregated from mineral location is properly declared null and void ab initio.

O. Glenn Oliver, 73 IBLA 56 (May 12, 1983)

A mining claim located for a nonmetalliferous mineral when the land was withdrawn from mineral entry for nonmetalliferous minerals is properly declared null and void ab initio.

Withdrawal of land subject to valid existing rights does not prevent an amended location of a mining claim from relating back to the original location; a relocation, however, will not relate back.

To establish that a location of a claim after a withdrawal is an amendment of a location made before the withdrawal, a claimant must show that the earlier

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

location included the portion of the claim subject to the withdrawal, that the persons making the amended location had an unbroken chain of title with the original locators, and that the location predating the withdrawal was properly made.

Grace P. Crocker, 73 IBLA 78 (May 17, 1983)

A mining claim located on land segregated from all forms of appropriation, including locations under the mining law, by a small tract classification order is null and void ab initio.

Ernest L. Brevington, 73 IBLA 167 (May 24, 1983)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of an application by the State of Alaska to select lands segregates those lands from all subsequent appropriations, including locations under the mining law. A mining claim located on land which has been segregated and closed to mineral entry is properly declared null and void ab initio.

Fred Thompson, 74 IBLA 231 (July 19, 1983)

BLM may properly reject a mineral patent application to the extent it includes land embraced in a patent without a mineral reservation to the United States.

Nels Swanberg, Margaret Swanberg, 74 IBLA 249 (July 22, 1983)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Shiny Rock Mining Corp., 75 IBLA 136 (Aug. 15, 1983)

A lode mining claim located entirely on land previously patented without reservation of the minerals to the United States is null and void ab initio. If the discovery on which location of a lode mining claim is based is on unappropriated land, however, exterior boundaries may be laid within or across the surface of patented land for the purposes of claiming the unappropriated ground within the end lines and side lines and securing the extralateral rights to the lode deposit.

Zula C. Brinkerhoff, 75 IBLA 179 (Aug. 22, 1983)

Mining claims located on land which has been withdrawn from mineral location are properly declared null and void ab initio. However, where on appeal the mining claimant provides evidence which tends to show that some of the claims are amended locations of claims which predate the withdrawal, the case will be remanded to BLM for a determination of which, if any, of the claims are amended locations.

Portage Creek Mining Co., 75 IBLA 309 (Aug. 30, 1983)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

A mining claim located upon lands withdrawn from mineral entry is properly declared null and void.

Withdrawal of land subject to valid existing rights does not prevent an amended location of a mining claim from relating back to the original location; a relocation, however, will not relate back.

Rick & Linda Anderson, 76 IBLA 212 (Oct. 17, 1983)

A mining claim located on lands previously withdrawn from appropriation under the mining laws is properly declared null and void ab initio and the notice of location submitted for recordation is rejected insofar as it covers withdrawn lands. However, BLM should not reject the notice as it pertains to lands open to location, provided the claim conforms to the rules governing lode claims after being amended to exclude the withdrawn areas.

Bay Spirit Mining Corp., 76 IBLA 252 (Oct. 17, 1983)

Land which has been granted and approved to a state without a reservation of minerals to the United States is not available for the location of mining claims, and a mining claim located on such land after it is so conveyed is null and void ab initio.

The final approval of a list of state selected lands ended the Department's authority to resolve conflicting claims to those lands, including its authority to recognize the validity of mining claims situated thereon.

George Antonovich, John E. Curran, 76 IBLA 301 (Oct. 19, 1983) 90 I.D. 464

Where an act of Congress directs segregation of certain lands from "all forms of entry under the public land laws," the question of whether such a segregation prohibits mineral entry under the general mining laws is answered by determining congressional intent from the act itself, the legislative history of the act and, in addition, from historical interpretations of the Department concerning the act or other similar acts.

A mining claim located on land at a time when the land is segregated from mining location by a withdrawal confers no rights on the locator and is properly declared null and void ab initio.

John L. Grassmeier, 77 IBLA 156 (Nov. 16, 1983)

A mining claim located on land which has been segregated from mineral location is properly declared null and void ab initio. Lands segregated by Acts of Congress from all forms of entry under the public land laws of the United States for a 10-year period for conveyance to the Colorado River Commission of Nevada acting for the State of Nevada are not available for location of mining claims where the Commission submitted a timely application for conveyance of the lands to the State in accordance with provisions of the Acts.

Malcolm L. Figert, Leonard Weiner, 77 IBLA 160 (Nov. 16, 1983)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

Mining claims located on land which has been classified for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), and subsequently leased pursuant thereto, are properly declared null and void ab initio because the land was segregated from mineral entry, even where the lease contained a mineral reservation to the United States.

In order to establish that a notice of location of a mining claim is an amended location which relates back prior to a BLM decision which classified the land for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), the mining claimant must submit proof of a chain of title to him. In the absence of such proof, the purported amendment must be treated as a relocation.

Mining claims located on land patented without a mineral reservation to the United States are properly declared null and void ab initio.

Ronald B. Grabau, Dorothy L. Grabau, 77 IBLA 174 (Nov. 17, 1983)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required preliminary to a decision holding that such claims are invalid.

Shiny Rock Mining Corp. (On Reconsideration), 77 IBLA 261 (Nov. 30, 1983)

Where a patent has been issued for the lands on which a claim is situated it is proper for BLM to refuse recordation of the claim, since it has no jurisdiction over the claim.

Henry J. Hudspeth, Sr., Betty A. Hudspeth, 78 IBLA 235 (Jan. 9, 1984)

A placer mining claim located for gold on land previously withdrawn from appropriation under the mining laws relating to metalliferous minerals by Public Land Order No. 4522, dated Sept. 13, 1968, is null and void ab initio.

Charles H. Phillips, 78 IBLA 320 (Jan. 24, 1984)

A mining claim located at a time the land is withdrawn from appropriation by the Act of May 29, 1928, is null and void ab initio. It is immaterial whether future revocation of the withdrawal is being considered.

Samuel P. Speerstra, 78 IBLA 343 (Jan. 24, 1984)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

A mining claim located on land segregated and closed to mineral entry by notation of an application for withdrawal in the official BLM records is null and void ab initio.

Lands withdrawn for a powersite reservation, with certain exceptions, are open to entry for location and patent of mining claims with a reservation of power rights in the lands to the United States subject to the Mining Claims Rights Restoration Act. Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Lamar & Christine Burnett, 78 IBLA 349 (Jan. 25, 1984)

A mining claim lying entirely on lands previously patented under the Recreation and Public Purposes Act is null and void ab initio because such lands are not open to mineral entry.

Cruz G. Velasquez, Arsendo Sanchez, 78 IBLA 355 (Jan. 25, 1984)

Lands segregated on the public records by a Recreational and Public Purposes lease are not available for the location of mining claims, but a claimant may establish the exterior boundaries of a lode claim on land under a Recreation and Public Purposes lease, with the permission of the lessee, for the purpose of making end lines parallel so as to obtain extralateral rights to a vein or lode discovered on lands available for location.

Where a lode mining claim is located partially on patented or withdrawn land, such a claim is not null and void ab initio to the extent of its inclusion of such lands. While the claim may not afford the claimant any rights whatever in the lands into which the claim is partially projected, the configuration of such a claim might, in the proper circumstances, invest the claimant with extralateral rights in other land beyond or adjacent to that land which is closed to mineral entry.

Santa Fe Mining, Inc., 79 IBLA 48 (Feb. 9, 1984)

A mining claim whose discovery is located on land segregated and closed to mineral entry by notation of receipt of an application for withdrawal is properly declared null and void ab initio.

If the discovery on which location of a lode mining claim is based is on unappropriated land, exterior boundaries may be laid within or across the surface of withdrawn land for the purposes of claiming that portion of the ground within the end lines and side lines of the claim which has not been withdrawn and securing extralateral rights to the lode deposit to the extent that such extralateral rights are to ores within the ground which has not been withdrawn.

Marilyn Dutton Hansen, 79 IBLA 214 (Feb. 28, 1984)

Where a lode mining claim is located partially on patented or withdrawn land, such a claim is not null and void ab initio to the extent of its inclusion of such lands. While the claim may not afford the claimant any rights whatever in the lands into which the claim is partially projected, the configuration of such a claim might, in the proper circumstances, invest the claimant with extralateral rights in other land beyond

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

or adjacent to that land which is closed to mineral entry.

Comstock Tunnel & Drainage Co., Sutro Tunnel Co., 79 IBLA 237 (Mar. 1, 1984)

A locator whose discovery is on lands open to location may extend the end lines and side lines of a lode mining claim across patented or withdrawn lands to define extralateral rights to lodes or veins apexing within that portion of the claim subject to location. This principle permits development of unappropriated mineral in irregular parcels of lands in compliance with the statutory requirements for parallel end lines.

Anthony Juskiewicz, 79 IBLA 267 (Mar. 7, 1984)

BLM may properly declare a mining claim null and void ab initio where located on land segregated from mineral entry on the date of location by a small tract classification order.

J. S. Bowers, 79 IBLA 298 (Mar. 20, 1984)

Where on appeal the Board determines that, in declaring a millsite claim null and void ab initio because it was located on land which had been patented to the state, BLM mistakenly fixed the situs of the claim and that the claim is actually on land open to entry, the Board will reverse the BLM decision.

Savage Construction Co., Inc., 79 IBLA 389 (Mar. 27, 1984)

A mining claim located upon lands withdrawn from mineral entry by a Secretarial order for the benefit of the Mission Indians is properly declared null and void ab initio.

Robert E. Dawson, Kenneth E. Dawson, 80 IBLA 99 (Apr. 3, 1984)

BLM may not declare a mining claim located on land subject to a State indemnity selection application null and void ab initio because of the segregative effect arising from the filing of the application pursuant to 43 CFR 2091.2-6 where the state's application was filed prior to promulgation of the regulation.

James B. Houghton, Wm. A. Houghton, 80 IBLA 195 (Apr. 24, 1984).

Mining claims located on lands that are withdrawn from location are null and void ab initio.

Howard J. Hunt, Howard M. Hunt, 80 IBLA 396 (May 14, 1984)

A mining claim wholly located on land which has been segregated from mineral location by the filing of a state school land indemnity selection application is properly declared null and void ab initio.

When Arizona filed its original application for selection of land as part of its entitlement to compensation for deficiencies for school trust lands pursuant to its enabling act, the Department did not have segregation authority to protect the selections. During the promulgation of 43 CFR 2091.2-6, Arizona submitted a

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

request to have the previous applications withdrawn, consolidated, and amended to include additional lands. This will be deemed a reapplication under the circumstances of this case, the filing of which enabled the Department to segregate the lands described therein under 43 CFR 2091.2-6. Mining claims subsequently initiated on lands that were segregated by the reapplication were properly declared null and void ab initio.

If the discovery on which location of a lode mining claim is based is on unappropriated land, exterior boundary lines may be laid within or across the surface of withdrawn or segregated land, solely for the purpose of claiming unappropriated ground within the end lines to secure the extralateral rights to lode deposits apexing in the unappropriated portion of the claim. Therefore, those portions of the claims thus situated on the segregated lands are not properly declared null and void ab initio.

Amoco Minerals Co., 81 IBLA 23 (May 15, 1984)

The Recreation and Public Purposes Act makes reserved minerals subject to disposition only under applicable laws and such regulations as the Secretary may prescribe. In the absence of such regulations, land under patent pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 - 869-4 (1976), is not open to location under the mining laws.

George Schultz et al., 81 IBLA 29 (May 17, 1984)

Mining claims located for trace minerals on land previously withdrawn from mineral entry by Exec. Order No. 5327, as to nonmetalliferous minerals, and Public Land Order No. 4522, as to metalliferous minerals, are properly declared null and void ab initio.

Mineral Life Corp., 81 IBLA 103 (May 30, 1984)

A mining claim whose discovery is located on land segregated and closed to mineral entry by notation of receipt of an application for withdrawal is properly declared null and void ab initio.

If the discovery on which location of a lode mining claim is based is on unappropriated land, exterior boundary lines may be laid within or across the surface of withdrawn or segregated land for the purpose of claiming that portion of the ground within the end lines and side lines of the claim which has not been withdrawn and securing extralateral rights to the lode deposit apexing within the portion of the claim subject to location.

Lloyd J. Mecham, 81 IBLA 239 (June 6, 1984)

Land which has been patented without a reservation of minerals to the United States is not available for the location of mining claims, and mining claims located on such land after it is so patented are null and void ab initio.

All-Key Associates, 81 IBLA 288 (June 12, 1984)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

BLM may properly declare lode mining claims located wholly on land within the Lake Mead National Recreation Area, established pursuant to the Act of Oct. 8, 1964, 16 U.S.C. § 460n (1982), null and void ab initio because such land is implicitly withdrawn from mineral entry.

Where a lode mining claim is located partially on withdrawn lands, such a claim is not null and void ab initio to the extent of its inclusion of such lands. While the claim may not afford the claimant any rights whatever in the withdrawn lands into which the claim is partially projected, the configuration of such a claim might, in the proper circumstances, invest the claimant with extralateral rights in other land beyond or adjacent to that land which is closed to mineral entry.

Marvin F. Johnston, 81 IBLA 295 (June 12, 1984)

A mining claim located on land segregated from such location by the filing of a state selection application is properly declared null and void ab initio; however, where the case record is unclear whether the land embraced by the claim was segregated by an application predating the location or whether the land was segregated by an amendment to the application filed subsequent to the location, the decision will be set aside and the case remanded.

Elizabeth S. Hjellen et al., 81 IBLA 341 (June 21, 1984)

Elsie May Staude, 82 IBLA 226 (Aug. 22, 1984)

Mining claims located on land previously withdrawn from mineral entry by a Secretarial order of Dec. 14, 1904, pursuant to sec. 3 of the Act of June 17, 1902, are properly declared null and void ab initio. Therefore, no property rights are created. It is immaterial whether the lands are or have been used for the purpose for which they were withdrawn.

Homer Owens, 81 IBLA 402 (June 29, 1984)

Where a lode mining claim is located partially on withdrawn or patented land, it is not null and void ab initio to the extent of its inclusion of such lands. A locator whose discovery is on lands open to location may extend the end lines and side lines of his claim across withdrawn or patented land to define the extralateral rights to lodes or veins which apex within the claim.

Western Nuclear, Inc., 82 IBLA 67 (July 12, 1984)

The Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 - 869-4 (1982), makes reserved minerals subject to disposition only under applicable laws and such regulations as the Secretary may prescribe. In the absence of such regulations, land classified for disposition and under lease pursuant to the Recreation and Public Purposes Act is not open to location under the mining laws.

E. D. Vongehr, 82 IBLA 162 (Aug. 6, 1984)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

Where lands were patented to a railroad under a statute which authorized the granting of nonmineral lands only, the issuance of the patent generally constituted a conclusive determination by the United States of the nonmineral character of the land so patented, and the subsequent discovery of mineral values thereon does not operate to void the conveyance by the United States. Where such land has been reconveyed to the United States subject to a reservation of all minerals to the private grantor, the land is not subject to the subsequent location of mining claims under the general mining laws.

Lode mining claims located entirely on lands which are not subject to mineral entry at the time of their location are properly declared null and void ab initio without a hearing. However, where lode claims are partially located on land which is then not subject to mineral entry, they may not summarily be declared null and void ab initio to the extent of those portions of the claims which embrace lands not available to mineral entry, as lode claims may be projected onto such lands in order to configure the claim boundaries so as to secure extralateral rights.

Noise & Loon Berger, 82 IBLA 253 (Aug. 28, 1984)

Leo Crowley, Michael G. Clifton, 84 IBLA 7 (Nov. 26, 1984)

A mining claim located on land segregated from such location by the filing of a state selection application is properly declared null and void ab initio.

Ronald R. Kotowski, 82 IBLA 317 (Sept. 6, 1984)

Mining claims located on land previously withdrawn from mineral entry by Public Land Orders Nos. 5653 and 5654, 43 FR 59756-57, are properly declared null and void ab initio.

Mac A. Stevens, 83 IBLA 164 (Oct. 15, 1984)

Lands within the Colville Indian Reservation were segregated from mineral entry on Sept. 19, 1934, and the land was not thereafter opened to mineral location. A mining claim located on such land after Sept. 19, 1934, is null and void ab initio.

Dora Trudell, 83 IBLA 196 (Oct. 16, 1984)

BLM may properly declare a mining claim null and void ab initio if it was located at a time when the land was withdrawn from mineral entry for the benefit of the Virgin River Gorge Recreation Lands Area, even though the claim is purported to have historical significance which might enhance the recreational value of the area.

Evan Hansen, Lew Hansen, 83 IBLA 260 (Oct. 23, 1984)

Lands withdrawn for a powersite reservation are open to entry for location and patent of mining claims, with certain exceptions, subject to the conditions in the Mining Claims Rights Restoration Act, 30 U.S.C. § 621 (1982). Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Leslie E. Corrigo, 84 IBLA 26 (Nov. 26, 1984)

MINING CLAIMS--Continued

LANDS SUBJECT TO--Continued

Issuance of a patent without mineral reservation divests the Department of jurisdiction and authority to inquire into disputed questions of fact relating to the patented land or to make any determination of rights to that land. Where it has not retained jurisdiction over land encompassed by a mining claim, BLM may properly reject a claimant's recordation filing for that claim.

Rosander Mining Co., 84 IBLA 60 (Nov. 30, 1984)

A mining claim is null and void ab initio when it is located on land withdrawn from entry and location under the mining laws, even though the claimant located the claim in good faith and had no actual knowledge that the land was closed to appropriation.

Where there is an interval of several years between the filing of a mining claim location notice with BLM and BLM's decision that such claim was void from its inception, having been located on land that was closed to mineral entry, laches or estoppel will not bar BLM's decision that the claim is invalid, notwithstanding the claimant's good faith expenditure of labor and money for the benefit of the claim during the intervening years. BLM has no affirmative duty to mineral locators to promptly check the legal status of every claim filed by them and to apprise such claimants of its findings.

Mac A. Stevens, 84 IBLA 124 (Dec. 10, 1984)

Mining claims located on land closed to entry and location under the mining laws by a withdrawal order of the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act are null and void ab initio.

John Elmore, 84 IBLA 163 (Dec. 13, 1984)

A mining claim located on land segregated and closed to mineral entry by notation of an application for withdrawal in the official BLM records is null and void ab initio.

Lamar Burnett et ux., 84 IBLA 166 (Dec. 19, 1984)

Where a lode mining claim is located partially on withdrawn land, it is not null and void ab initio to the extent of its inclusion of such lands. A locator whose discovery is on lands opened to location may extend the end lines and side lines of his claim across withdrawn or patented land to define the extralateral rights to lodes or veins which apex within the claim.

Cominco American, Inc., 84 IBLA 209 (Dec. 27, 1984)

Mining claims located on land unavailable for location and entry under the mining laws are null and void ab initio.

Although 6 months passed before the Bureau of Land Management notified claimants that their claims were null and void ab initio, the claimants were not entitled to a refund of the expenses incurred developing the claims. The Bureau of Land Management has no affirmative obligation to mineral locators to promptly check the status of their mining claims.

Bill & Judy Bass et al., 84 IBLA 233 (Dec. 31, 1984)

MINING CLAIMS--Continued

LOCATABILITY OF MINERAL

Generally

Material which is principally valuable for use as fill, sub-base, ballast, riprap, or barrow, for which ordinary earth or rock may be used, is not locatable under the mining laws and was not locatable prior to July 23, 1955.

United States v. W. G. Nickol, Eva Rose Nickol, 47 IBLA 183 (May 7, 1980)

In determining whether a deposit of clay is locatable as a valuable mineral deposit under the mining laws, there is a distinction between a deposit considered to be common or ordinary clay, which is not locatable, and a locatable deposit having exceptional qualities useful and marketable for purposes for which common clays cannot be used.

Common clay includes clay usable for structural and other heavy clay products, for pressed or face brick, as well as ordinary brick, tile, and pipe, for pottery, earthenware, stoneware, and cement.

A deposit of bentonite which can profitably be removed and marketed for pelletizing taconite is an exceptional clay locatable under the mining laws, even though blending and additives are necessary to make the deposit suitable for such use.

Even if a mining claimant establishes that a deposit of bentonite is the same quality as other deposits sold for pelletizing taconite, the claimant must establish that his deposit can be marketed for this purpose rather than for a purpose for which common clay can also be used. The claimant must establish that the material on his claim, not some other claim, may be mined, removed, and marketed at a profit.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

Leasable Compounds

A natural brine containing water and ions of sodium, potassium, calcium, magnesium, and chlorine may be considered a valuable deposit of a sodium compound within the meaning of 30 U.S.C. § 262 (1976) if either of two contingencies occur. First, sodium must be present in sufficient quantity as to be commercially valuable. Second, sodium must be essential to the molecular structure of the valuable mineral.

Land is "known to be valuable" for a mineral subject to the Mineral Leasing Act of Feb. 25, 1920, as amended, when "known conditions at the time [of location] were plainly such as to engender the belief that the land contained mineral deposits of such quality and in such quantity as would render their extraction profitable and justify expenditures to that end." United States v. Southern Pacific Co., 251 U.S. 1, 13-14 (1919); Diamond Coal Co. v. United States, 233 U.S. 236, 239-40 (1914). In determining whether mineral deposits are such as to render their extraction profitable and justify expenditures, extrinsic factors, such as the cost of extraction, processing, transportation, and marketing must be considered.

The Administrative Law Judge gave proper weight to Government testimony in dismissing the Government's contest complaint where the evidence supported a finding of the existence of a sodium-calcium-chloride brine, but did not support a finding that such brine was "known to be valuable" for a Leasing Act mineral.

MINING CLAIMS--Continued

LOCATABILITY OF MINERAL--Continued

Leasable Compounds--Continued

The existence of a "related product" within the meaning of 30 U.S.C. § 262 (1976) presumes the existence of a valuable sodium compound deposit.

United States v. Leron Bardsley (Trustee), Marlene B. Bardsley, Individually and as Administratrix of the Estate of Donald H. Bardsley (Deceased), 45 IBLA 367 (Feb. 7, 1980)

LOCATION

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of Location." The date of location of a mining claim is determined in accordance with the law of the State where the claim is situated. Under Washington law, it is the date specified on the notice of location filed with the local recorder's office.

The date of location of a mining claim may not be changed by altering this date on the copy of the notice of location filed with BLM so that it reflects a date different than that in the original notice.

P & S Mining Co., 45 IBLA 115 (Jan. 23, 1980)

Mining claims are properly declared null and void ab initio when they are located during a period when the lands are withdrawn from entry under the mining laws. However, under 30 U.S.C. § 38 (1976), if a person or predecessors-in-interest have held and worked the claims for a period of time equal to that prescribed by the state statute of limitations for adverse possession of mining claims, during which period the land was open to mineral location, that person is deemed to have made proper locations. Whether the locations are valid depends on whether discoveries have been made on each claim within the meaning of the mining laws.

Dolores Olsen and Wesley E. Race, et al., 45 IBLA 232 (Feb. 4, 1980)

A Forest Service special use permit issued to a state agency does not constitute a withdrawal of the land involved from appropriation under the mining law, and a contest will not lie against a subsequently located mining claim on a charge that a portion of the claim is void to the extent that it includes land embraced by the permit.

United States v. Clare Williamson and Lapine Pumice Co., 45 IBLA 264 (Feb. 6, 1980) 87 I.D. 34

No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3842.1-2.

Big Horn Limestone Co., 46 IBLA 98 (Feb. 28, 1980)

Clayton S. Hale, 62 IBLA 35 (Feb. 24, 1982)

MINING CLAIMS--Continued

LOCATION--Continued

The purpose of 30 U.S.C. § 38 (1976) whereby a person or association may establish a right to patent lands which said person or association has held and worked for a period equal to the statute of limitations is to obviate proving formal compliance with requirements for locating a claim, but it does not dispense with proof of discovery.

United States v. Joseph B. and Aletha Henri, 46 IBLA 221 (Mar. 27, 1980)

The owner of an unpatented mining claim, located after Oct. 21, 1976, must file within 90 days after the date of location, in the proper BLM office, a copy of the certificate of location of the claim.

The failure to file the instruments required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, constitutes an abandonment of the mining claim, and the claim is properly deemed to be void.

Eric Murray, 47 IBLA 112 (Apr. 28, 1980)

The owner of a mining claim located on or before Oct. 21, 1976, had until Oct. 22, 1979, to record a copy of the location notice with Bureau of Land Management and pay the required service fee, and where the fee was not paid 43 CFR 3833.1-2(d) requires that the notice of location be returned as unacceptable.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to timely file an instrument required by 43 CFR 3833.1-2 constitutes an abandonment of the mining claim, and it is deemed to be void.

George B. Flewelling, 48 IBLA 141 (May 30, 1980)

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b) and 3833.4, the owner of an unpatented mining claim located after Oct. 21, 1976, shall file within 90 days after the date of location in the proper BLM office a copy of the official record of the notice or certificate of location, or the claim must be deemed abandoned and void.

James White, 48 IBLA 346 (July 3, 1980)

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, or the claim is deemed abandoned and void.

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Armando Maisica, 48 IBLA 351 (July 11, 1980)

Under 43 U.S.C. § 1744 (1976) if the owner of a mining claim located on or before Oct. 21, 1976, does not file a copy of the recorded notice or certificate of location by Oct. 22, 1979, the claim must be deemed abandoned and void.

Frank Otegui, 49 IBLA 40 (July 21, 1980)

MINING CLAIMS--Continued

LOCATION--Continued

The owner of an unpatented mining claim located after Oct. 21, 1976, must file a copy of the certificate or notice of location of the claim with BLM within 90 days of the date of location of the claim, failing which BLM properly rejects the untimely tendered document and declares the claim abandoned and void.

Henry D. Friedman, 49 IBLA 97 (July 28, 1980)

Where a mining claim located on land withdrawn at the time of location is declared void ab initio, such a location, and the decision declaring such a location void, do not affect the status of any location of the same land made prior to the withdrawal; nor can such a location, made by a party with an interest in the prior location, reestablish or protect rights to the prior claim.

Jack C. Franks, 49 IBLA 162 (July 30, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a), 3833.2-1(a), 3833.4, for a mining claim located on or before Oct. 21, 1976, a copy of the notice or certificate of location and evidence of assessment work or notice of intention to hold must be filed with the Bureau of Land Management by Oct. 22, 1979, or the claim shall be deemed abandoned and void.

Canyon View Mining Co., 49 IBLA 184 (July 31, 1980)

For a mining claim located on or before Oct. 21, 1976, under 43 U.S.C. § 1744 (1976), 43 CFR 3833.1-2(a) and 3833.4, a copy of the recorded notice or certificate of location must be filed with the appropriate BLM state office by Oct. 22, 1979, or the claim shall be conclusively deemed to be abandoned and void.

Virgal B. Taylor, Elizabeth Hutton, 49 IBLA 329 (Aug. 25, 1980)

Under 43 CFR 3833.1-2(a) and 3833.4(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the recorded notice or certificate of location with the Bureau of Land Management by Oct. 2, 1979, or the claim is deemed abandoned and void.

All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations.

Hugh A. Johnson, 50 IBLA 47 (Sept. 9, 1980)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file an instrument required by secs. 3833.1 and 3833.2 of this title within the time period prescribed therein shall be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it shall be void.

Tod Anderson, 50 IBLA 66 (Sept. 17, 1980)

MINING CLAIMS--Continued

LOCATION--Continued

In the absence of a discovery on a surface outcrop of a vein and in the absence of a clearly exposed vein on the surface of the ground, a projection vertically upward to the surface from the discovery points shown on a mineral survey is acceptable to identify the center line of a lode claim for location purposes. Where a Government contest complaint against a mining claim charges that a mineral survey is improperly executed, the charge is properly dismissed.

United States v. Cornelius E. Mannix, 50 IBLA 110 (Sept. 24, 1980)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of Location." The date of location of mining claims is determined in accordance with the law of the State where the claims are situated. Under California law, the time for recordation in the county is measured from the date of the posting of the location notice on the claims.

The dates of location of mining claims as shown on the notices of location recorded in compliance with State law will be treated as controlling where, after rejection by BLM of the location notices as untimely filed, claimant alleges that the notices are untrue as the dates shown are "typographical errors."

Los Resources Management Corp., 50 IBLA 131 (Sept. 24, 1980)

Where a person has located a mining claim on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to file timely with the proper office of the Bureau of Land Management a copy of the notice or certificate of location of a mining claim is deemed conclusively to constitute an abandonment of the mining claim by the owner.

The Department of the Interior, as agency of Executive Branch of Government, is not proper forum to decide whether or not as to mining claims the recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Abner Wood, 50 IBLA 141 (Sept. 26, 1980)

All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations.

John F. Schaelzer, 51 IBLA 188 (Dec. 2, 1980)

Pursuant to 43 CFR 3833.1-1, an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 Oct. 20, 1976), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

Gordon L. Cooper, 51 IBLA 191 (Dec. 5, 1980)

MINING CLAIMS--Continued

LOCATION--Continued

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

Arley C. Burke, 51 IBLA 224 (Dec. 10, 1980)

Where a person locates mining claims on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 CFR 3833.4, the failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site by the owner.

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to BLM for recordation on Oct. 22, 1979, and the check submitted was returned by the bank as uncollectible, the mining claims located prior to Oct. 21, 1976, are deemed abandoned and void.

John J. Dunsmore et al., 51 IBLA 297 (Dec. 17, 1980)

Where a person locates a mining claim on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to file such instruments as required by subsections (a) and (b) of that section shall be deemed conclusively to constitute an abandonment of the mining claim, or mill or tunnel site by the owner.

The Department of Interior, as agency of Executive Branch of Government, is not the proper forum to decide whether or not the recordation provisions of the Federal Land Policy and Management Act of 1976 relating to mining claims are constitutional.

Marvin E. Brown, Ione M. Brown, 52 IBLA 44 (Jan. 6, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the mining claim void.

Thomas F. Byron, Anna B. Philo, 52 IBLA 49 (Jan. 6, 1981)

MINING CLAIMS--Continued

LOCATION--Continued

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management office on or before Oct. 22, 1979. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

Joe Pastone, 52 IBLA 288 (Feb. 9, 1981)

In the absence of a showing that a person holds a written deed giving him legal title to mining claims which have apparently been abandoned, the person filing notices of location in his own name is properly regarded as a "relocation" of the claims, that is, the initiation of new claims which are adverse to the previous claims. Where a person has "relocated" mining claims, these claims date from the time of relocation and do not relate back to the date of location of the earlier claims.

American Resources, Ltd., 52 IBLA 290 (Feb. 9, 1981)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of location." The date of location of a mining claim is determined in accordance with the law of the state where the claim is situated. Under Arizona law, it is the date specified on the notice of location filed with the local recorder's office.

The dates of location of mining claims as shown on the notices of location recorded in compliance with State law will be treated as controlling where, after rejection by BLM of the location notices as untimely filed, claimant alleges that the notices are untrue as the dates shown are scrivener's errors.

John C. and Theresa K. Buchanan, 52 IBLA 387 (Feb. 19, 1981)

H. Mason Coggin, 54 IBLA 224 (Apr. 27, 1981)

The apex law gives the owner of a properly located claim on a vein the right to an indefinite extension on the dip of the vein beyond the vertical planes through the side lines of his claim. For a claim to be properly located there must be a discovery within the limits of the claim. The apex law cannot be utilized to establish the validity of another claim absent an independent showing of a valid discovery.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with the proper BLM office within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

Where an unpatented mining claim is located in Alaska near the dividing line separating the Anchorage and Fairbanks districts, indicated on the map in 43 CFR 1821.2-1, such that it is virtually impossible from the map to determine with substantial accuracy in which district the mining claim lies, the timely filing of the location notice by the owner of the claim in either the Alaska State Office or the Fairbanks District Office

MINING CLAIMS--Continued

LOCATION--Continued

will be considered as satisfying the requirement of 43 CFR 3833.1-2(b) of filing in the proper BLM office.

Janie S. Nelson, Terry L. Sullivan, 55 IBLA 289 (June 25, 1981)

"Date of location." The date of location of a mining claim is determined in accordance with the law of the state where the claim is situated. Under California law, it is the date of posting location notice on the claim.

The dates of location of mining claims as shown on the notice of location recorded in compliance with State law will be treated as controlling where, after rejection by BLM of the location notices as untimely filed, claimant alleges that the notices are untrue as the dates shown are in error.

C. B. Shannon, 55 IBLA 312 (June 26, 1981)

An amended location notice generally relates back to the date of the original location notice. A location notice cannot be considered an amended location, so as to relate back to a location which predates a withdrawal, where the location notice describes additional or new land not contained in the original location.

Lairy D. Brookshire et al., 56 IBLA 73 (July 15, 1981)

While it may be appropriate in some cases to refer a matter for a hearing before an Administrative Law Judge to determine whether a mining claim, the location notice for which is dated after withdrawal of the land, is based on an amended location and thus survives withdrawal of the land for mining purposes, the allowance of a request for a hearing is within the discretion of the Board, and this discretion is likely to be employed to deny the request for hearing where the appellant has failed to provide the Board with any evidence to support the allegation that the amended location can be proved.

Gary Willis, 56 IBLA 217 (July 22, 1981)

Pursuant to 43 CFR 3833.1-1 and 36 CFR 9.5(a), an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 (Oct. 20, 1976)), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

Abram H. Kreider, 57 IBLA 68 (Aug. 18, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site. These requirements are mandatory and failure to comply within the time period prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, millsite or tunnel site.

D. L. Nielsen, R. W. Tompkins, 57 IBLA 114 (Aug. 25, 1981)

MINING CLAIMS--Continued

LOCATION--Continued

While deposits of limestone chiefly valuable for building stone were subject to location only as placer claims, deposits of limestone valuable for their chemical or metallurgical properties are properly located according to the form of their deposition.

All placer claims must conform "as near as practicable" with the system of rectangular public land surveys. Where a claim does not so conform and it is not possible to amend the claim so that it does, the entry must be canceled.

United States v. Richard P. Hopkins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located on Federal land after Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location in the proper BLM office within 90 days after the date of location.

Frank E. Evans, 60 IBLA 44 (Nov. 17, 1981)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

Prudential Mining & Exploration, Inc., 60 IBLA 363 (Dec. 22, 1981)

Donald C. Strong, 63 IBLA 195 (Apr. 8, 1982)

In order to amend a claim, it is necessary that the party seeking to so amend have present title to the claim, since, in the absence of such title, any act purporting to "amend" is actually in derogation of the original claim and must be treated as a relocation.

Where a party alleges that a location notice, denominated as a relocation, is, in fact, an amendment of an earlier location, and gaps in the chain of title to the original claims are apparent on the record, that party must submit evidence eliminating any such hiatus in the chain of title. In the absence of such evidence, the purported amendment must be treated as a relocation.

Where a mining claimant seeks to amend various mining claims, there must be some way to ascertain which claims, in fact, are being amended. Where it is impossible to identify specific claims with specific amendments, the amendment can be of no force or effect.

R. Gail Tibbetts et al. v. Bureau of Land Management, 62 IBLA 124 (Mar. 4, 1982)

Appellant has not complied with the statutory and regulatory rules for recordation of mining claim locations where the document filed with BLM bears a location date that the document filed with the county does not. Moreover, State of Washington law, which governs determination of the location date in this case, contemplates recordation of a location notice with the county only after certain prerequisites have been accomplished on the claim to locate it. Thus, the declaration that location occurred on Nov. 11, 1981,

MINING CLAIMS--Continued

LOCATION--Continued

or on Feb. 3, 1982, is incorrect when the location notice was recorded with the county Nov. 10, 1981. Where it is impossible for BLM to ascertain whether the mining claimant has timely filed, because the location date is clearly incorrect or missing, the filing is properly rejected.

Gerald B. Bannon, 63 IBLA 115 (Apr. 2, 1982)

An "amended location" of a mining claim is a subsequent location intended to further the rights acquired by the earlier locator while making some change in the location, such as changing the name of the claim or its owners of record (as where the original claim has been sold) or excluding excess acreage. In contrast to a "relocation," an "amended location" does relate back to the date of the filing of the original notice of location, so that the filer does receive the rights associated with the earlier location, including its superiority to subsequent withdrawals, to the extent that the amended location merely furthers rights acquired by a prior subsisting location, and does not include any new land. The owner of a claim, determined to be an amended location of a claim originally located on or before Oct. 21, 1976, is required to comply with the provisions of 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(a) insofar as these provisions deal with claims located on or before Oct. 21, 1976.

Gary S. Posenjak, 63 IBLA 326 (Apr. 27, 1982)

An amended location notice of a mining claim generally relates back to the date of the original location, but a location notice cannot be considered an amended location where the original location did not comport with the statutory requirements.

Kivalina River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

An amended location notice generally relates back to the date of original location. A location notice cannot be considered an amended location where the original location did not comport with the statutory requirements. A location notice, even though styled "amended," may be considered an original location where the earlier location was improperly made.

Samuel P. Parr, Sr., 65 IBLA 167 (June 29, 1982)

An amended location notice generally relates back to the date of the original location notice. A location notice cannot be considered an amended location, so as to relate back to a location which predates a withdrawal to the extent such location notice describes new land not contained in the original location.

Where there are factual questions relating to whether a refiling subsequent to a withdrawal was in the nature of an "amended location" or whether it constituted a "relocation," the matter will be referred for a hearing to allow the claimant the opportunity to show that the subsequent filing is an amended location, and that it is thus the successor in an unbroken chain of title dating back to the original location.

Fairfield Mining Co., Inc., 66 IBLA 115 (Aug. 10, 1982)

MINING CLAIMS--Continued

LOCATION--Continued

Failure to comply with state and local regulations requiring oil shale placer mining claims to be marked on the ground does not invalidate the claims when the claims were located before Feb. 25, 1920, in compliance with contemporary Departmental regulations.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

"Date of location." Under Colorado State law, as applied by 43 CFR 3833.0-5(h), the date of location of an unpatented mining claim in Colorado is the date specified in the location certificate. Where the claimant fails to file a copy of the official record of the notice of location of this claim with BLM within 90 days of this date, BLM properly rejects the filing, notwithstanding allegations that the actual date of location was different than the date specified in the location certificate.

Amigo Mining, Inc., 68 IBLA 305 (Nov. 19, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

B. Rigby Young, 69 IBLA 88 (Nov. 30, 1982)

For the purpose of Departmental adjudication, an amended location is one made in furtherance of an earlier valid location, while a relocation is one which is adverse to the prior location.

An amended location notice generally relates back, where no adverse rights have intervened, to the date of the original location.

Coates-Labunge, 69 IBLA 137 (Dec. 9, 1982)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

Dearyl Riley, 70 IBLA 33 (Jan. 7, 1983)

The requirements for location of a mining claim on the public domain are governed by relevant statutes of the state wherein the claim is located to the extent they do not conflict with Federal mining law. Where recordation of a certificate of location within 90 days of location of a claim is a required element of a mining claim location under state law and the certificate of location is not recorded until 2 years after segregation of the land from appropriation under the mining law, the claim is properly declared null and void ab initio as having been located on the land at a time when it is not open to location, regardless of the fact that claimant may have conducted preliminary activities on the land prior to segregation.

Thomas Stoelting et al., 70 IBLA 231 (Jan. 25, 1983)

MINING CLAIMS--Continued

LOCATION--Continued

An amended location notice generally relates back to the date of the original location notice, that is, to the extent that an amended location merely furthers rights acquired by a prior subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights prior to the filing of the amended location and subsequent to the original location will not invalidate the claims.

Rhinehart Berg, 71 IBLA 131 (Mar. 9, 1983)

A mining claimant who has met certain fundamental requirements of the mining law, such as discovery, citizenship, and expenditure, and who has exclusively held and worked his claim for the period prescribed by the applicable statute of limitations for mining claims is entitled to a patent, regardless of the fact that the claim may have been improperly located as lode or placer, assuming no intervening loss of discovery.

No amended location of a mining claim is possible if the original location was void.

Frank Belluzzo, 71 IBLA 178 (Mar. 10, 1983)

All placer mining claims must conform as nearly as practicable with the public survey system. 43 CFR 3842.1-2.

Owyhee Calcium Products, Inc., 72 IBLA 235 (Apr. 26, 1983)

A lode mining claim located entirely on land previously patented without reservation of the minerals to the United States is null and void ab initio. If the discovery on which location of a lode mining claim is based is on unappropriated land, however, exterior boundaries may be laid within or across the surface of patented land for the purposes of claiming the unappropriated ground within the end lines and side lines and securing the extralateral rights to the lode deposit.

Zula C. Brinkerhoff, 75 IBLA 179 (Aug. 22, 1983)

If the discovery on which location of a lode mining claim is based is on unappropriated land, exterior boundaries may be laid within or across the surface of withdrawn land for the purposes of claiming that portion of the ground within the end lines and side lines of the claim which has not been withdrawn and securing extralateral rights to the lode deposit to the extent that such extralateral rights are to ores within the ground which has not been withdrawn.

Marilyn Dutton Hansen, 79 IBLA 214 (Feb. 28, 1984)

A locator whose discovery is on lands open to location may extend the end lines and side lines of a lode mining claim across patented or withdrawn lands to define extralateral rights to lodes or veins apexing within that portion of the claim subject to location. This principle permits development of unappropriated mineral in irregular parcels of lands in compliance with the statutory requirements for parallel end lines.

Anthony Juskievicz, 79 IBLA 267 (Mar. 7, 1984)

MINING CLAIMS--Continued

LOCATION--Continued

In the absence of specific evidence that a mining claim location notice dated subsequent to the date of withdrawal of the land upon which the claim was located was intended to be an amendment, rather than a relocation, of a claim located prior to the withdrawal, a mining claimant cannot relate the date of a location to an earlier location and thus validate a claim which would otherwise be considered null and void ab initio.

John C. Neill, 80 IBLA 39 (Mar. 28, 1984)

If the discovery on which location of a lode mining claim is based is on unappropriated land, exterior boundary lines may be laid within or across the surface of withdrawn or segregated land, solely for the purpose of claiming unappropriated ground within the end lines to secure the extralateral rights to lode deposits apexing in the unappropriated portion of the claim. Therefore, those portions of the claims thus situated on the segregated lands are not properly declared null and void ab initio.

Amoco Minerals Co., 81 IBLA 23 (May 15, 1984)

Federal law requires that mining locations be made in good faith for the purpose of mining, processing, or prospecting for valuable minerals. Title to mineral lands cannot be acquired by occupancy unless for the prime purpose of mining and extracting minerals. Even if a discovery could be shown to exist, proof of bad faith can invalidate a claim, since in such a situation the mineral values are incidental to the purpose for which the land is claimed.

United States v. Jon Zimmers, Claire Kelly, 81 IBLA 41 (May 17, 1984)

If the discovery on which location of a lode mining claim is based is on unappropriated land, exterior boundary lines may be laid within or across the surface of withdrawn or segregated land for the purpose of claiming that portion of the ground within the end lines and side lines of the claim which has not been withdrawn and securing extralateral rights to the lode deposit apexing within the portion of the claim subject to location.

Lloyd J. Beehan, 81 IBLA 239 (June 6, 1984)

Lode mining claims located entirely on lands which are not subject to mineral entry at the time of their location are properly declared null and void ab initio without a hearing. However, where lode claims are partially located on land which is then not subject to mineral entry, they may not summarily be declared null and void ab initio to the extent of those portions of the claims which embrace lands not available to mineral entry, as lode claims may be projected onto such lands in order to configure the claim boundaries so as to secure extralateral rights.

Boise & Leon Berger, 82 IBLA 253 (Aug. 28, 1984)

Leo Crowley, Michael G. Clifton, 84 IBLA 7 (Nov. 26, 1984)

MINING CLAIMS--Continued

LODE CLAIMS

To constitute a discovery on a lode mining claim there must be physically exposed within the limits of the claim a lode or vein bearing mineral of such quality and in such quantity as to warrant a man of ordinary prudence in the expenditure of his labor and means, with a reasonable prospect of success, in attempting to develop a valuable mine; it is not enough to show that the exposed mineralization is sufficient to warrant holding a claim with a reasonable hope that at some time in the future the land embraced therein may become valuable for mining.

United States v. Robert Chambers, 47 IBLA 102 (Apr. 23, 1980)

No discovery of a valuable mineral deposit is demonstrated where the amounts of mineral yielded by a claim are so small that mining could not be expected to produce an economic return in any way commensurate with the labor and cost involved in extracting, transporting, and processing the mineralization.

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

United States v. Michael Kuretich et al., 54 IBLA 124 (Apr. 17, 1981)

Where the land on which a mining claim is located is subsequently closed to mineral entry, the validity of the claim must be determined as of the date of the withdrawal, as well as of the date of the hearing. If there was no discovery as of the date of withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though there might be a discovery at a later date.

United States v. Alice W. Rouse et al., 56 IBLA 36 (July 8, 1981)

United States v. Verde Mining Co., Inc., et al., 57 IBLA 225 (Aug. 27, 1981)

To constitute discovery upon a lode mining claim, there must be exposed within the limits of the claim a vein or lode of quartz or other rock in place, bearing gold or some other mineral deposit in such quality and quantity which would warrant a prudent man in the expenditure of his time and money with a reasonable prospect of success in developing a valuable mine.

While deposits of limestone chiefly valuable for building stone were subject to location only as placer claims, deposits of limestone valuable for their chemical or metallurgical properties are properly located according to the form of their deposition.

United States v. Richard P. Haskins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

MINING CLAIMS--Continued

LODE CLAIMS--Continued

The discovery of a valuable mineral deposit is essential to a valid mining claim. There must be exposed within the limits of a lode mining claim a vein or lode of rock in place bearing mineral of such quantity and quality that a prudent person would expend time and means with a reasonable prospect of success in developing a valuable mine.

The "marketability test" is a refinement of the "prudent man test" and requires that extraction, removal, and marketing costs be considered, as such factors directly bear on the question whether a person of ordinary prudence would be justified in the further expenditure of time and means to develop a paying mine.

Where a mining claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claims must be tested by the value of the mineral deposit as of the date of withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Leon Noyce and Thomas Rokita, 59 IBLA 268 (Oct. 29, 1981)

A mining claimant who has met certain fundamental requirements of the mining law, such as discovery, citizenship, and expenditure, and who has exclusively held and worked his claim for the period prescribed by the applicable statute of limitations for mining claims is entitled to a patent, regardless of the fact that the claim may have been improperly located as lode or placer, assuming no intervening loss of discovery.

Frank Belluzzo, 71 IBLA 178 (Mar. 10, 1983)

Where a decision on appeal is based on a factual issue not raised at the hearing, where no opportunity for argument on appeal was provided and where the fact on which the decision was based were incorrect due to a faulty hearing transcript, the decision will be set aside.

Oreo Development Co. v. Leo Calder (On Reconsideration), A-26604 (Apr. 25, 1983) 90 I.D. 223

A lode mining claim located entirely on land previously patented without reservation of the minerals to the United States is null and void ab initio. If the discovery on which location of a lode mining claim is based is on unappropriated land, however, exterior boundaries may be laid within or across the surface of patented land for the purposes of claiming the unappropriated ground within the end lines and side lines and securing the extralateral rights to the lode deposit.

Yula C. Brinkerhoff, 75 IBLA 179 (Aug. 22, 1983)

If the discovery on which location of a lode mining claim is based is on unappropriated land, exterior boundaries may be laid within or across the surface of withdrawn land for the purposes of claiming that portion of the ground within the end lines and side lines of the claim which has not been withdrawn and securing extralateral rights to the lode deposit to the extent that such extralateral rights are to ores within the ground which has not been withdrawn.

Marilyn Dutton Hansen, 79 IBLA 214 (Feb. 28, 1984)

MINING CLAIMS--Continued

LODE CLAIMS--Continued

A locator whose discovery is on lands open to location may extend the end lines and side lines of a lode mining claim across patented or withdrawn lands to define extralateral rights to lodes or veins apexing within that portion of the claim subject to location. This principle permits development of unappropriated mineral in irregular parcels of lands in compliance with the statutory requirements for parallel end lines.

Anthony Juskiewicz, 79 IBLA 267 (Mar. 7, 1984)

If the discovery on which location of a lode mining claim is based is on unappropriated land, exterior boundary lines may be laid within or across the surface of withdrawn or segregated land, solely for the purpose of claiming unappropriated ground within the end lines to secure the extralateral rights to lode deposits apexing in the unappropriated portion of the claim. Therefore, those portions of the claims thus situated on the segregated lands are not properly declared null and void ab initio.

Amoco Minerals Co., 81 IBLA 23 (May 15, 1984)

If the discovery on which location of a lode mining claim is based is on unappropriated land, exterior boundary lines may be laid within or across the surface of withdrawn or segregated land for the purpose of claiming that portion of the ground within the end lines and side lines of the claim which has not been withdrawn and securing extralateral rights to the lode deposit apexing within the portion of the claim subject to location.

Lloyd J. Mecham, 81 IBLA 239 (June 6, 1984)

Where a lode mining claim is located partially on withdrawn or patented land, it is not null and void ab initio to the extent of its inclusion of such lands. A locator whose discovery is on lands open to location may extend the end lines and side lines of his claim across withdrawn or patented land to define the extralateral rights to lodes or veins which apex within the claim.

Western Nuclear, Inc., 82 IBLA 67 (July 12, 1984)

Lode mining claims located entirely on lands which are not subject to mineral entry at the time of their location are properly declared null and void ab initio without a hearing. However, where lode claims are partially located on land which is then not subject to mineral entry, they may not summarily be declared null and void ab initio to the extent of those portions of the claims which embrace lands not available to mineral entry, as lode claims may be projected onto such lands in order to configure the claim boundaries so as to secure extralateral rights.

Noise & Leon Berger, 82 IBLA 253 (Aug. 28, 1984)

Leo Crowley, Michael G. Clifton, 84 IBLA 7 (Nov. 26, 1984)

Where a lode mining claim is located partially on withdrawn land, it is not null and void ab initio to the extent of its inclusion of such lands. A locator whose discovery is on lands opened to location may extend the end lines and side lines of his claim across

MINING CLAIMS--Continued

LODE CLAIMS--Continued

withdrawn or patented land to define the extralateral rights to lodes or veins which apex within the claim.

Cominco American, Inc., 84 IBLA 209 (Dec. 27, 1984)

MARKETABILITY

Uncontradicted evidence of nonproduction of a mining claim, which has continued over a period of years, is sufficient, without more, to establish a prima facie case of invalidity of the mining claim.

United States v. Gerald Hess, 46 IBLA 1 (Feb. 13, 1980)

A discovery exists where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. This "prudent man" test has been refined and complemented by the "marketability" test requiring a showing that the mineral in question can be presently extracted, removed, and marketed at a profit.

United States v. W. G. Nickol, Eva Rose Nickol, 47 IBLA 183 (May 7, 1980)

In determining whether a claimant has made a discovery, the present costs of mining, removing, and marketing the minerals involved are properly considered.

United States v. Cornelius E. Mannix, 50 IBLA 110 (Sept. 24, 1980)

The Supreme Court has determined that a finding of present marketability as of Feb. 25, 1920, is not a prerequisite to a determination that oil shale deposits are valuable mineral deposits within the meaning of the general mining laws, and has excepted oil shale claims from the general rules of discovery for mining claims.

Frederick H. Larson v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

Under Andrus v. Shell Oil Co., ___ U.S. ___, 64 L.Ed.2d 593 (1980), 48 U.S.L.W. 4603 (June 2, 1980), oil shale is a prospectively valuable mineral and therefore present marketability need not be shown to demonstrate discovery.

United States v. Cameron Catlin Bohee et al., United States v. Exxon Corp. et al., United States v. Ridabelle Brown et al. (Supp.), 51 IBLA 97 (Nov. 5, 1980)
87 I.D. 535

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery,

MINING CLAIMS--Continued

MARKETABILITY--Continued

a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

Where contestees present uncontroverted evidence showing that, over a period of 4 years, they and a partner have extracted 26 or 27 ounces of gold from their claim using a suction dredge, and where the Government has made no showing that suction dredge mining would be insufficient to support a valid claim, the contest is properly dismissed without prejudice to the initiation of another contest complaint.

United States v. Clifford L. & Mary A. Williams, 65 IBLA 346 (July 16, 1982)

The value of a mineral deposit claimed under the mining laws must be determined by objective rather than subjective criteria. An otherwise invalid mine cannot be bootstrapped into validity because the material may be used in some other profitable business in which a claimant may be engaged.

United States v. Michael D. Buckley, Virginia B. Buckley, 66 IBLA 357 (Aug. 27, 1982)

The Department contested the validity of four unpatented limestone placer mining claims and the associated millsite contending the limestone from the claims was unmarketable. Following the hearing, the Administrative Law Judge correctly declared the claims null and void where the evidence established the material from the claims could not have been marketed at a profit.

United States v. Estate of Mildred Ruck & Cleo Winner, 69 IBLA 19 (Nov. 24, 1982)

In order to become entitled to a mining claim, a claimant must establish the presence of a valuable mineral deposit. 30 U.S.C. § 22 (1976). A valuable mineral deposit exists where the mineral found is of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Castle v. Womble, 19 L.D. 455 (1894). This is the "prudent man test," approved by the U.S. Supreme Court in Chrisman v. Miller, 197 U.S. 313 (1905). It has been refined to require a showing of marketability, i.e., that the mineral can be presently extracted, removed, and marketed at a profit. United States v. Coleman, 390 U.S. 599 (1968). Where a claim is located on land subsequently withdrawn from appropriation under the mining laws, the claim must be supported by a discovery at the time of withdrawal, as well as the date of the hearing into its validity. Cameron v. United States, 252 U.S. 450 (1920).

United States v. Eva M. Pool et al., 74 IBLA 37 (June 27, 1983)

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

United States v. Oscar E. & Gary E. Anderson, 83 IBLA 170 (Oct. 15, 1984)

MINING CLAIMS--Continued

MILLSITES

An application for a millsite patent is properly rejected where the applicant can allege only past use of the millsite for mining or milling purposes pursuant to 30 U.S.C. § 42 (1976). An application for a millsite patent is properly rejected where use of the millsite within the terms of 30 U.S.C. § 42 (1976) depends upon the future discovery of minerals.

So long as the legal title to public lands remains in the United States, it has the power, after proper notice and upon adequate hearing, to determine whether a millsite claim is valid, and if it be found invalid, to declare it null and void.

United States of America v. Utah International, Inc., 45 IBLA 73 (Jan. 17, 1980)

Sec. 15 of the Act of May 10, 1872, 30 U.S.C. § 42 (1976), requires that a millsite be used or occupied distinctly and explicitly for mining or milling purposes. Where a cabin on a millsite is used for residential purposes and the use of the cabin for mining purposes is only incidental to its use as a residence, the millsite must be declared null and void.

A mineral claimant who has not made a discovery of a valuable mineral deposit within the limits of his lode or placer mining claims is not the proprietor of a "vein, lode or placer" within the context of 30 U.S.C. § 42 (1976), and cannot establish any right to a millsite claim based on such unperfected mining locations.

United States v. Leon R. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

A millsite located on land withdrawn from all forms of appropriation under the public land laws, including location and entry under the mining laws, except locations for metalliferous minerals, is null and void ab initio because it is not a location for metalliferous minerals under the mining law.

Notice and an opportunity for a hearing is required only where there is a disputed question of fact and where validity of a millsite location turns on the legal effect to be given facts of record concerning the status of the land when the millsite was located, no hearing is required.

John C. and Martha W. Thomas d.b.a. Tungsten Mining Co., 53 IBLA 182 (Mar. 17, 1981)

Where a dependent millsite is allegedly operated only in connection with a lode mining claim which is invalid, it necessarily follows that the millsite is invalid.

United States v. Michael Kuretich et al., 54 IBLA 124 (Apr. 17, 1981)

Under 43 CFR 3833.2-1(d), a millsite owner is not required to file a notice of intention to hold the site until Dec. 30 of the year following the year in which the owner files the notice of location for the site with BLM for recordation. A BLM decision declaring six millsite claims abandoned and void because notices of intention to hold, filed at the same time as the notices of location for the sites, are defective will be reversed.

Louis L. Oggs, Jr., et al., 56 IBLA 30 (July 8, 1981)

MINING CLAIMS--Continued

MILLSITES--Continued

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Feldslite Corporation of America, 56 IBLA 78 (July 15, 1981) 88 I.D. 643

Mrs. Otis Teaford, 56 IBLA 367 (Aug. 3, 1981)

Dave E. Newman, 57 IBLA 23 (Aug. 6, 1981)

Bruce J. Heiss, 57 IBLA 152 (Aug. 25, 1981)

Nelson C. Barry, 57 IBLA 268 (Aug. 31, 1981)

Harlow H. Oberbillig, 57 IBLA 336 (Sept. 1, 1981)

Keith E. O'Hara, 58 IBLA 59 (Sept. 21, 1981)

Inez Crews et al., 59 IBLA 257 (Oct. 29, 1981)

Harvey A. Clifton et al., 60 IBLA 29 (Nov. 16, 1981)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Richard Holland, 74 IBLA 167 (July 12, 1983)

Since millsites may only be located on nonmineral land, a millsite claim is necessarily adverse to a mining claim. Thus, land embraced by a millsite claim is not open to the initiation of rights under 30 U.S.C. § 38 (1976).

United States v. Richard P. Hasking, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

The failure to file a copy of a notice or certificate of location for a millsite as required by sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2 in the proper Bureau of Land Management office within the time period prescribed therein conclusively constitutes abandonment of the millsite by the owner.

Fletcher D. Fisher, 59 IBLA 150 (Oct. 26, 1981)

A vague intention to use or occupy land embraced in a millsite claim for mining or milling purposes at some time in the future is not sufficient to comply with the requirements for obtaining a millsite.

United States v. Lyle E. and Diane Campbell, 59 IBLA 261 (Oct. 29, 1981)

"Notation rule." Under the notation rule a millsite claim, located at a time when the master title plat in the local Bureau of Land Management office shows that the lands embraced by the claim are included in a state selection application, is properly declared null and void ab initio because notation of the state selection application on the official records segregates the land from further appropriation. The rule applies even where the notation was posted in error, or where the segregative use so noted is void, voidable, or has terminated.

A mining claim or millsite located on land at a time when the land is segregated from the operation of

MINING CLAIMS--Continued

MILLSITES--Continued

the mining laws by a State selection application is properly declared null and void ab initio.

John C. and Martha W. Thomas, d.b.a. Tungsten Mining Co. (On Reconsideration), 59 IBLA 364 (Nov. 9, 1981)

Use of a millsite claim as a boat dock does not satisfy the requirements for a valid millsite claim. Even if such a use were qualifying, the lack of production shows that the site is not presently used for shipping ore, and an intent to use the land for millsite purposes in the future is not sufficient for a valid millsite claim. Furthermore, a millsite is properly declared to be invalid if it is used in connection with a mining claim that is held to be invalid.

United States v. Michael D. Beckley, Virginia B. Beckley, 66 IBLA 357 (Aug. 27, 1982)

MINERAL LANDS

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quantity and quality as to render its extraction profitable and justify expenditures to that end. The charge that the lands embraced by a mining claim are not mineral in character can raise two discrete issues. First, it can challenge the validity of the entire claim. Alternatively, it can be applied to placer claims which are supported by a discovery, with the effect that the claimant must show that each 10 acres of the claim are mineral in character.

United States v. Clare Williamson and Lapine Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

Although placer claims may be validated by a single discovery, each 10-acre subdivision embraced by the claim must be mineral in character. Land is mineral in character when known conditions engender the belief that the land contains mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end.

United States v. W. G. Nickol, Eva Rose Nickol, 47 IBLA 183 (May 7, 1980)

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quantity and quality as to render its extraction profitable and justify expenditures to that end. The charge that the land embraced by a mining claim is not mineral in character is a normal adjunct to a charge of no discovery.

United States v. Graham E. Corns, 53 IBLA 5 (Feb. 26, 1981)

United States v. Verde Mining Co., Inc., et al., 57 IBLA 225 (Aug. 27, 1981)

Although placer claims may be validated by a single discovery, each 10-acre subdivision embraced by the claim must be mineral in character.

United States v. Robert E. Lara, 67 IBLA 48 (Sept. 9, 1982)

MINING CLAIMS--Continued

MINERAL LANDS--Continued

Where 10-acre portions of oil shale placer mining claims cover lands from which erosion has removed the Parachute Creek member (the principal body of rich oil shale), there is no geological basis to infer the presence of rich oil shale, and such portions of the claims are properly determined to be nonmineral in character.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end. A finding that land is mineral in character may be based wholly on inferential evidence.

United States v. Cecil Bell et al., 68 IBLA 367 (Nov. 22, 1982)

If a lode mining claim is supported by a discovery, it necessarily follows that the land is mineral in character. If a claim is not supported by a discovery, it is invalid and it would be immaterial whether the land is mineral in character. In any event, the tests for determining the mineral character of land and whether a discovery of a valuable mineral deposit has been made are essentially the same.

United States v. Eva M. Pool et al., 74 IBLA 37 (June 27, 1983)

PATENT

If the record does not contain sufficient evidence to persuade the Secretary or his authorized officers that the law has been complied with, the Department cannot legally grant the gratuity which claimants request, i.e., issuance of a mineral patent.

United States v. Ernest Higbee et al., 52 IBLA 83 (Jan. 9, 1981)

Where an applicant for a mineral patent has been requested to provide additional information and has not done so after 18 months, the Bureau of Land Management may properly deny his request for a further extension of time to submit that information and reject his mineral patent application without prejudice to applicant's right to file a proper application in the future. But when the pendency of an appeal from that decision has stayed its effectiveness beyond the time needed by the applicants to obtain the necessary information, the Board may give the applicants 10 additional days to file the information with BLM before the rejection of their application becomes effective.

Wilbur G. Hallauer et al., 52 IBLA 202 (Jan. 26, 1981)

Where the Bureau of Land Management is not satisfied with the evidence of discovery submitted by a mineral patent applicant, it may request further information. However, if it concludes that the information presented is insufficient to support a discovery, it may not summarily reject the patent application. It must initiate a contest proceeding.

United States Steel Corp., 52 IBLA 319 (Feb. 19, 1981)

MINING CLAIMS--Continued

PATENT--Continued

At any time prior to the issuance of patent, protest may be filed against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings. Such protest cannot, however, be sustained on the basis of the protestants' allegation that they are the owners of a conflicting claim which now is deemed abandoned and void as a matter of law.

Paula Troester Saragoza et al., 53 IBLA 247 (Mar. 19, 1981)

Where, in a contest on an application for a mineral patent, it is determined that no discovery has been made on a claim, the necessary result of this determination is that the mining claim is invalid and must be so declared.

United States v. Ralph P. Progley, Melvin S. Hilgers, 54 IBLA 321 (Apr. 30, 1981)

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so within the time prescribed by a Bureau of Land Management decision, BLM may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 129 (May 20, 1982)

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so after 10 years, the Bureau of Land Management may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 132 (May 20, 1982)

The provisions of 30 U.S.C. §§ 29 and 30 (1976) relating to "adverse claims" refers only to adverse mineral claims, and nothing in these sections purports to limit the rights of third parties to appeal from a denial of a protest of a patent application where they can show a cognizable interest which has been adversely affected.

In re Pacific Coast Molybdenum Co., 68 IBLA 325 (Nov. 22, 1982)

An Administrative Law Judge in a mining contest may properly preclude testimony at a hearing on remand on issues of geology, quality, quantity, and continuity of ore, and technology of a proposed beneficiation process where findings on such issues have been made by the Judge at an earlier hearing and approved by the Board on appeal, and no offer of proof is submitted to the Board that would compel an altered finding.

United States v. Pittsburgh Pacific Co., 68 IBLA 342 (Nov. 22, 1982) 89 I.D. 586

MINING CLAIMS--Continued

PATENT--Continued

Sec. 22(c) of the Alaska Native Claims Settlement Act permits the conveyance of land that is subject to unpatented mining claims located prior to Aug. 31, 1971, to a regional Native corporation. The possessory interest of the mining claimant in the claims is protected, although limited, as a valid existing right by sec. 22(c) and 43 CFR 2650.3-2.

Theodore J. Albasy, 69 IBLA 160 (Dec. 13, 1982)
89 I.D. 619

BLM decisions rejecting mineral patent applications for numerous deficiencies, uncertainties, and inconsistencies therein, will be affirmed where appellant fails to point out how the decisions are in error, subject to the applicant's right to submit proper and correct applications in the future.

Donald L. Clark, 71 IBLA 169 (Mar. 10, 1983)

It is proper to reject an application for mineral patent where the official records disclose that the alleged claims have been conclusively determined to be abandoned and void for failure to comply with the recordation requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Mineral Investigation & Development Co., 71 IBLA 398 (Mar. 31, 1983)

A mineral patent applicant must support his application with a certificate or abstract of title. 43 CFR 3862.1-3(a).

Where an applicant for a mineral patent has been requested to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so within the time prescribed by a Bureau of Land Management decision, BLM may properly reject the application without prejudice to applicant's right to submit a proper and complete application in the future.

Owyhee Calcium Products, Inc., 72 IBLA 235 (Apr. 26, 1983)

Where protests to a mineral patent application are denied and an appeal is taken, protestants have the burden of affirmatively establishing that patent should not issue and that BLM's decision was in error.

The quantum of evidence necessary to prove a discovery does not change because the land on which the claim is located may have other values. Bad faith in locating a claim, however, where proved, requires invalidation of a claim even where it is supported by a discovery.

In re Pacific Coast Molybdenum Co., 75 IBLA 16 (Aug. 5, 1983)
90 I.D. 352

The Bureau of Land Management properly determines the acreage of mining claims that have been conformed to surveyed legal subdivision of the township by reference to its official land status records.

The Bureau of Land Management properly reserves to the United States in a mineral patent for O & C revested grant lands the timber now on a mining claim subject to the Act of June 9, 1916, 39 Stat. 218, and

MINING CLAIMS--Continued

PATENT--Continued

the timber now or hereafter growing on a mining claim subject to the Act of Apr. 8, 1948, 62 Stat. 162.

Joseph A. Barnes et al., 78 IBLA 46 (Dec. 13, 1983)
90 I.D. 550

Failure of the holder of a mining claim to file an adverse claim within the 60-day publication period set forth in 30 U.S.C. §§ 29, 30 (1976) amounts to a waiver of any rights to a claim against the mineral patent applicant for a conflicting claim.

Lee Brothers Dredging Co., 79 IBLA 330 (Mar. 21, 1984)

Effect must be given, if possible, to every word, clause, and sentence in a statute. Therefore, the application of sec. 601(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1781(f) (1982), to mineral patent must be made in a manner which recognizes valid existing rights of a mineral claimant at the time of passage of the Act.

California Portland Cement Corp., 83 IBLA 11 (Sept. 18, 1984)

PLACER CLAIMS

No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 30 U.S.C. §§ 35, 36 (1976); 43 CFR 3842.1-2.

Big Horn Limestone Co., 46 IBLA 98 (Feb. 28, 1980)

Clayton S. Hale, 62 IBLA 35 (Feb. 24, 1982)

Although placer claims may be validated by a single discovery, each 10-acre subdivision embraced by the claim must be mineral in character. Land is mineral in character when known conditions engender the belief that the land contains mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end.

United States v. W. G. Nichol, Eva Rose Nichol, 47 IBLA 183 (May 7, 1980)

Under Andrus v. Shell Oil Co., ___ U.S. ___, 64 L.Ed.2d 593 (1980), 48 U.S.L.W. 4603 (June 2, 1980), oil shale is a prospectively valuable mineral and therefore present marketability need not be shown to demonstrate discovery.

To demonstrate a sufficient discovery of oil shale under Freeman v. Summers, 52 L.D. 201 (1927), a mining claimant must show that mineral was disclosed on or before Feb. 25, 1920, in such situation and such formation that he can follow the deposit to depth with reasonable assurance that paying minerals will be found. An isolated bit of mineral, not connected with or leading to substantial prospective values, is not a sufficient discovery.

United States v. Cameron Catlin Bobbe et al., United States v. Exxon Corp. et al., United States v. Mabelle Brown et al. (Supp.), 51 IBLA 97 (Nov. 5, 1980)
87 I.D. 535

MINING CLAIMS--Continued

PLACER CLAIMS--Continued

Oil placer mining claims located pursuant to the Petroleum and Mineral Oils Act of Feb. 11, 1897, c. 216, 29 Stat. 526, and preserved by sec. 37 of the Mineral Leasing Act of 1920, 30 U.S.C. § 193 (Supp. II 1978), are subject to the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Conoco, Inc., 58 IBLA 390 (Oct. 21, 1981) 88 I.D. 918

A placer mining claim has been defined as ground that includes valuable deposits not in place, that is, not fixed in rock, but which are in a loose state.

Under provisions of the Act of Aug. 4, 1892, 30 U.S.C. § 161 (1976), known as the Building Stone Act, land chiefly valuable for building stone can only be entered by mining claims in the placer form, regardless of the actual mode of occurrence of the deposit.

While deposits of limestone chiefly valuable for building stone were subject to location only as placer claims, deposits of limestone valuable for their chemical or metallurgical properties are properly located according to the form of their deposition.

Nothing in 30 U.S.C. § 38 (1976) alters the requirement limiting each individual claimant to 20 acres per location. Thus, for a single possessory claim of 85 acres to be sustained, it must be shown that five individuals held and worked the claim for the requisite period of time.

All placer claims must conform "as near as practicable" with the system of rectangular public land surveys. Where a claim does not so conform and it is not possible to amend the claim so that it does, the entry must be canceled.

United States v. Richard P. Haskins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

Although placer claims may be validated by a single discovery, each 10-acre subdivision embraced by the claim must be mineral in character.

United States v. Robert B. Lara, 67 IBLA 48 (Sept. 9, 1982)

When the Government contests the mineral character of a 10-acre portion of a placer mining claim, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to overcome that showing by a preponderance of the evidence.

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quality and quantity as to render its extraction profitable and justify expenditures to that end. A finding that land is mineral in character may be based wholly on inferential evidence.

United States v. Cecil Bell et al., 68 IBLA 367 (Nov. 22, 1982)

A mining claimant who has met certain fundamental requirements of the mining law, such as discovery, citizenship, and expenditure, and who has exclusively held and worked his claim for the period prescribed by the applicable statute of limitations for mining claims

MINING CLAIMS--Continued

PLACER CLAIMS--Continued

is entitled to a patent, regardless of the fact that the claim may have been improperly located as lode or placer, assuming no intervening loss of discovery.

Under the provisions of the Act of Aug. 4, 1892, 30 U.S.C. § 161 (1976), a person authorized to enter lands under the mining laws of the United States may enter lands chiefly valuable for building stone under the provisions of the law in relation to placer mining claims.

Frank Belluzzo, 71 IBLA 178 (Mar. 10, 1983)

Where a decision on appeal is based on a factual issue not raised at the hearing, where no opportunity for argument on appeal was provided and where the fact on which the decision was based were incorrect due to a faulty hearing transcript, the decision will be set aside.

Oreo Development Co. v. Leo Calder (On Reconsideration), A-26604 (Apr. 25, 1983) 90 I.D. 223

All placer mining claims must conform as nearly as practicable with the public survey system. 43 CFR 3842.1-2.

No placer location shall include more than 20 acres for each individual claimant and may not exceed 160 acres for an association of up to eight individual claimants. 43 CFR 3842.1-2.

Owyhee Calcium Products, Inc., 72 IBLA 235 (Apr. 26, 1983)

Under 30 U.S.C. § 36 (1976), an association placer location must embrace contiguous tracts of land. Lands which merely corner each other are not contiguous under this provision.

W. G. Singleton, 75 IBLA 168 (Aug. 19, 1983)

An association of claimants may locate an association placer claim encompassing up to 160 acres. The permissible size of the claim is dictated by the number of parties in the association. No such location shall include more than 20 acres for each individual claimant.

If the persons locating placer mining claims form a corporation with each owning stock in proportion to their claims, the locations are not invalid. However, if persons merely lend their names to a corporation in order to enable it to acquire more ground than is allowed, the locations are invalid. The policy and objective of 30 U.S.C. § 35 (1976) is to limit the quantity of placer mineral land which may be located by one person to 20 acres per claim. The corporation can not be looked upon as an association, as contemplated by 30 U.S.C. § 35 (1976).

Any scheme or device entered into whereby one individual is to acquire by location an amount or portion of a placer mining claim in area more than 20 acres constitutes a fraud upon the Government, from which title is to be acquired, and any location made pursuant to such scheme or device is without legal support and void.

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

MINING CLAIMS--Continued

PLACER CLAIMS--Continued

Where the evidence in a private contest of that part of a placer mining claim embraced in land patented under the Stock-Raising Homestead Act establishes that the 10-acre subdivisions therein are nonmineral in character, the claim is properly declared null and void as to such land.

Joanne M. Massirio v. Western Hills Mining Ass'n et al., 78 IBLA 155 (Dec. 29, 1983)

In determining whether each 10-acre part of a placer claim is mineral in character, the claim must be subdivided to create square 10-acre parcels, to the extent possible, regardless whether the claim, as laid out on the ground, conforms to the system of public land surveys.

Where the evidence submitted by a Government mineral examiner supports the conclusion that a 10-acre parcel of land in a placer location is not mineral in character, the burden devolves to the mineral claimant to overcome this showing by a preponderance of the evidence, failing in which that portion shall be declared invalid.

United States v. Robert B. Lara (On Reconsideration), 80 IBLA 215 (Apr. 30, 1984)

POSSESSORY RIGHT

Mining claims are properly declared null and void ab initio when they are located during a period when the lands are withdrawn from entry under the mining laws. However, under 30 U.S.C. § 38 (1976), if a person or predecessors-in-interest have held and worked the claims for a period of time equal to that prescribed by the state statute of limitations for adverse possession of mining claims, during which period the land was open to mineral location, that person is deemed to have made proper locations. Whether the locations are valid depends on whether discoveries have been made on each claim within the meaning of the mining laws.

Dolores Olsen and Wesley E. Hace, et al., 45 IBLA 232 (Feb. 4, 1980)

When an unpatented mining claim is situated within lands selected and approved for conveyance under ANCSA, the possessory interest of the mining claimant is protected under provisions of § 22(c) and 43 CFR 2650.3-2 as a valid existing right notwithstanding that the Bureau of Land Management has not adjudicated such unpatented mining claims prior to conveyance.

Oregon Portland Cement Co., 6 ANCAB 65 (Aug. 25, 1981) 88 I.D. 760

Albert Hanan et al; J. A. Jack and Sons, Inc.; and Hemphill Brothers, Inc., 6 ANCAB 111 (Sept. 29, 1981)

A notice of location which is in proper form and timely filed with the correct fee must be accepted and recorded by BLM notwithstanding the protest of a rival mining claimant that he has a superior and exclusive possessory right to the same ground. Such disputes are not within the jurisdiction of this Department, and can be resolved only by private litigation between the parties in courts of competent jurisdiction.

W. W. Allstead, 58 IBLA 86 (Sept. 21, 1981)

MINING CLAIMS--Continued

POSSESSORY RIGHT--Continued

Under the provisions of 30 U.S.C. § 38 (1976), the holding and working of a claim for the period of time equal to the State's statute of limitations is the legal equivalent of proofs of acts of location, recording, and transfer. This provision does not, however, alter other requirements of the mining laws, such as the necessity of a discovery or limitations on acreage which may be taken up in a claim.

The requirements of 30 U.S.C. § 38 (1976), relating to "holding" and "working" a claim may be met where the assessment work requirements have been met and where there is actual possession or occupancy of the claim.

Nothing in 30 U.S.C. § 38 (1976) alters the requirement limiting each individual claimant to 20 acres per location. Thus, for a single possessory claim of 85 acres to be sustained, it must be shown that five individuals held and worked the claim for the requisite period of time.

Since millsites may only be located on nonmineral land, a millsite claim is necessarily adverse to a mining claim. Thus, land embraced by a millsite claim is not open to the initiation of rights under 30 U.S.C. § 38 (1976).

The recordation provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), applies to claims which rely on the provision of 30 U.S.C. § 38 (1976) to prove location and posting. Where such claims have not been duly recorded, they are a nullity.

United States v. Richard P. Hasking, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

In order to establish a right against the United States under sec. 2332, Revised Statutes, 30 U.S.C. § 38 (1976), actual possession, following discovery of a valuable mineral deposit, under color of right for the complete period of the State's statute of limitations governing adverse possession of mining claims must occur during a period when the land is open to operation of the mining laws. Where the record does not support an assertion of a right under 30 U.S.C. § 38 (1976) to a mineral patent, the application for such patent is properly rejected and the mining claim declared invalid.

Ernest Highee et al., 60 IBLA 267 (Dec. 17, 1981)

Under the provisions of 30 U.S.C. § 38 (1976), the holding and working of a claim for the period of time equal to the State's statute of limitations is the legal equivalent of proofs of acts of location, recording, and transfer. Where, following a hearing, the record does not support a finding that the claimants had held and worked the claim for the 2 years required under Nevada law between 1948 and 1953 when the land was open to the operation of the mining laws, the application for patent is properly rejected and the mining claim declared invalid.

Ernest Highee et al. (On Reconsideration), 79 IBLA 380 (Mar. 27, 1984)

The Department does not have jurisdiction to consider the relative superiority of the possessory rights of rival mineral claimants to the same ground. A final decision by a court of competent jurisdiction resolves all questions regarding such conflicting rights.

Harvey A. Clifton, 80 IBLA 96 (Apr. 3, 1984)

MINING CLAIMS--Continued

POSSESSORY RIGHT--Continued

Federal law requires that mining locations be made in good faith for the purpose of mining, processing, or prospecting for valuable minerals. Title to mineral lands cannot be acquired by occupancy unless for the prime purpose of mining and extracting minerals. Even if a discovery could be shown to exist, proof of bad faith can invalidate a claim, since in such a situation the mineral values are incidental to the purpose for which the land is claimed.

United States v. Jon Ziegler, Claire Kelly, 81 IBLA 41 (May 17, 1984)

POWERSITE LANDS

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a group of mining claims on land withdrawn for power development or powersites where unrestricted placer mining on such land would result in substantial interference with the use of the land for timber harvesting or recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

United States v. S. James Steward, 54 IBLA 67 (Apr. 10, 1981)

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a mining claim on land withdrawn for power development or powersites, where unrestricted placer mining on such land would result in substantial interference with the use of the land for recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

United States v. Robert A. Pettigrew, 54 IBLA 149 (Apr. 17, 1981) 88 I.D. 453

A mining claim located after Aug. 11, 1955, is properly declared null and void ab initio when at the time of location the claim is located on lands withdrawn for power development or powersites and such lands are under examination and survey by a prospective licensee of the Federal Power Commission under an uncanceled preliminary permit. This preliminary permit, issued under the Federal Power Act and authorizing the prospective licensee to conduct its examination and survey, may not have been renewed in the case of such prospective licensee more than once.

Robert A. Pettigrew, 54 IBLA 257 (Apr. 28, 1981)

MINING CLAIMS--Continued

POWERSITE LANDS--Continued

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

John C. Farrell, 55 IBLA 42 (May 28, 1981)

Lincoln Resources, Inc., 66 IBLA 310 (Aug. 24, 1982)

Although land reserved for powersite purposes by a 1910 Executive Order issued pursuant to the "Pickett Act" of June 25, 1910, remained open to the location of mining claims for metalliferous minerals, that Act was superseded by sec. 24 of the Federal Power Act of June 10, 1920, which closed such lands to all mineral location until enactment of the Mining Claim Rights Restoration Act of Aug. 11, 1955.

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

George L. Hawkins, Wallace G. Heath, 66 IBLA 390 (Aug. 31, 1982)

A mining claim located prior to Aug. 11, 1955, on land withdrawn for a powersite is null and void ab initio.

Mackay Bar Corp., 69 IBLA 148 (Dec. 13, 1982)

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a group of mining claims on land withdrawn for power development or power sites where unrestricted placer mining on such land would result in substantial interference with the use of the land for timber harvesting or recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

Robert E. Ehrman, Jr., 69 IBLA 290 (Dec. 23, 1982)

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a group of mining claims within land withdrawn for power development or powersites where unrestricted placer mining on such land would result in substantial interference with the use of land for other purposes. The Act gives the Secretary no discretion to permit limited or restricted placer mining on such withdrawn land. The Secretary may permit either unrestricted placer mining or none at all.

Gregg M. Miller, 74 IBLA 205 (July 18, 1983)

MINING CLAIMS--Continued

POWERSITE LANDS--Continued

Under the Mining Claims Rights Restoration Act of 1955 it is proper to prohibit all placer mining operations on a mining claim located on land withdrawn for power development or powersite where unrestricted placer mining on such land would result in substantial interference with the use of the land for timber harvesting or other purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that after placer mining the locator must restore the surface of the claim to its condition immediately prior to mining operations.

Arthur A. Gotschall, 78 IBLA 81 (Dec. 16, 1983)

Lands withdrawn for a powersite reservation, with certain exceptions, are open to entry for location and patent of mining claims with a reservation of power rights in the lands to the United States subject to the Mining Claims Rights Restoration Act. Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Lamar & Christine Burnett, 78 IBLA 349 (Jan. 25, 1984)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a power project is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

J. W. Roberts, Jean Roberts, 79 IBLA 279 (Mar. 16, 1984)

Under the Mining Claims Rights Restoration Act of 1955 it is proper to prohibit all placer mining operations on a mining claim located on land withdrawn for power development or powersite where unrestricted placer mining on such land would result in substantial interference with the use of the land for recreation or other purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that after placer mining the locator must restore the surface of the claim to its condition immediately prior to mining operations.

United States v. Robert R. Evans, 82 IBLA 155 (July 31, 1984)

Lands withdrawn for a powersite reservation are open to entry for location and patent of mining claims, with certain exceptions, subject to the conditions in the Mining Claims Rights Restoration Act, 30 U.S.C. § 621 (1982). Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Leslie B. Correia, 84 IBLA 26 (Nov. 26, 1984)

MINING CLAIMS--Continued

RECORDATION

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of Location." The date of location of a mining claim is determined in accordance with the law of the State where the claim is situated. Under Washington law, it is the date specified on the notice of location filed with the local recorder's office.

The date of location of a mining claim may not be changed by altering this date on the copy of the notice of location filed with BLM so that it reflects a date different than that in the original notice.

P & S Mining Co., 45 IBLA 115 (Jan. 23, 1980)

Where a mining claimant submits a copy of a notice of location in the BLM's Riverside, California, District Office, for a claim located after Oct. 21, 1976, he has not complied with 43 CFR 3833.1-2(b), even though the material was submitted in the District Office before the expiration of the 90-day deadline, as the notice has not been filed in the "proper BLM office," which is the BLM California State Office in Sacramento, as expressly provided by 43 CFR 3833.0-5(g) and 1821.2-1(d). Where the District Office forwards the information to the State Office but it does not arrive until after the 90-day deadline has passed, owing to its extremely late submission to the District Office, it is untimely, and the claim is properly declared abandoned and void under 43 CFR 3833.4(a).

C. F. Linn, 45 IBLA 156 (Jan. 23, 1980)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), if an unpatented mining claim located before Oct. 21, 1976, is not supported annually on or before Dec. 31 of the calendar year following the calendar year he recorded the claim in the BLM office by either an affidavit of assessment work or notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement that there was no intention to abandon and that the failure to file the required statements with BLM was an oversight.

Jerry Cuppoy, 45 IBLA 215 (Jan. 30, 1980)

If a mining claim is not timely recorded in accordance with the recordation provisions in the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), it is conclusively deemed abandoned and is void as a matter of law. A claimant who has no interest in maintaining a mining claim should not record it with the Bureau of Land Management.

Where a mining claimant timely tendered payment to cover service fees for recording 70 mining claim notices of location, but also included four additional mining claim notices which she did not intend to maintain but filed merely for informational purposes, and on appeal she clarifies her intent concerning the four claims and unclear markings on maps which were to show that the four claims were "canceled," the payment and filing will be deemed to have been timely made as to the 70 claims if payment is subsequently made pursuant to a notice given.

Ann E. Warnke, 45 IBLA 305 (Feb. 6, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

"Copy of the Official Record of the Notice or Certificate of Location." Under the revised definition of the term at 43 CFR 3833.0-5(i) (1979), a duplicate of a notice of location which has been filed with the local recorder is a "copy of the official record of the notice or certificate of location," even though it is not stamped by the local recorder and does not include a reference to the local record, and is therefore acceptable under 43 CFR 3833.1-2(b) if tendered within 90 days of the date of location.

Where it benefits the affected party to do so, and where there are no intervening rights which will be adversely affected, a mining claim recordation regulation which is amended while the matter is pending may be applied in its amended form.

James E. Strong, 45 IBLA 386 (Feb. 13, 1980)

Where regulations implementing sec. 314 of the Federal Land Policy and Management Act of 1976 require reference to the Bureau of Land Management serial number under which a mining claim is recorded for future recordings, a claimant fails to include the number when he files a notice of assessment work, and he is specifically informed of this and other requirements, but fails to furnish the number, the filing is unacceptable, and failure to comply with the filing requirements constitutes abandonment of the claim, as provided by the Act.

David V. Udy, 45 IBLA 389 (Feb. 13, 1980)

The owner of an unpatented mining claim located prior to Oct. 21, 1976, has until Oct. 22, 1979, to record the location. Recordation is effected by filing a copy of the location notice or certificate with the proper BLM office.

Failure to comply with the regulations governing recordation of assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned.

H. L. Smith, 46 IBLA 62 (Feb. 22, 1980)

Under 43 U.S.C. § 1744(b) (1976) the owner of an unpatented mining claim located before Oct. 21, 1976, must file with BLM, a copy of the notice of location before Oct. 22, 1979, or the claim will be conclusively deemed to have been abandoned under 43 U.S.C. § 1744(c). Mining claimants are not relieved of the requirement to timely file their documents where such documents may have been lost in the mail.

Where an unpatented mining claim is located after Oct. 21, 1976, a claimant has 90 days from the date of the new location to file with BLM a copy of the notice of location and if he does so file, BLM should proceed with recordation of the new claim.

Everett Yount, 46 IBLA 74 (Feb. 22, 1980)

Where a mining claimant attempts to file notices of location for six claims pursuant to 43 CFR 3833.1-2 and tenders payment for filing costs in an amount sufficient to cover only four of such claims, BLM shall require the claimant to select four claims to which the money tendered shall be applied. The remaining two claims are properly declared abandoned and void in accordance with 43 CFR 3833.4.

Robert L. Steele, 46 IBLA 80 (Feb. 22, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

If a mining claim is located after Oct. 21, 1976, and the locator fails to record the claims with the proper State Office of the Bureau of Land Management within 90 days afterward, the Department must conclusively deem the claims abandoned and declare them null and void. The fact that the claimant was not notified of the rejection of his filings soon enough to enable him to relocate the claims prior to a time when any intervening claims of right may have arisen does not permit the Department to withhold the consequences of invalidity mandated by the statute.

George D. Duffy, 46 IBLA 127 (Feb. 29, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to BLM for recordation on Oct. 18, 1979, and the filing fee therefor is not paid to BLM until Nov. 7, 1979, the recordation date of the notice of location is Nov. 7, 1979. In the circumstances, under 43 CFR 3833.1-2 appellant's filing was not completed until Nov. 7, 1979, which is after the cutoff date of Oct. 22, 1979, for mining claims located prior to Oct. 21, 1976, and the mining claim must be deemed abandoned and void.

Nevada Pacific Co., Inc., 46 IBLA 208 (Mar. 24, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where, under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file a notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, the mining claim is properly declared abandoned and void.

John Walter Chaney, 46 IBLA 229 (Mar. 27, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Beryl Rhodes, 46 IBLA 287 (Mar. 31, 1980)

George Toole, 47 IBLA 89 (Apr. 21, 1980)

Arthur H. Schmidt, 47 IBLA 143 (May 6, 1980)

Allen J. Maxwell, Mary A. Janusz, 47 IBLA 306 (May 19, 1980)

Paul B. Rhodes, 48 IBLA 90 (May 29, 1980)

Don P. Bird et al., 49 IBLA 94 (July 22, 1980)

Herb Ballou, 49 IBLA 225 (Aug. 12, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a $5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Phyllis Wood et al., 46 IBLA 309 (Apr. 4, 1980)

Beth Mallory, 47 IBLA 296 (May 19, 1980)

Edward J. Szynkowski, Jr., 53 IBLA 310 (Mar. 25, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), unless the required copy of the official record of location is filed in the proper BLM office within 90 days from the date of location, a mining claim, located after Oct. 21, 1976, is properly deemed abandoned and void.

A question as to the date of location of a mining claim is to be resolved according to state law, pursuant to 43 CFR 3833.0-5(h).

R. J. Holmes, 46 IBLA 316 (Apr. 4, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Glen J. McCrorey and Deloris McCrorey, 46 IBLA 355 (Apr. 8, 1980)

H. E. Rogers, 47 IBLA 196 (May 7, 1980)

Edwin Forsberg, 47 IBLA 235 (May 13, 1980)

Jean L. Greene, 47 IBLA 309 (May 19, 1980)

Andy Svadbad, 48 IBLA 87 (May 29, 1980)

John Hudspeth, Florene Hudspeth, 48 IBLA 99 (May 29, 1980)

Joe Rapic, 48 IBLA 255 (June 26, 1980)

Robert E. Donahue, 50 IBLA 374 (Oct. 21, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim was submitted to BLM for recordation on Oct. 22, 1979, the deadline date, and the filing fee therefore is not paid to BLM until after the deadline for filing had passed, the mining claim must be deemed abandoned and void.

L. Leon Jennings, Mansfield L. Jennings, Gilbert B. Jennings, 47 IBLA 47 (Apr. 14, 1980)

B. L. Durrant, Rod Mulville, B. E. Kerr, 47 IBLA 208 (May 13, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official notice of location or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, failing which the claim is properly deemed abandoned and void.

Sheldon Hargen, 47 IBLA 118 (Apr. 28, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Timely transmittal of the documents to the wrong BLM Office does not meet the requirements where the documents are not filed in the proper office timely.

John S. Henson, 47 IBLA 129 (Apr. 29, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A document received by BLM on Oct. 24, 1979, is not timely filed.

Dwight F. Kennedy, 47 IBLA 132 (Apr. 29, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Filing in a BLM District Office rather than the designated BLM State Office is not sufficient.

John Sloan, 47 IBLA 146 (May 6, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Fred A. Dunbar, 47 IBLA 152 (May 6, 1980)

Edward G. Taylor, 47 IBLA 286 (May 15, 1980)

George J. Burnett, 50 IBLA 124 (Sept. 24, 1980)

Lorraine Mohr, 50 IBLA 147 (Sept. 26, 1980)

County of Imperial, 51 IBLA 250 (Dec. 15, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

Stephen Greist, 51 IBLA 287 (Dec. 17, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Documents filed in the proper BLM office after that date cannot be accepted even if they were erroneously transmitted to the Montana Department of Natural Resources before that date and were on file with the county office.

Joanne G. Owens, 47 IBLA 172 (May 7, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of recording with BLM, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Documents received in the Bureau of Land Management's Burns, Oregon, District Office on Oct. 22, 1979, are not timely filed in the proper BLM office, where pursuant to 43 CFR 1821.2-1(d), the proper office with jurisdiction over the area in which the claim is located is the Oregon State Office in Portland, and the documents are not received in the State Office until after Oct. 22, 1979.

Floyd Zaiger, 47 IBLA 204 (May 7, 1980)

The owner of an unpatented mining claim on Federal lands located prior to Oct. 21, 1976, had until Oct. 22, 1979, to record the location in the proper BLM office. Recordation is effected by filing a copy of the official record of the location notice or certificate with the proper BLM office and payment of a service charge of $5 per claim.

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid.

The owner of an unpatented mining claim on Federal land located prior to Oct. 21, 1976, had to file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recordation, whichever date is earlier, evidence of annual assessment work performed during the preceding assessment year, or a notice of intention to hold the mining claim.

Failure to comply with the regulations governing recordation of notice of location or assessment work or notice of intention to hold mining claims must result

MINING CLAIMS--Continued

RECORDATION--Continued

in a conclusive finding that the mining claim has been abandoned and is void.

G. H. Monk, 47 IBLA 213 (May 13, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Appellant's attempt to mail the documents on Saturday, Oct. 20, 1979, will not excuse late filing even though he was told by the Post Office that the documents would be in Phoenix by Monday, Oct. 22, 1979.

Ray P. Coffee, 47 IBLA 217 (May 13, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The requirements are not met where documents are not received by the proper BLM office until Oct. 25, 1979, even though the claimant had the envelope date stamped by a different BLM office on Oct. 22, 1979, before mailing it to the proper office.

Santa Fe Nuclear, Inc., 47 IBLA 220 (May 13, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 2, 1979, and the service fee therefor is not paid to BLM until Oct. 29, 1979, the recordation date of the notice is Oct. 29, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A notice relating to an unpatented mining claim located before Oct. 21, 1976, which is filed with BLM on Oct. 29, 1979, is not timely filed.

Charles P. Seel, 47 IBLA 229 (May 13, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned and is void. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim with the proper Bureau

MINING CLAIMS--Continued

RECORDATION--Continued

of Land Management Office on or before Oct. 22, 1979, accompanied by the proper fee.

Carl A. Borgstrom, 47 IBLA 232 (May 13, 1980)

The statute and regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claims have been abandoned and are void.

Andrew W. Berg, 47 IBLA 238 (May 13, 1980)

Where the owner of an unpatented mining claim located before Oct. 21, 1976, files a copy of the original notice of location in the calendar year 1978, he is required by 43 CFR 3833.2-1(a) to file proof of assessment work for the assessment year ending on Aug. 31, 1979, on or before Oct. 22, 1979, failing which his claim is properly declared abandoned and void.

A mining claimant's failure to file timely evidence of annual assessment work is not excused by alleged tardiness of the State recorder's office in recording this information and returning a record copy to claimant, as a claimant is permitted under 43 CFR 3833.2-2(a) to satisfy the Federal filing requirements by submitting a duplicate of the assessment notice, even though it has not yet been filed for record with the State.

Harry J. Phillips, 47 IBLA 252 (May 13, 1980)

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where certificates of location of mining claims are submitted to BLM for recordation on Oct. 18, 1979, and the filing fee therefor is not paid to BLM until Feb. 25, 1980, the recordation date of the notices of location is Feb. 25, 1980. In the circumstances, under 43 CFR 3833.1-2 appellant's filing was not completed until Feb. 25, 1980, which is after the cutoff date of Oct. 22, 1979, for mining claims located prior to Oct. 21, 1976, and the mining claims must be deemed abandoned and void.

Cecil V. Clifford, Jr., 47 IBLA 262 (May 13, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Where a mining claim is located on July 4, 1976, and recorded with BLM on Jan. 23, 1978, the evidence of assessment work must be filed with BLM on or before Oct. 22, 1979. Evidence of assessment work received on Dec. 3, 1979, is not filed timely and the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

Jim Adams, 47 IBLA 281 (May 15, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a $5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Where a mining claimant submits a copy of a notice of location to the BLM District Office at Burley, Idaho, for a claim located prior to Oct. 21, 1976, he has not complied with 43 CFR 3833.1-2(a), even though the material was submitted to the District Office before the expiration of the statutory deadline of Oct. 22, 1979, as the location notice has not been filed in the "proper BLM office," which is the BLM Idaho State Office, in Boise, as expressly provided by 43 CFR 3833.0-5(g) and 1821.2-1(d), and the mining claim is properly declared abandoned and void under 43 CFR 3833.4(a).

Roy Trenayne, 47 IBLA 289 (May 15, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the service fee therefor is not paid to BLM until Nov. 13, 1979, the recordation date of the notice is Nov. 13, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A notice relating to an unpatented mining claim located before Oct. 21, 1976, which is filed with BLM on Nov. 13, 1979, is not timely filed.

Loyal Dee Griggs, 47 IBLA 293 (May 15, 1980)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. As this is a mandatory requirement there is no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where, for a claim located after Oct. 21, 1976, the filing fee is not paid within 90 days after the date of location, the claim must be deemed abandoned and void.

David Mendenhall, 47 IBLA 298 (May 19, 1980)

Fleck Mining and Investment Co., 49 IBLA 187 (Aug. 6, 1980)

Gary Hansbrough, 50 IBLA 206 (Sept. 30, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of mining claims, were submitted to BLM for recordation and the filing fees therefor were not paid to BLM until after the deadline (90 days after the date of location) had passed, the mining claims must be deemed abandoned and void.

Virginia Edwards, 47 IBLA 301 (May 19, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned and is void. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979.

William and Marie Blanchard, 47 IBLA 312 (May 19, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 11, 1979, and the service fee therefor is not paid to BLM until Nov. 20, 1979, the recordation date of the notice is Nov. 20, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A notice relating to an unpatented mining claim located before Oct. 21, 1976, which is filed with BLM on Nov. 20, 1979, is not timely filed.

Frank Franich, 47 IBLA 332 (May 21, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. A certificate of location received after Oct. 22, 1979, at the wrong BLM office is not timely filed and the mining claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

James H. Wardle, 47 IBLA 345 (May 21, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim, located after Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office within 90 days after the date of location of such claim, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

The "proper BLM office" is defined in 43 CFR 3833.0-5(g) as the BLM office which has jurisdiction over the area in which the claim is located, as specified in 43 CFR 1821.2-1(d). Where this latter regulation designates the Oregon State Office as the proper office, filing in a local Oregon office is not sufficient.

Tina Anderson, 47 IBLA 348 (May 21, 1980)

The owner of an unpatented mining claim located prior to Oct. 21, 1976, must record the location on or before Oct. 22, 1979. Recordation is effected by filing a copy of the location notice or certificate with the proper BLM Office.

The owner of an unpatented mining claim located prior to Oct. 21, 1976, and recorded with BLM in the calendar year 1977, must file affidavit of assessment work or notice of intention to hold the claim on or before Dec. 30 of the calendar year following the calendar year in which the claim was recorded with BLM and failure to comply with the regulations governing recordation of such instruments must result in a conclusive finding that the claim has been abandoned.

Where mining claimants attempt to record their claims on Oct. 28, 1977, which were located prior to Oct. 21, 1976, but do not submit the mandatory service fee, as required by 43 CFR 3833.1-2(d), until May 3, 1978, recordation of the claims is effective as of May 3, 1978, and the claimants are not required to file evidence of annual assessment work until Oct. 22, 1979.

W. Verne Kight, Eva M. Kight, 47 IBLA 351 (May 21, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the location of the mining claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Anna M. Vance, 47 IBLA 357 (May 21, 1980)

Elsie Codd, 51 IBLA 43 (Oct. 30, 1980)

Ed Wardrobe, 51 IBLA 45 (Oct. 30, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact the Post Office returned mail enclosing the documents to the claimant because the envelope did not conform to postal requirements affords no basis for relief where the documents subsequently

MINING CLAIMS--Continued

RECORDATION--Continued

were received by BLM after Oct. 22, 1979, as the statute gives no authority for waiving the late filing.

Tom Phelps, 47 IBLA 360 (May 21, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the filing fee therefor is not paid to BLM until Mar. 10, 1980, the recordation date of the notice is Mar. 10, 1980.

Wilbur Martin, 47 IBLA 370 (May 21, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

The Federal Land Policy and Management Act of 1976 does not provide the Bureau of Land Management or the Interior Board of Land Appeals with discretion to waive the effects of failure to comply with the recordation requirements.

Sylvan S. Hewitt, Dennis Wallace, 47 IBLA 393 (May 22, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Where a copy of the notice or certificate of location is on file at the BLM Phoenix District Office in relation to trespass action and the $5 filing fee is not received in the BLM Arizona State Office until after the deadline, the certificate of location is not timely filed and the mining claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Mitsuko Flick, 48 IBLA 1 (May 27, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that the Post Office assured the claimant that the documents would reach the Oregon State Office by Oct. 22, 1979, will not excuse the late filing.

Norman E. Brooks, 48 IBLA 16 (May 27, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location and related material for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. File means being received and date stamped by the proper BLM office. Failure to so file is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

Robert Willing et al., 48 IBLA 39 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode or placer mining claim must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner. A question as to the date of location is to be resolved according to state law, pursuant to 43 CFR 3833.0-5(b).

Larry Labusan, Jay Coates, 48 IBLA 43 (May 29, 1980)

The owner of an unpatented mining claim located prior to Oct. 21, 1976, had until Oct. 22, 1979, to record the location and file a copy of the recorded affidavit of assessment work or notice of intention to hold. Recordation is effected by filing a copy of the location notice or certificate with the proper BLM office.

Failure to comply with the regulations governing recordation of assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned and is void.

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a $5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Bernard A. Schmid, 48 IBLA 48 (May 29, 1980)

Where the owner of an unpatented mining claim located prior to, but recorded with BLM after Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

Department of the Interior, as agency of executive branch of Government, is not a proper forum to decide whether or not the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Alice E. Deetz, 48 IBLA 59 (May 29, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979,

MINING CLAIMS--Continued

RECORDATION--Continued

or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Pursuant to 43 CFR 3833.2-1(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Rose M. Mathews, 48 IBLA 71 (May 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Filing is accomplished when a document is delivered to and received by the proper office. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Johnnie Finnegan, Don E. Gordon, Carl Holder, 48 IBLA 79 (May 29, 1980)

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office prior to Oct. 22, 1979. A copy of the location certificate, which is not an exact replica or machine copy of the recorded certificate, but which contains the same language and is filed timely will be accepted as complying with the laws and regulations.

Vilma Hartley, 48 IBLA 83 (May 29, 1980)

Where a claimant timely files notices of location for recordation of his mining claims and submits a sketch map and narrative description of the location of the claims sufficient to locate the claimed lands on the ground, and identifies the claims by section, township, range, meridian, and state, he has met the requirements of sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2(c)(5) and (6).

Robert H. Lawson, 48 IBLA 93 (May 29, 1980)

Where the owners of unpatented mining claims located before Oct. 21, 1976, fail to file copies of the original notices of location with the proper BLM office on or before Oct. 22, 1979, their claims are properly held to be abandoned and void.

Jean C. Lepper et al., 48 IBLA 103 (May 29, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2 and 3833.2-1, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location and a copy of the recorded affidavit of assessment work or notice of intention to hold the claim, with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim must be deemed abandoned and void.

Helen E. Wallace, 48 IBLA 127 (May 30, 1980)

The owner of a mining claim located on or before Oct. 21, 1976, had until Oct. 22, 1979, to record a copy of the location notice with Bureau of Land Management and pay the required service fee, and where the fee was not paid 43 CFR 3833.1-2(d) requires that the notice of location be returned as unacceptable.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to timely file an instrument required by 43 CFR 3833.1-2 constitutes an abandonment of the mining claim, and it is deemed to be void.

George E. Flewelling, 48 IBLA 141 (May 30, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A document required to be filed on or before Oct. 22, 1979, and received by BLM on Jan. 8, 1980, is not timely filed.

James E. Cooper, 48 IBLA 175 (June 9, 1980)

The statute and regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where, under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file a notice of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, the mining claim is properly declared abandoned and void.

Robert Alameda et al., 48 IBLA 178 (June 9, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of recording with BLM, whichever date is sooner, evidence of annual

MINING CLAIMS--Continued

RECORDATION--Continued

assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), gives no authority to the Department of the Interior to accept for mining claim recordation documents submitted after the statutory time requirements as if they were timely filed in order to avoid the consequences of the statute.

John F. Sherwood, 48 IBLA 180 (June 9, 1980)

George L. Harrison, 49 IBLA 157 (July 30, 1980)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, within 90 days after the date of location of such claim, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner. The "date of location" is determined by reference to the law of the state in which the claim is situated.

C. A. Guzman, 48 IBLA 193 (June 9, 1980)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner or owners of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to file will conclusively be deemed an abandonment of the claim and it shall be void.

Lovell Becker, Billie Peterson, 48 IBLA 203 (June 16, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. Under 43 CFR 3833.1-2 there is no express requirement that a machine reproduction be provided. Accordingly, a handwritten duplicate of a notice of location is acceptable under the regulations.

W. C. Miles, 48 IBLA 214 (June 16, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

A. J. Grady, 48 IBLA 218 (June 16, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where a mining claim is located on Aug. 20, 1976, and recorded with BLM on Nov. 14, 1978, the evidence of assessment work must be filed with BLM on or before Oct. 22, 1979. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

A. W. Jones, 48 IBLA 225 (June 16, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Laura Mae Hopper, 48 IBLA 253 (June 26, 1980)

Don Chris A. Coyne, 52 IBLA 1 (Jan. 5, 1981)

Lynn Day, 63 IBLA 70 (Mar. 30, 1982)

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b) and 3833.4, the owner of an unpatented mining claim located after Oct. 21, 1976, shall file within 90 days after the date of location in the proper BLM office a copy of the official record of the notice or certificate of location, or the claim must be deemed abandoned and void.

James White, 48 IBLA 346 (July 3, 1980)

Under 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, or the claim is deemed abandoned and void.

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Armando Majalca, 48 IBLA 351 (July 11, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

The owner of an unpatented mining claim on Federal land located prior to Oct. 21, 1976, had to file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recordation, whichever date is earlier, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Failure to comply with the regulations governing recordation of notices of location or the filing of evidence of assessment work or a notice of intention to hold mining claim must result in a conclusive finding that the mining claim has been abandoned and is void.

Dollie L. Glaab, 48 IBLA 404 (July 11, 1980)

Max Weiss, 49 IBLA 332 (Aug. 25, 1980)

Under 43 U.S.C. § 1744 (1976) if the owner of a mining claim located on or before Oct. 21, 1976, does not file a copy of the recorded notice or certificate of location by Oct. 22, 1979, the claim must be deemed abandoned and void.

Frank Otequi, 49 IBLA 40 (July 21, 1980)

A mining claimant may file a notice of intention to hold its mining claims in lieu of evidence of annual assessment work performed thereon only where the obligation to perform the annual assessment work has been suspended or deferred or has not yet accrued. Where the record indicates no such circumstances and shows to the contrary that the claimant was required to and did perform this work in the preceding assessment year, filing notices of intention will not suffice.

A notice of intention to hold a group of mining claims must meet the requirements set out at 43 CFR 3833.2-3(a), and must include, inter alia, a clear statement of the reason why the annual assessment work was not performed. This requirement is impossible of satisfaction where the claimant in fact did the assessment work.

A failure to file evidence of annual assessment work for the preceding assessment year is not excused by 43 CFR 3833.4(b), which provides that a filing which complies with FLPMA may not be deemed invalid because of its failure to meet the requirements of other laws.

Alaskaman Co., 49 IBLA 43 (July 21, 1980)

The owner of an unpatented mining claim located after Oct. 21, 1976, must file a copy of the certificate or notice of location of the claim with BLM within 90 days of the date of location of the claim, failing which BLM properly rejects the untimely tendered document and declares the claim abandoned and void.

Copies of mining claim certificates or notices of location which are required to be filed within 90 days of the date of location of a claim are not timely filed where they are placed in the mail prior to the deadline but are not received or date stamped by BLM until after the deadline.

Where a mining claimant merely asserts that because of a 9-day difference between the posting of an envelope and the date received stamp of BLM, BLM may have mishandled notices of location submitted in attempted compliance with the requirements of 43 CFR 3833.1-2(b), allegedly causing them to be date stamped by BLM as untimely, and there is nothing else in the record to support this conjecture he has not met the burden of

MINING CLAIMS--Continued

RECORDATION--Continued

rebutting the presumption that BLM officials have properly discharged their duties in receiving and promptly date stamping all such notices tendered to them.

Henry D. Friedman, 49 IBLA 97 (July 28, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner.

Ross Weaver, 49 IBLA 111 (July 28, 1980)

George W. Cole, 49 IBLA 128 (July 28, 1980)

Cripple Creek Exploration Corp., 49 IBLA 190 (Aug. 6, 1980)

Alfred Letcher, 49 IBLA 193 (Aug. 6, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The statute and regulations governing recordation of mining claims are mandatory and where a mining claimant contends that he mailed his notices of location along with other documents which were received by the Bureau of Land Management 1 day after the filing date, the claims are properly declared abandoned and void.

G. B. Marquardson, 49 IBLA 114 (July 28, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. Filing in the Utah State Office rather than the Wyoming State Office is not sufficient.

Interstate Brick, 49 IBLA 125 (July 28, 1980)

Interstate Brick, 50 IBLA 107 (Sept. 17, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 19, 1979, and the filing fee therefor is not paid to BLM until Feb. 11, 1980, the date of filing for recordation of the notice is Feb. 11, 1980.

Lawrence Jacob, Freeda Jacob, 49 IBLA 137 (July 28, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

Lela M. Osborn, 49 IBLA 146 (July 30, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1, the owner of an unpatented mining claim located before Oct. 21, 1976, had to file in the proper office of the Bureau of Land Management a copy of the official record of the notice or certificate of location and an affidavit of assessment work performed on the claim on or before Oct. 22, 1979. Where the owner of an unpatented mining claim failed to file either instrument within the prescribed time, the claim is deemed conclusively to be abandoned and void.

George Stillman, 49 IBLA 150 (July 30, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that appellant lost or misplaced the required documents and had to send away for new ones will not excuse late filing.

Gale E. Powell, 49 IBLA 173 (July 30, 1980)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, within 90 days after the date of location of such claim, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner. The "date of location" is determined by reference to the law of the State in which the claim is situated.

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a $5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

Weldon Head Kennedy, Elmer Devore, 49 IBLA 180 (July 31, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a), 3833.2-1(a), 3833.4, for a mining claim located on or before Oct. 21, 1976, a copy of the notice or certificate of location and evidence of assessment work or notice of intention to hold must be filed with the Bureau of Land Management by Oct. 22, 1979, or the claim shall be deemed abandoned and void.

Canyon View Mining Co., 49 IBLA 184 (July 31, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of a claim or site are submitted to BLM for recordation on Dec. 26, 1979, and the filing fee therefor is not paid to BLM until Jan. 23, 1980, the recordation date of the notices is Jan. 23, 1980.

Brewery Hill Mining Co., Inc., 49 IBLA 197 (Aug. 6, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Glen Hocking, 49 IBLA 217 (Aug. 11, 1980)

Rila Tyrrel, 49 IBLA 267 (Aug. 18, 1980)

Lost Pollack Mining and Exploration, Ltd., 50 IBLA 227 (Sept. 30, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of recording with BLM, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Mining claims located after the enactment of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, must be deemed abandoned and void if a copy of the notice of location or certificate of location is not filed with the proper Bureau of Land Management Office within 90 days after the date of location of such claims.

Darlene T. Haynes et al., 49 IBLA 243 (Aug. 18, 1980)

Land which has been patented without a reservation of minerals to the United States is not available for location of mining claims, and BLM properly rejects a copy of a notice of location of a lode claim insofar as it covers patented land. However, BLM should not reject the notice insofar as it concerns unpatented lands, provided that the claim conforms to the rules governing lode claims after being amended to exclude the patented areas.

Samuel A. Chessbrough, 49 IBLA 249 (Aug. 18, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

For a mining claim located on or before Oct. 21, 1976, under 43 U.S.C. § 1744 (1976), 43 CFR 3833.1-2(a) and 3833.4, a copy of the recorded notice or certificate of location must be filed with the appropriate BLM state office by Oct. 22, 1979, or the claim shall be conclusively deemed to be abandoned and void.

Virgal N. Taylor, Elizabeth Hutton, 49 IBLA 329 (Aug. 25, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, 3833.2-1, and 3833.4, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location and a copy of the recorded affidavit of assessment work or notice of intention to hold the claim, with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim must be deemed abandoned and void.

John Lincoln, Jr., 49 IBLA 335 (Aug. 25, 1980)

The owner of an unpatented mining claim on Federal land located prior to Oct. 21, 1976, had to file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recordation, whichever date is earlier, evidence of annual assessment work performed during the preceding assessment year, or a notice of intention to hold the mining claim.

Mark G. Jones, 49 IBLA 378 (Sept. 5, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Where a placer mining claim was located in 1975, the evidence of assessment work must be filed with BLM on or before Oct. 22, 1979. If no evidence of assessment work has been timely filed with BLM, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a).

Vernon G. & Shirley S. Wickham, 50 IBLA 1 (Sept. 5, 1980)

An appeal from a decision declaring mining claims abandoned and void because of failure to meet the recordation requirements of the Federal Land Policy and Management Act of 1976 may be dismissed where the appellant failed to file her statement of reasons or request for a further extension of time to file a statement within time granted by the Board and she does not satisfactorily show why a request was not timely filed, and there is no likelihood she could prevail on the merits of the case in any eventuality.

The Board of Land Appeals has no authority to waive the strict requirements of the Federal Land Policy and Management Act of 1976 for recording mining claims, and where the requirements have not been met for a claim, the claim is properly declared abandoned and void.

Eloise Joyce Williamson, 50 IBLA 42 (Sept. 9, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

Under 43 CFR 3833.1-2(a) and 3833.4(a), the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the recorded notice or certificate of location with the Bureau of Land Management by Oct. 2, 1979, or the claim is deemed abandoned and void.

All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations.

Hugh A. Johnson, 50 IBLA 47 (Sept. 9, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. The owner of an unpatented mining claim, located after Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office within 90 days after the date of location of such claim. The statute and regulations governing recordation of mining claims are mandatory and where BLM has not received a notice of location, the claim is properly declared abandoned and void.

Margaret Covert, 50 IBLA 58 (Sept. 15, 1980)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site.

The failure to file an instrument required by secs. 3833.1 and 3833.2 of this title within the time period prescribed therein shall be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site and it shall be void.

Tod Anderson, 50 IBLA 66 (Sept. 17, 1980)

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management Office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

The filing of the notice of location of a mining claim does not meet the requirement for filing a notice of intention to hold the mining claim.

Don Saunders, Perry Adkison, Ward L. Jones, 50 IBLA 84 (Sept. 17, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that the documents had been deposited in the mail and postmarked by the postal

MINING CLAIMS--Continued

RECORDATION--Continued

authorities Oct. 22, 1979, will not excuse the late filing.

Helen Holland et al., 50 IBLA 121 (Sept. 24, 1980)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim.

Clifford J. Kalch, 50 IBLA 127 (Sept. 24, 1980)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of Location." The date of location of mining claims is determined in accordance with the law of the State where the claims are situated. Under California law, the time for recordation in the county is measured from the date of the posting of the location notice on the claims.

The dates of locations of mining claims as shown on the notices of location recorded in compliance with State law will be treated as controlling where, after rejection by BLM of the location notices as untimely filed, claimant alleges that the notices are untrue as the dates shown are "typographical errors."

Lee Resources Management Corp., 50 IBLA 131 (Sept. 24, 1980)

Where a person has located a mining claim on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to file timely with the proper office of the Bureau of Land Management a copy of the notice or certificate of location of a mining claim is deemed conclusively to constitute an abandonment of the mining claim by the owner.

The Department of the Interior, as agency of Executive Branch of Government, is not proper forum to decide whether or not as to mining claims the recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Abner Wood, 50 IBLA 141 (Sept. 26, 1980)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed evidence of assessment work performed during the preceding assessment year or a notice of intention to hold the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

John J. Schnabel, 50 IBLA 201 (Sept. 30, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

It is proper to refuse to accept notices of location of mining claims submitted for recordation pursuant to sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), when the claims are null and void because they are filed for lands on the outer continental shelf.

Ford MacElvain, 50 IBLA 303 (Oct. 7, 1980)
87 I.D. 478

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void and renders the claim void.

Cleo Ray Pregh, Marjorie P. Ontaria, 50 IBLA 363 (Oct. 16, 1980)

Where the owner of unpatented mining claims located before Oct. 21, 1976, files copies of the notices of location of these claims prior to the Oct. 22, 1979, deadline for so doing, but fails to file evidence of annual assessment work during the preceding assessment year on or before this deadline, the claims are properly declared abandoned and void.

Stanley Bishop, 50 IBLA 371 (Oct. 21, 1980)

Joseph T. Dodge, d.b.a. Rocky Mountain Mineral Co., 50 IBLA 394 (Oct. 24, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented millsite located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. The owner of an unpatented millsite, located after Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office within 90 days after the date of location of such claim. The statute and regulations governing recordation of millsite claims are mandatory and where BLM has not received a notice of location, the claim is properly declared abandoned and void.

Wayne E. Clevis, 50 IBLA 379 (Oct. 22, 1980)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void.

Melvin E. Yiles, 51 IBLA 32 (Oct. 30, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The statutory and regulatory requirements to file a notice of location are mandatory and failure to comply with them must result in a finding that the claims are void.

J. K. Kendrick, 51 IBLA 56 (Oct. 31, 1980)

Under 43 CFR 3833.1-2(d), the owner of unpatented mining claims must tender a filing fee of $5 per claim when filing recordation information, or BLM properly rejects the filing as unacceptable. Where he submits information on or before the Oct. 22, 1979, deadline, but does not include this fee on or before this date, BLM properly regards this filing as unacceptable, so that the claims became void under 43 CFR 3833.4 when the deadline passed without an acceptable filing.

Where the owner of two mining claims files recordation information for two claims with BLM, but tenders only $5 as a filing fee, this amount is insufficient to provide the required $5 fee for both claims, and BLM properly may recognize only one claim as valid. In these circumstances, BLM properly requires the owner to select which claim to validate.

Eva Bolden et al., 51 IBLA 140 (Nov. 20, 1980)

All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations.

John F. Schaelzer, 51 IBLA 188 (Dec. 2, 1980)

Pursuant to 43 CFR 3833.1-1, an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 Oct. 20, 1976), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

Gordon L. Cooper, 51 IBLA 191 (Dec. 5, 1980)

Land which has been patented without a reservation of minerals to the United States is not available for the location of mining claims and BLM properly refuses recordation of such claims.

Silver Spot Metals, Inc., 51 IBLA 212 (Dec. 10, 1980)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

Arlen C. Burke, 51 IBLA 224 (Dec. 10, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that the Post Office may have assured the claimant that the documents would reach the Colorado State Office by Oct. 22, 1979, will not excuse the late filing.

Cleghorn and Washburn Mining Co., 51 IBLA 265 (Dec. 15, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Edward B. Kramer, 51 IBLA 294 (Dec. 17, 1980)

Where a person locates mining claims on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 CFR 3833.4, the failure to file such instruments as required by subsections (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site by the owner.

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to BLM for recordation on Oct. 22, 1979, and the check submitted was returned by the bank as uncollectible, the mining claims located prior to Oct. 21, 1976, are deemed abandoned and void.

John J. Dunsmore et al., 51 IBLA 297 (Dec. 17, 1980)

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim must file a map, narrative, or sketch depicting the location of his mining claim or site. A BLM decision dated Aug. 22, 1980, effectively advising a claimant that his claims are void because no map has been filed within 30 days of July 16, 1979, will be set aside as erroneous where the file contains a map of the claims which is BLM date stamped Aug. 3, 1979.

George Phil Martinez, 51 IBLA 330 (Dec. 29, 1980)

MINING CLAIMS--Continued

RECORDATION--Continued

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a claimant files for recordation on Oct. 19, 1979, but the filing fee is not paid to BLM until after the deadline for filing, Oct. 22, 1979, the mining claim must be deemed abandoned and void.

Robert W. Miller, Marjorie Ripper Miller, 51 IBLA 364 (Dec. 29, 1980)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the mining claim void.

Nolart, Inc., 52 IBLA 5 (Jan. 5, 1981)

Thomas F. Byrne, Anna B. Philo, 52 IBLA 49 (Jan. 6, 1981)

John T. Sweaton et al., 52 IBLA 108 (Oct. 26, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), if unpatented mining claims located after Oct. 21, 1976, are not supported annually by either an affidavit of assessment work or a notice of intention to hold, the claim will be conclusively deemed abandoned and void, despite appellant's statement that there was no intent to abandon and he did not fully understand the regulations.

Dale E. Hopkins, 52 IBLA 9 (Jan. 5, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. It also includes an exact reproduction, duplicate, or other acceptable evidence, except microfilm, of an amended instrument which may change or alter the description of the claim.

William H. Talbott et al., 52 IBLA 12 (Jan. 5, 1981)

Where a person locates a mining claim on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.4, the failure to file such instruments as required by

MINING CLAIMS--Continued

RECORDATION--Continued

subsections (a) and (b) of that section shall be deemed conclusively to constitute an abandonment of the mining claim, or mill or tunnel site by the owner.

The Department of Interior, as agency of Executive Branch of Government, is not the proper forum to decide whether or not the recordation provisions of the Federal Land Policy and Management Act of 1976 relating to mining claims are constitutional.

Marvin E. Brown, Jane B. Brown, 52 IBLA 44 (Jan. 6, 1981)

Under 43 CFR 3833.1-2(c) BLM may require a mining claimant to supplement his initial filing of recordation information with additional information including a description of the lands in his claims, according to the rectangular survey system, and to within a quarter section.

Walter Byerly, 52 IBLA 58 (Jan. 6, 1981)

A copy of a recorded notice or certificate of location of a mining claim will not be accepted by BLM for recordation if it is not accompanied by the service fee required under 43 CFR 3833.1-2(d).

Susan Native, 52 IBLA 134 (Jan. 16, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, or prior to Dec. 31 of each year following the calendar year in which the claim was recorded with BLM. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Lowell H. Paige, 52 IBLA 137 (Jan. 16, 1981)

The Federal regulations at 43 CFR 3833.4(a) do not conflict with 43 CFR 3833.4(b) which pertains to the filing of defective or untimely instruments under laws other than the Federal Land Policy and Management Act.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act are constitutional.

Alex Pinkham, Mary Anne Pinkham, 52 IBLA 149 (Jan. 16, 1981)

Where a mining claimant attempts to file notices of location for 24 claims pursuant to 43 CFR 3833.1-2 and tenders payment for filing costs in an amount sufficient to cover only 23 of those claims, BLM shall require the claimant to select 23 claims to which the money tendered shall be applied. The remaining one claim is properly declared abandoned and void in accordance with 43 CFR 3833.4.

Floyd R. Moody, 52 IBLA 153 (Jan. 21, 1981)

MINING CLAIMS--Continued

RECORDATION--Continued

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. There can be no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where the filing fee is not paid within 90 days after the date of location for a claim located after Oct. 21, 1976, the claim must be deemed abandoned and void.

Philip I. Griner, 52 IBLA 179 (Jan. 26, 1981)

Raymond R. McCool, Harold P. Hinds, 60 IBLA 62 (Nov. 19, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

Henri Gurgk, 52 IBLA 200 (Jan. 26, 1981)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. Therefore, where a notice of location of a claim or site is submitted for recordation on May 14, 1980, after having been located on May 3, 1980, and the filing fee is not paid to BLM until Aug. 11, 1980, the recordation date of the notice is Aug. 11, 1980, and thus more than 90 days after the date of location.

Ben Hartensen, Anne Hartensen, Will Halstead, 52 IBLA 253 (Feb. 6, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management office on or before Oct. 22, 1979. This requirement is mandatory and failure to comply conclusively constitutes abandonment of the claim by the owner.

Joe Bastone, 52 IBLA 288 (Feb. 9, 1981)

John W. Baccus, 59 IBLA 288 (Oct. 30, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the mining claim void.

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements

MINING CLAIMS--Continued

RECORDATION--Continued

are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Robert G. Sunder, Joanne E. S. Sunder, 52 IBLA 375 (Feb. 19, 1981)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of location." The date of location of a mining claim is determined in accordance with the law of the state where the claim is situated. Under Arizona law, it is the date specified on the notice of location filed with the local recorder's office.

The dates of location of mining claims as shown on the notices of location recorded in compliance with State law will be treated as controlling where, after rejection by BLM of the location notices as untimely filed, claimant alleges that the notices are untrue as the dates shown are scrivener's errors.

John C. and Theresa E. Buchanan, 52 IBLA 387 (Feb. 19, 1981)

H. Mason Coggin, 54 IBLA 224 (Apr. 27, 1981)

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

James B. Pauley, 53 IBLA 1 (Feb. 26, 1981)

Carl B. Anderson, 61 IBLA 4 (Dec. 29, 1981)

Elmer F. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

William H. Topporowski, 53 IBLA 21 (Feb. 26, 1981)

Walter Schivo, 53 IBLA 40 (Feb. 26, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1978, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1979, or the claims are conclusively deemed abandoned and, thus, void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

Cleatus Sypult, 53 IBLA 171 (Mar. 16, 1981)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Lynn Keith, 53 IBLA 192 (Mar. 17, 1981) 88 I.D. 369

Faber Group Mines, Inc., 58 IBLA 88 (Sept. 28, 1981)

United States Energy Corp. et al., 58 IBLA 159 (Sept. 28, 1981)

Rupert Thorne, 58 IBLA 319 (Oct. 16, 1981)

Enterprise Mines, Inc., 58 IBLA 372 (Oct. 20, 1981)

James D. Ross, Maria J. Ross, 72 IBLA 395 (May 5, 1983)

Even though the Bureau of Land Management knew of the existence of certain mining claims, as evidenced by BLM's initiation of contest proceedings against the claims, the claimants were not relieved of the responsibility of complying with the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976. The filing of evidence of assessment work is an annual requirement and failure to so file alone is deemed to constitute conclusive abandonment of the claims.

United States v. Paul H. Koepingsmark et al., 53 IBLA 377 (Mar. 31, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

Randal Angeloni, Douglas Blixt, 54 IBLA 56 (Apr. 9, 1981)

Andrew Kasanis, 56 IBLA 332 (July 30, 1981)

Dia Art Foundation, 56 IBLA 357 (Aug. 3, 1981)

Robert W. Soehner, 56 IBLA 370 (Aug. 3, 1981)

David Truesdell et al., 57 IBLA 60 (Aug. 17, 1981)

Bonnie L. Chafe, 57 IBLA 384 (Sept. 10, 1981)

Recordation of an unpatented mining claim does not render valid any claim which would not otherwise be valid under applicable law. Acceptance by BLM of recordation documents does not constitute a recognition of the validity of the claim and BLM is not estopped to declare the claim null and void where it was located on

MINING CLAIMS--Continued

RECORDATION--Continued

land withdrawn from mining location at the time of the location.

William C. Reiman, Richard M. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

When the owner of a lode or placer mining claim files a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim, he has complied with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2.

Lester L. Learned, 54 IBLA 147 (Apr. 17, 1981)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. As this is a mandatory requirement there is no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where, for a claim located after Oct. 21, 1976, the filing fee is not paid within 90 days after the date of location, the claim must be deemed abandoned and void.

It is proper for the Bureau of Land Management to refuse to accept a check postdated 30 days after receipt as satisfactory payment of service fees for recordation of mining claims.

Jesse L. Miller, 54 IBLA 187 (Apr. 22, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1977, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1978, or the claims are conclusively deemed abandoned and, thus, void.

Eugene E. Daugherty, 54 IBLA 352 (May 12, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Richard E. Forsgren, 54 IBLA 362 (May 18, 1981)

Vernon Bradley, 57 IBLA 351 (Sept. 8, 1981)

James W. Tibbals, Janet D. Tibbals, 58 IBLA 42 (Sept. 17,1981)

Loy Yokum, 62 IBLA 27 (Feb. 24, 1982)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a), the owner of an unpatented mining claim located before Oct. 21, 1976, must file on or before Oct. 22, 1979, in the proper BLM office, a copy of the notice of location or the claim will be conclusively deemed to have been abandoned and declared void.

Where an unpatented mining claim is located in Alaska near the dividing line separating the Anchorage and Fairbanks districts, indicated on the map in 43 CFR 1821.2-1, such that it is virtually impossible from the map to determine with substantial accuracy in which district the mining claim lies, the timely filing of the location notice by the owner of the claim in either the Alaska State Office or the Fairbanks District Office will be considered as satisfying the requirement of 43 CFR 3833.1-2(a) of filing in the proper BLM office.

Inspiration Development Co., 54 IBLA 390 (May 20, 1981) 88 I.D. 557

Lowell L. Patton, 55 IBLA 125 (June 3, 1981)

Land which has been patented without a reservation of minerals to the United States is not available for the location of placer mining claims, and BLM properly may reject documents submitted for recordation of a mining claim insofar as they cover patented land.

D. Entrenado, 55 IBLA 49 (May 29, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1979, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30, 1980, or the claims are conclusively deemed abandoned and, thus void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

Onco, Inc., 55 IBLA 77 (June 1, 1981)

Timely transmittal of the documents required by sec. 314 of the Federal Land Policy and Management Act for recordation of a mining claim to the California State Office when the claim is located in Nevada does not meet the requirements that the documents be filed timely in the proper office.

Alex Stewart, 55 IBLA 105 (June 1, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Acceptance for recordation of a timely filed certificate of location of unpatented mining claim and negotiation of the check for the required service fee creates no estoppel to subsequently declare the claim abandoned and void for failure to file timely

MINING CLAIMS--Continued

RECORDATION--Continued

the required evidence of assessment work or notice of intention to hold.

Margaret E. Peterson, 55 IBLA 136 (June 4, 1981)

A copy of the official record of the notice of location for a mining claim located after Oct. 21, 1976, must be delivered to and received by the proper Bureau of Land Management office within 90 days after the date of location in order to be filed timely. Depositing a document in the mails does not constitute filing.

Don E. Bates, 55 IBLA 263 (June 25, 1981)

Del Rupp, 57 IBLA 297 (Aug. 31, 1981)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with the proper BLM office within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

Where an unpatented mining claim is located in Alaska near the dividing line separating the Anchorage and Fairbanks districts, indicated on the map in 43 CFR 1821.2-1, such that it is virtually impossible from the map to determine with substantial accuracy in which district the mining claim lies, the timely filing of the location notice by the owner of the claim in either the Alaska State Office or the Fairbanks District Office will be considered as satisfying the requirement of 43 CFR 3833.1-2(b) of filing in the proper BLM office.

Janis S. Nelson, Terry L. Sullivan, 55 IBLA 289 (June 25, 1981)

The owner of mining claims located after Oct. 21, 1976, must file copies of the notices of location of the claims with BLM within 90 days of the dates of location of the claims, failing which the claims are properly declared abandoned and void.

"Date of location." The date of location of a mining claim is determined in accordance with the law of the state where the claim is situated. Under California law, it is the date of posting location notice on the claim.

The dates of location of mining claims as shown on the notice of location recorded in compliance with State law will be treated as controlling where, after rejection by BLM of the location notices as untimely filed, claimant alleges that the notices are untrue as the dates shown are in error.

C. B. Shannon, 55 IBLA 312 (June 26, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply conclusively constitutes an abandonment of the claim by the owner and renders the claim void.

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976))

MINING CLAIMS--Continued

RECORDATION--Continued

Congress specifically placed the burden on the claimant to show that the claim has not been abandoned by his compliance with the Act's requirements, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

Where a mining claimant believes that assessment work would be a prohibited or useless act, the claimant should file a notice of intention to hold pursuant to 43 CFR 3833.2-3.

Robert E. Fennell, Clair B. Colburn, d.b.a. Colfennch Mining Ass'n, 56 IBLA 43 (July 8, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was recorded with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

Robert E. Melcher, 56 IBLA 165 (July 20, 1981)

Dennis A. Lane, 56 IBLA 171 (July 20, 1981)

Jacqueline A. Riddlemoser, 56 IBLA 173 (July 20, 1981)

John R. Davies, 56 IBLA 175 (July 20, 1981)

Edward McNally, Merrill Porter, 56 IBLA 177 (July 20, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was recorded with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

Hi-Oro Mining Co., 56 IBLA 179 (July 20, 1981)

Department of the Interior, as agency of executive branch of Government, is not a proper forum to decide whether or not the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

William O. Bahly, 56 IBLA 190 (July 20, 1981)

Shirley Thompson, Duane R. Thompson, 57 IBLA 154 (Aug. 25, 1981)

Petro-Lewis Corp., Partnership Properties Co., 57 IBLA 300 (Aug. 31, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim by Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work

MINING CLAIMS--Continued

RECORDATION--Continued

is not filed because it became lost in the mail, the loss must be borne by the claimant.

William T. Bost, 56 IBLA 234 (July 22, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed because of intervening inclement weather, loss must be borne by claimant.

Valiant Resources, Inc., 56 IBLA 278 (July 28, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(c), the owner of unpatented mining claims located in the calendar year 1979, must have filed with the Bureau of Land Management (BLM), affidavits of assessment work or notice of intention to hold the mining claims on or before Dec. 30, 1980, or the claims are conclusively deemed abandoned and, thus, void.

Allen Turner, 56 IBLA 280 (July 28, 1981)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM for recordation on Apr. 6, 1981, and the filing fees therefor are not paid to BLM until Apr. 27, 1981, the recordation date of the notices is Apr. 27, 1981.

Fred W. Crouch III, 56 IBLA 318 (July 29, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Regina McMahon, 56 IBLA 372 (Aug. 3, 1981)

Bruce E. Berringer, 60 IBLA 258 (Dec. 4, 1981)

Raymond L. Dinviddie, 64 IBLA 334 (June 10, 1982)

Don Noon, 68 IBLA 211 (Nov. 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on

MINING CLAIMS--Continued

RECORDATION--Continued

or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year following the year of recording with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the loss must be borne by the claimant.

Jack Terwilliger, 56 IBLA 383 (Aug. 3, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file on or before Oct. 22, 1979, in the proper BLM office, a copy of the notice of location, or the claim will be conclusively deemed to have been abandoned and declared void.

Kenneth C. Eichner, 56 IBLA 391 (Aug. 3, 1981)

The filing with BLM prior to Oct. 21, 1976, of a copy of the notice of the location of an unpatented mining claim, pursuant to the Mining Claims Rights Restoration Act, 30 U.S.C. § 623 (1976), does not relieve the owner of the claim of the filing obligation imposed by sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and its implementing regulations.

Don E. Robinson, 57 IBLA 5 (Aug. 5, 1981)

The mailing of a notice of intention to hold a mining claim before the due date is not sufficient to comply with the requirements of the statute unless the notice is actually received by the proper BLM office before such date.

William J. Kroetch, 57 IBLA 29 (Aug. 6, 1981)

Pursuant to 43 CFR 3833.1-1 and 36 CFR 9.5(a), an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 (Oct. 20, 1976)), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

Abrae H. Kreider, 57 IBLA 68 (Aug. 18, 1981)

George D. Hooker et al., 66 IBLA 168 (Aug. 12, 1982)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site. These requirements are mandatory and failure to comply within the time period prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim, millsite or tunnel site.

Under 43 CFR 3833.1-2(d), a location notice for each mining claim filed for recordation must be accompanied by the stated fee. As this is a mandatory requirement there is no recordation unless the documents are accompanied by the stated fee.

D. L. Nielsen, E. W. Tompkins, 57 IBLA 114 (Aug. 25, 1981)

MINING CLAIMS--Continued

RECORDATION--Continued

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

D. E. Bailey, 57 IBLA 120 (Aug. 25, 1981)

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(b). This requirement is mandatory and where a mining claimant fails to comply therewith the claims are properly declared abandoned and void.

Art Fields, Russel Adams, 57 IBLA 142 (Aug. 25, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year following the calendar year in which the claim was recorded with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

John E. Erickson, 57 IBLA 157 (Aug. 25, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the first proof of labor was filed with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail the loss must be borne by the claimant.

Magdalene Pickering Franklin, 57 IBLA 244 (Aug. 27, 1981)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owners of unpatented lode or placer mining claims located after Oct. 21, 1976, within 90 days after the location of such claims, must file in the proper BLM office a copy of the official record of the notice of location or certificate of location. Failure to file such instruments timely is deemed conclusively to constitute an abandonment of the mining claims by the owners, and they are properly declared void.

Richard E. and Gloria M. Haas, Michael P. and Echo Argob, 57 IBLA 266 (Aug. 28, 1981)

Phyllis J. Birchard, 59 IBLA 247 (Oct. 29, 1981)

Herman Black, 60 IBLA 229 (Dec. 4, 1981)

Ross Murray, 62 IBLA 7 (Feb. 23, 1982)

George Nassis, 64 IBLA 137 (May 20, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Spiffer #2 Partnership, 76 IBLA 362 (Oct. 24, 1983)

The failure of a holder of a millsite claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the millsite is a curable defect and the millsite may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Harlow H. Oberbillig, 57 IBLA 336 (Sept. 1, 1981)

Richard Holland, 74 IBLA 167 (July 12, 1983)

The failure of the owner of an unpatented mining claim to furnish a date of location, not indicated in a copy of the notice of location of the claim filed with BLM, in response to a notice of deficiency requiring the submission of such date within 30 days, may be waived where BLM already had evidence of when the claim was located, the person entrusted with such matters was incapacitated during this time period, and the claimant promptly furnished the date of location upon learning of the failure to respond timely.

Park City Chief Mining Co., 57 IBLA 342 (Sept. 3, 1981)

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed for recordation shall be accompanied by a one time $5 service fee. This is a mandatory requirement and without payment of the fee there can be no recordation.

Park City Chief Mining Co., 57 IBLA 346 (Sept. 3, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file in the proper BLM office a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which such notice or evidence was first filed with BLM. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the loss must be borne by the claimant.

Philip Cramer, 57 IBLA 386 (Sept. 10, 1981)

Reliance upon information allegedly provided by a county official contrary to the terms of sec. 314(b), Federal Land Policy and Management Act, 43 U.S.C. § 1744(b), cannot create any rights not authorized by law.

The Federal Land Policy and Management Act of 1976 does not provide the Bureau of Land Management or the Interior Board of Land Appeals with discretion to waive the effects of failure to comply with the recordation requirements.

Sonny Chapmeyer, 58 IBLA 29 (Sept. 16, 1981)

A notice of location which is in proper form and timely filed with the correct fee must be accepted and recorded by BLM notwithstanding the protest of a rival mining claimant that he has a superior and exclusive possessory right to the same ground. Such disputes are not within the jurisdiction of this Department, and can be resolved only by private litigation between the parties in courts of competent jurisdiction.

MINING CLAIMS--Continued

RECORDATION--Continued

E. E. Allstead, 58 IBLA 46 (Sept. 21, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the official record of a notice of intention to hold or evidence of performance of annual assessment work on the claim, as recorded in the office where the location notice of the claim is recorded, prior to Dec. 31 of each calendar year following the year in which the claim was located. There is no provision for waiver of this mandatory requirement or of the statutory consequences of the claim being deemed conclusively to be abandoned for failure to comply.

Polar Resources Co., 58 IBLA 70 (Sept. 22, 1981)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location and either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report provided by sec. 28-1 of Title 30, relating thereto, all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

A detailed map prepared by the mining claimant's geologist, showing the geologist's labor performed on the claims during the assessment year in question, cannot be considered as meeting the requirements of sec. 314 of FLPMA with respect to notice of intention to hold a mining claim, where it was not filed for recordation with the local recording office where the notice of location is prescribed by state law to be recorded.

The language in sec. 314 of FLPMA, 43 U.S.C. § 1744(c) (1976), relating to defective and untimely filings does not protect a claimant from the statutory conclusive presumption of abandonment where he has not met the recordation requirements of FLPMA. It is only defectiveness or untimeliness of filings under other Federal laws that shall not impair the validity of a mining claim which is otherwise valid under FLPMA.

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

There is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their duties. Where the official time and date stamp of a BLM office is impressed upon a document, it is presumed that the impression is accurate, in the absence of a clear showing to the contrary by appellant.

Whelan's Mining and Exploration, Inc., 58 IBLA 127 (Sept. 24, 1981)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Rodoc Gem and Mineral Society, 58 IBLA 142 (Sept. 25, 1981)

Daryl E. Bartholomew, 63 IBLA 198 (Apr. 8, 1982)

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the evidence is actually received by the proper BLM office before such date.

Don Hestor, 58 IBLA 163 (Sept. 28, 1981)

Louis E. Sharp, 59 IBLA 223 (Oct. 28, 1981)

Marvin G. Stuck, 60 IBLA 197 (Nov. 27, 1981)

Kay M. Krohn, 62 IBLA 84 (Feb. 25, 1982)

Robert S. Terri, 62 IBLA 291 (Mar. 16, 1982)

Carl W. St. Claire, 63 IBLA 125 (Apr. 5, 1982)

Lloyd J. Osborn, 64 IBLA 21 (May 6, 1982)

Vestor Harker, 64 IBLA 86 (May 12, 1982)

Herbert A. Horton, 64 IBLA 89 (May 12, 1982)

The filing of the notice of location of a mining claim does not meet the requirement for filing a notice of intention to hold the mining claim.

Albert L. Fillerup, 58 IBLA 194 (Sept. 29, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

MINING CLAIMS--Continued

RECORDATION--Continued

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

The mailing of a notice of intention to hold a mining claim before the due date is not sufficient to comply with the requirements of the statute unless the notice is actually received by the proper BLM office before such date.

Ralph A. Pigsh, 58 IBLA 254 (Oct. 6, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply conclusively constitutes an abandonment of the claim by the owner and renders the claim void.

Mrs. Walter E. Bollen, 58 IBLA 257 (Oct. 6, 1981)

Where mining claims were located in 1940 and copies of the official record of the notices of location were not filed with the proper BLM office on or before Oct. 22, 1979, the claims are properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Wayne Cook, 58 IBLA 350 (Oct. 19, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Edgar W. Cook, Marlene Cook, 58 IBLA 358 (Oct. 20, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim with the proper Bureau of Land Management office on or before

MINING CLAIMS--Continued

RECORDATION--Continued

Oct. 22, 1979. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner.

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper Bureau of Land Management office, of such instrument or recordation. It also includes an exact reproduction, duplicate, or other acceptable evidence except microfilm, of an amended instrument which may change or alter the description of the claim. A quitclaim deed is not an acceptable substitute in the absence of a showing that the certificates of location were unavailable.

John J. Vikerçik, George W. Trabis, 58 IBLA 377 (Oct. 21, 1981)

The owner of an unpatented mining claim must file a copy of the official record of the notice or certificate of location of the claim within 90 days after the date of location of that claim in the proper BLM office. In computing the 90-day period, the date of location is not included but the last day of the period is included. A copy of the notice of location for a claim located on Apr. 20, 1978, must have been filed with BLM by July 19, 1978.

Warren J. Fyten, 58 IBLA 381 (Oct. 21, 1981)

Oil placer mining claims located pursuant to the Petroleum and Mineral Oils Act of Feb. 11, 1897, c. 216, 29 Stat. 526, and preserved by sec. 37 of the Mineral Leasing Act of 1920, 30 U.S.C. § 193 (Supp. II 1978), are subject to the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Conoco, Inc., 58 IBLA 390 (Oct. 21, 1981) 88 I.D. 918

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement.

AOS Co., 59 IBLA 112 (Oct. 26, 1981)

MINING CLAIMS--Continued

RECORDATION--Continued

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper Bureau of Land Management office on or before Oct. 22, 1979, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. Where evidence of assessment work is not filed, the claim is conclusively deemed abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a).

The mailing of an affidavit of assessment work concerning a mining claim before the due date is not sufficient to comply with the requirements of the statute unless the notice is actually received by the proper Bureau of Land Management office before such date.

John Silva, 59 IBLA 167 (Oct. 26, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper office of BLM within 90 days after the date of location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Lee Smart, 59 IBLA 235 (Oct. 28, 1981)

Under sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1(a), where the owner of unpatented mining claim located before Oct. 21, 1976, submits a copy of the location notice to BLM in April 1978, and proof of labor to BLM in Oct. 1979, but fails to submit evidence of annual assessment work or notice of intention to hold the mining claim on or before Dec. 30, 1980, BLM properly declares the mining claim abandoned and void. Filing is accomplished when a document is delivered to and received by the proper BLM office.

Roy E. Smalley et al., 59 IBLA 236 (Oct. 28, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed because it was delayed in the mail, the consequences must be borne by the claimant.

Inez Crews et al., 59 IBLA 257 (Oct. 29, 1981)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Elizabeth Francis, 60 IBLA 6 (Nov. 12, 1981)

William Cooper, 60 IBLA 50 (Nov. 17, 1981)

MINING CLAIMS--Continued

RECORDATION--Continued

Edwin Striegel, Marie A. O'Brien, 60 IBLA 232 (Dec. 4, 1981)

Red Scheaf, 61 IBLA 323 (Feb. 8, 1982)

Denver M. Tallman, 61 IBLA 326 (Feb. 8, 1982)

Doe Wright, 61 IBLA 356 (Feb. 16, 1982)

Jim M. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Lawrence Paul, 63 IBLA 275 (Apr. 19, 1982)

Stanley Sims, 64 IBLA 257 (June 2, 1982)

E. L. Divy Divnick, Floyd Tipond, 64 IBLA 297 (June 8, 1982)

Betty Smith, 64 IBLA 395 (June 17, 1982)

Utah Calcium Co., Inc., 64 IBLA 402 (June 17, 1982)

Harold L. Michaelson, 65 IBLA 6 (June 17, 1982)

Charles E. Hull et al., 65 IBLA 61 (June 23, 1982)

Edwin P. Keegan, Jr., 65 IBLA 114 (June 25, 1982)

Don C. Tracy, Gordon C. Tracy, 65 IBLA 160 (June 29, 1982)

Manuel R. Hernandez, 65 IBLA 281 (July 12, 1982)

Helena Silver Mines, Inc., 65 IBLA 287 (July 13, 1982)

Viola Rock Whitney, 65 IBLA 361 (July 20, 1982)

Victor Hegsted, 66 IBLA 31 (July 23, 1982)

David G. Still, 66 IBLA 35 (July 23, 1982)

William R. Gaechter et al., 66 IBLA 230 (Aug. 16, 1982)

Carlyle A. Brough, 68 IBLA 318 (Nov. 19, 1982)

Anne McPherson, Audrey Pilger, 72 IBLA 383 (May 5, 1983)

George P. Newcomb, 73 IBLA 104 (May 23, 1983)

Humbug Mining Co., 73 IBLA 270 (June 7, 1983)

Githa T. Mayo, 73 IBLA 277 (June 7, 1983)

Harold L. Long, 73 IBLA 280 (June 7, 1983)

Ray McKee, Cheryl McKee, 73 IBLA 311 (June 7, 1983)

Wayne M. Hunt, 73 IBLA 315 (June 7, 1983)

Paul P. Smith et al., 73 IBLA 336 (June 8, 1983)

Hugh Sprague, 73 IBLA 386 (June 15, 1983)

Bruce Naylor, Bill Barney, Darrell Taylor, 74 IBLA 201 (July 18, 1983)

Shirley Powerlake, 74 IBLA 210 (July 18, 1983)

Leonard E. Snider, Sr., 74 IBLA 213 (July 18, 1983)

Hughes Minerals, Inc., 74 IBLA 217 (July 18, 1983)

Frank Bongo, 74 IBLA 367 (July 28, 1983)

Parke Potter, 74 IBLA 397 (Aug. 2, 1983)

Devon M. Hurst, 75 IBLA 149 (Aug. 18, 1983)

Milford E. Pribble, 75 IBLA 174 (Aug. 19, 1983)

MINING CLAIMS--Continued

RECORDATION--Continued

Three Rivers Mining Co., 75 IBLA 176 (Aug. 19, 1983)

Dale Rossi, Judy Rossi, 75 IBLA 262 (Aug. 26, 1983)

John R. Powers, 75 IBLA 266 (Aug. 26, 1983)

Henry Allen, Harold Dils, 76 IBLA 14 (Sept. 6, 1983)

Charles Mayo, Marie G. Mayo, 76 IBLA 107 (Sept. 21, 1983)

Lydia Darlene Sheaks, 76 IBLA 148 (Sept. 26, 1983)

Betty E. Baxter, 76 IBLA 188 (Oct. 6, 1983)

Grace P. Crocker, 76 IBLA 231 (Oct. 17, 1983)

Nike Bell Mining & Oil Co., 76 IBLA 254 (Oct. 17, 1983)

Adolf Dieckmann (Trust), 76 IBLA 357 (Oct. 24, 1983)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim filed for recordation shall be accompanied by a service fee. This is a mandatory requirement, and without payment of the fee, there is no recordation. The failure to file such instruments as are required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein must be deemed conclusively to constitute an abandonment of the mining claim.

Vivian Sullivan Karlson, 60 IBLA 10 (Nov. 13, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim located on Federal land after Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location in the proper BLM office within 90 days after the date of location.

Pursuant to 43 CFR 3833.1-2(d), payment of a $5 service fee must accompany the filing with BLM of each notice or certificate of mining location; otherwise, each unpaid filing shall be rejected.

Frank E. Evans, 60 IBLA 44 (Nov. 17, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(2) (1976), the owner of unpatented mining claims located before Oct. 21, 1976, shall file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recording whichever date is sooner evidence of annual assessment work performed or a notice of intention to hold the mining claim or the mining claims shall be declared abandoned and void pursuant to 43 CFR 3833.4(a).

Buck A. Rogers, 60 IBLA 59 (Nov. 18, 1981)

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2 and 3833.2-1, the owner of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice of location for the claim and a copy of the current proof of labor as recorded in the office where the notice of location is recorded, with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply conclusively constitutes an abandonment of the claim by the owner.

Robert G. Milton, 60 IBLA 104 (Nov. 20, 1981)

MINING CLAIMS--Continued

RECORDATION--Continued

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed evidence of assessment work performed or a notice of intention to hold the claim with the proper Bureau of Land Management office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

Jungwanda J. Papaglion, Mildred Lucille Gulick, 60 IBLA 128 (Nov. 24, 1981)

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

A copy of the official record of the evidence of assessment work for a mining claim must be delivered to and received by the proper office of the Bureau of Land Management on or before Dec. 30 of each calendar year in order to be timely filed. Depositing a document in the mails does not constitute filing.

George Vincent McMahon, 60 IBLA 107 (Nov. 27, 1981)

Where a mining claim was located in September 1974 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

Nicolaus P. Newby, 60 IBLA 264 (Dec. 15, 1981)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The mailing of a notice of location prior to the due date is not sufficient to comply with the requirements of the statute unless the notice is actually received by the proper BLM office before such date.

Prudential Mining & Exploration, Inc., 60 IBLA 363 (Dec. 22, 1981)

MINING CLAIMS--Continued

RECORDATION--Continued

The requirement to file timely copies of evidence of assessment work under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), is not excused by confusion as to the proper office for filing. Where a mining claim is near the dividing line of the Anchorage and Fairbanks districts so that it is virtually impossible to determine the appropriate office from the map at 43 CFR 1821.2-1, a timely filing in either office will satisfy the requirement. However, the statute does not authorize the Department to accept late filings.

West Fork Mining Co., 60 IBLA 370 (Dec. 22, 1981)

When mail is properly addressed and deposited in the United States mails, with postage thereon duly prepaid, there is a rebuttable presumption that it was received by the addressee in the ordinary course of mail.

Delivery by post office of a document to a BLM state office by placement of such mail in the post office box where the state office customarily receives its mail, during the hours in which the state office is open to the public for the filing of documents, constitutes delivery to and receipt by the state office of the document.

Where the envelope containing a mining claimant's evidence of annual assessment work required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), addressed to the Oregon State Office, Bureau of Land Management, at its post office box address in Portland, Oregon, was postmarked in Seattle, Washington, on Dec. 29, 1980, and it is established that whereas in the ordinary course of mail the letter would have been delivered to the state office at its regular post office box prior to 4:15 p.m. on the following day, the last hour for filing such evidence, but that any mail placed in the post office box after 1 p.m. nevertheless would not have been picked up by the state office until a day later, the evidence of assessment work is presumed to have been filed on Dec. 30, even though the date and time stamp of the state office indicates that it was not received until 7:30 a.m. on Dec. 31.

Washington Chromium Co., 60 IBLA 378 (Dec. 23, 1981)

The mailing of an affidavit of assessment work concerning a mining claim before the due date is not sufficient to comply with the requirements of the statute unless the evidence of assessment work is actually received by the proper Bureau of Land Management office before such date.

Samantha Bowman, 61 IBLA 20 (Dec. 29, 1981)

The owner of an unpatented mining claim must file in each calendar year, on or before Dec. 30, either an affidavit of assessment work performed on the claim or a notice of intention to hold the mining claim. Failure to so file results in a conclusive statutory presumption of abandonment of the claim by the owner.

Northern Stops Supply, 61 IBLA 36 (Dec. 29, 1981)

There is a rebuttable presumption that administrative officers properly discharge their duties and do not lose or misfile documents timely filed. Where, however, the BLM computer print-out indicates that evidence of assessment work was received for one of appellant's four mining claims, and where appellant submits a copy of proof of labor for all four claims which had been recorded in the proper county recording office and

MINING CLAIMS--Continued

RECORDATION--Continued

then submitted to BLM, and where BLM had no record of having issued any adverse decision for the fourth claim but appellant submitted a copy of the decision he had received, the cumulative evidence rebuts the presumption of regularity.

Robert T. Reynolds, 61 IBLA 52 (Dec. 31, 1981)

Where a mining claim was located in Apr. 1970 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

Al Sherman, 61 IBLA 94 (Jan. 6, 1982)

Filing is accomplished only when a document is delivered to and received by the proper BLM office during business hours and depositing a document in the mails does not constitute filing. Mail received in the post office box designated by BLM as its address of record prior to BLM's close of business on a given day is properly considered as received by BLM on that date and failure of BLM to pick up the mail cannot alter this result. However, where the evidence establishes that a document was not placed in the BLM post office box until after the deadline, the filing is not timely.

Golden Monoguch Mining Corp. et al., 61 IBLA 120 (Jan. 15, 1982)

Where a mining claimant records in the county recording office notices of location for mining claims which reflect the month and year of location but omit the day, and thereafter submits to the Bureau of Land Management for recordation copies of the notices with the day filled in, BLM should accept such filing for the purpose of recordation under sec. 314 of the Federal Land Policy and Management Act on the assumption that the claimant will refile the corrected documents with the county in order to protect its interests.

Precious Minerals Unlimited, Inc., 61 IBLA 136 (Jan. 15, 1982)

Where a mining claim was located in Oct. 1969 and evidence of the assessment work was not filed with the proper BLM office on or before Oct. 22, 1979, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

William R. E. Underwood, 61 IBLA 172 (Jan. 25, 1982)

Where a mining claim was located Aug. 15, 1981, and a copy of the official record of the notice of location was not filed with the proper BLM office within 90 days thereafter, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

Leonard W. Nelson, Sr., 61 IBLA 353 (Feb. 11, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on Federal land prior to Oct. 21, 1976, must file with the proper office of BLM within 3 years after Oct. 21, 1976, a notice of intention to hold or evidence of performance of annual assessment work on the claim, and a similar filing must be made before Dec. 31 of every year thereafter. Otherwise, the claim is conclusively deemed

MINING CLAIMS--Continued

RECORDATION--Continued

abandoned and void. There is no provision for waiver of this requirement.

Ronald R. Atkins, 61 IBLA 364 (Feb. 16, 1982)

Sec. 314(a) of FLPMA requires the owner of an unpatented mining claim located prior to Oct. 21, 1976, to file with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter, an affidavit of assessment work performed thereon, or a notice of intention to hold the claim, or a detailed report provided by sec. 28-1 of Title 30, relating thereto. Sec. 314(c) states that the failure to comply with subsec. (a) invokes a conclusive presumption of the claim's abandonment, and 43 CFR 3833.4(a) declares that the claim "shall be void."

David and Roirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, must file in the proper BLM office, within 90 days after the date of location of such claim, a copy of the official record of the notice or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner, and it is properly declared void.

Bruce C. Kempffer, 62 IBLA 32 (Feb. 24, 1982)

James R. Morgan, 67 IBLA 223 (Sept. 23, 1982)

Sidney A. Webb, 69 IBLA 202 (Dec. 16, 1982)

Alfred E. Baloch, 72 IBLA 223 (Apr. 26, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a copy of the recorded notice of location within 90 days after the date of location, and a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year of the location. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Douglas Lee Jones, 62 IBLA 107 (Mar. 2, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976, as it relates to claims located on or before Oct. 21, 1976, requires the filing with the Bureau of Land Management of a copy of the official notice of location or certificate of location and either a notice of intention to hold the mining claims, an affidavit of assessment work performed thereon, or a detailed report relating thereto, as provided by 30 U.S.C. § 28-1 (1976), all to be filed on or before Oct. 22, 1979. Each required document must also be timely filed or recorded with the proper local or state office having the responsibility under state law for recording location notices. Failure to comply with these requirements gives rise to a conclusive presumption of abandonment of the claims.

Armin P. Kapplar, 62 IBLA 224 (Mar. 10, 1982)

Blanche M. Peterson, 67 IBLA 388 (Oct. 8, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

In Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), it was held that "supplemental" mining claim information required only by the regulations, not FLPMA, is subject to cure. Failure to file a proof of labor timely or properly is not curable after the recordation deadline, because such filing is not "supplemental," being required by FLPMA itself.

Robert L. Race et al., 63 IBLA 1 (Mar. 25, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Olive M. Stirland, 65 IBLA 363 (July 20, 1982)

Appellant has not complied with the statutory and regulatory rules for recordation of mining claim locations where the document filed with BLM bears a location date that the document filed with the county does not. Moreover, State of Washington law, which governs determination of the location date in this case, contemplates recordation of a location notice with the county only after certain prerequisites have been accomplished on the claim to locate it. Thus, the declaration that location occurred on Nov. 11, 1981, or on Feb. 3, 1982, is incorrect when the location notice was recorded with the county Nov. 10, 1981. Where it is impossible for BLM to ascertain whether the mining claimant has timely filed, because the location date is clearly incorrect or missing, the filing is properly rejected.

Gerald W. Hannon, 63 IBLA 115 (Apr. 2, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Where the requirement of filing proof of assessment work or a notice of intention to hold applies, such filing must be made within each calendar year, i.e., on or after Jan. 1, and on or before Dec. 30. The date of filing with the Bureau of Land Management is the critical date, and the assessment year recited in the proof is secondary.

John T. Conner, 63 IBLA 129 (Apr. 5, 1982)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM for recordation on Oct. 9, 1981, and the filing fees therefor are not paid to BLM until Oct. 20, 1981, the recordation date of the notices is Oct. 20, 1981.

Mrs. George G. Wagner et al., 63 IBLA 146 (Apr. 6, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1976, and a proof of labor or notice of intention to hold prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Elsie I. Stewart, Walter G. Stewart, 63 IBLA 153 (Apr. 6, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located prior to Oct. 21, 1976, must file evidence of assessment work or a notice of intention to hold the claim in the proper office of the Bureau of Land Management on or before Oct. 22, 1979. Failure to comply with this recordation requirement is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Paul J. Lambkin, 63 IBLA 170 (Apr. 8, 1982)

Cruz M. Chavez, 67 IBLA 270 (Sept. 27, 1982)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

The mailing of a notice of location after the due date is not sufficient to comply with the requirements of the statute.

Donald C. Strong, 63 IBLA 195 (Apr. 8, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim and evidence of assessment work or a notice of intention to hold the claim within 3 years after Oct. 21, 1976, in the proper office of the Bureau of Land Management. There also must be filed with the Bureau of Land Management, on or before Dec. 30 of each calendar year thereafter, a current proof of labor or notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, nor any grace period to accommodate late filings. Where evidence of assessment work is not filed because of delay in mail delivery, the consequences must be borne by the claimant.

T. Richard Ikard, 63 IBLA 200 (Apr. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the statutory consequence must be borne by the claimant.

Charles A. Bohaty III, 63 IBLA 231 (Apr. 16, 1982)

R. L. Pate, Sr., 63 IBLA 233 (Apr. 19, 1982)

Where a mining claimant has been excused from the performance of annual assessment work on claims within a unit of the National Park Service, notice of intention to hold claims must be delivered to and received by the proper office of the Bureau of Land Management on or before Dec. 30 of each calendar year in order to be timely filed under the provisions of sec. 314 of the Federal Land Policy and Management Act of 1976. Depositing a document in the mails does not constitute filing.

The Department of the Interior, as an agency of the executive branch of Government, is without jurisdiction to determine whether the mining claim recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

Gold Reserve Mining, Inc., 63 IBLA 266 (Apr. 19, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a copy of the official record of the notice of location of the claim, and evidence of assessment work or a notice of intention to hold the claim, within 3 years after Oct. 21, 1976, in the proper office of the Bureau of Land Management; and on or before Dec. 30 of each calendar year thereafter, there also must be filed with BLM current proof of labor or notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, nor any grace period to accommodate late filings. Where evidence of assessment work is not filed because of loss in mail delivery, the consequences must be borne by the claimant.

Robert J. Ferchola, 64 IBLA 23 (May 6, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Where a mining claimant submits a copy of his annual proof of labor to the BLM District Office in Moab, Utah, on Dec. 30, 1981, he has not complied with 43 CFR 3833.2-1, even though the instrument was submitted to the District Office within the statutory period for such filing, because the proof of labor has not been filed in the "proper BLM office," which is the BLM Utah State Office in Salt Lake City, as expressly provided by 43 CFR 1821.2-1(d), and 43 CFR 3833.0-5(g). Where the required instrument is not received by and date stamped by the proper BLM office during the statutory time period, it is untimely and the mining claim is properly declared abandoned and void under 43 CFR 3833.4(a).

John E. Keogh, 64 IBLA 101 (May 17, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management prior to Dec. 31 of each calendar year is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Thomas G. Mason et al., 64 IBLA 104 (May 17, 1982)

Tienna Silver Mines Co., Inc., 67 IBLA 130 (Sept. 16, 1982)

Melvin Bradshaw, 68 IBLA 390 (Nov. 23, 1982)

Where a mining claimant submits a copy of a notice of intent to hold a mining claim to the BLM district office in Moab, Utah, on Dec. 30, 1981, he has not complied with 43 CFR 3833.2-1. Even though the instrument was submitted to the district office within the statutory period for such filings, the notice of intent has not been filed in the "proper BLM office," which is the BLM Utah State Office in Salt Lake City, as expressly provided in 43 CFR 1821.2-1(d) and 43 CFR 3833.0-5(g). Where the required instrument is not received and date stamped by the proper BLM office during the statutory time period, the mining claim is properly deemed to be abandoned.

H. Bowen, Jr., 64 IBLA 264 (June 2, 1982)

Where mining claims are located in 1977, the owners were required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file a notice of intention to hold the claims or evidence of assessment work performed during 1978, both in the county where the location notices were of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments is conclusively deemed to constitute an abandonment of the claims.

Robert Gilmore, 64 IBLA 295 (June 7, 1982)

Where the requirement of filing proof of assessment work or a notice of intention to hold a mining claim applies, a filing must be made within each calendar year, i.e., on or after Jan. 1, and on or before Dec. 30, in both the county recording office and the proper office of the Bureau of Land Management.

Pittsburgh Pacific Co., 64 IBLA 300 (June 8, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Where the owner of an unpatented mining claim fails to file a copy of the proof of labor recorded in the office where the location notice is of record in the proper office of the Bureau of Land Management, prior to Dec. 31 of the year of recording the instrument with the county recorder, the claim is properly deemed abandoned and void pursuant to 43 U.S.C. § 1744 (1976).

David McGinnis, 64 IBLA 302 (June 8, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

Marvin E. Nukala, 64 IBLA 313 (June 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, and recorded with BLM on or before Oct. 22, 1979, must file a notice of intention to hold or evidence of annual assessment work on the claim prior to Dec. 31 of each year thereafter. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it became lost in the mail, the loss must be borne by the claimant.

Edna L. Patterson, 64 IBLA 316 (June 10, 1982)

Recordation of an unpatented mining claim is effected by filing a copy of the official record of the location notice with the proper BLM office and paying a service charge of $5 per claim.

43 U.S.C. § 1744 (1976) requires the recordation of unpatented mining claims, and where a patented mining claim inadvertently was recorded with BLM, it is proper to cancel the recordation.

The recordation in 1981 of an amended location notice for a pre-FLPMA mining claim, where the original claim had never been recorded with BLM, cannot confer any earlier right to the claim than the date of the amended location.

Sunshine Mining Co., Silver Syndicate, Inc., 64 IBLA 399 (June 17, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for whatever reason, the claim is conclusively presumed to be abandoned.

Richard C. Davis, 65 IBLA 1 (June 17, 1982)

Steve Kosanke, 66 IBLA 46 (July 27, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

C. Douglas Lee, 65 IBLA 41 (June 22, 1982)

Mermaid Mining Co., 65 IBLA 172 (June 29, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file both in the office where the location is of record and in the proper office of BLM a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work or a notice of intent to hold the claim is not filed in both places, for whatever reason, the claim is conclusively presumed to be abandoned.

W. A. Shepherd, Viola M. Shepherd, 65 IBLA 72 (June 23, 1982)

J. Barry Van Hoosen, 65 IBLA 175 (June 29, 1982)

Gregory A. Yostpsh, Sr., 69 IBLA 124 (Dec. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of assessment work performed on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because of delay in mail delivery, the statutory consequence of abandonment must be borne by the claimant.

Canyonlands Uranium, Inc., 65 IBLA 82 (June 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1, the owner of a mining claim located on or before Oct. 21, 1976, must file evidence of performance of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Kuskulana River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

Where certain instruments are required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to be filed with the proper office of BLM prior to Dec. 31 of any year, and where the BLM office is not open on Dec. 30, the filing of the instruments on Jan. 2, the next date the BLM office is open, is deemed timely compliance with the filing requirements of FLPMA.

Buttes Resources Co., 65 IBLA 178 (June 29, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM on Mar. 3, 1981, and the filing fees therefor are not paid to BLM until Apr. 20, 1981, the recordation date of the notices is Apr. 20, 1981.

William Scott Olsen, 65 IBLA 274 (July 12, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Dec. 30 of the calendar year following the year in which the claim was located, and prior to Dec. 31 of every year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

Fayn Rupp, 65 IBLA 277 (July 12, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where the evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Elmer Trapstrup, 65 IBLA 285 (July 13, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

J & B Mining Co., Inc., 65 IBLA 335 (July 15, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file evidence of performance of annual assessment work or a notice of intention to hold the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, not discretionary. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it was delayed in the mail, the statutory consequence must be borne by the claimant.

Robert A. Sandstedt, Priler Stenseld, 65 IBLA 367 (July 20, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land must file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each calendar year, both in the office where the location notice is recorded and in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed because of loss or delay by the Postal Service, the consequences must be borne by the claimant.

James T. Hackworth, 66 IBLA 132 (Aug. 10, 1982)

Carolyn C. Crawford, E. Ray Chenault, 68 IBLA 19 (Oct. 19, 1982)

John Heston, 68 IBLA 206 (Nov. 10, 1982)

Don Tow, 68 IBLA 213 (Nov. 10, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of assessment work performed on the claim on or before Dec. 30 of each calendar year. The evidence of assessment work or the notice of intention to hold the claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Geoffrey L. Barron, 66 IBLA 165 (Aug. 11, 1982)

A. L. Stutenroth, 67 IBLA 6 (Sept. 1, 1982)

Orville N. Williams, Helen C. Williams, 69 IBLA 270 (Dec. 21, 1982)

The mailing of a proof of labor to the Bureau of Land Management prior to the due date is not sufficient to comply with the requirements of the statute unless the proof is actually received by the proper BLM office on or before such date.

Vernon J. Nell, 66 IBLA 171 (Aug. 12, 1982)

Maureen Carr, 67 IBLA 162 (Sept. 21, 1982)

Robert J. King, L. K. Hollenbeck, 72 IBLA 75 (Apr. 12, 1983)

Sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim to file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each year both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments in both places within the prescribed time period is conclusively deemed to constitute an abandonment of the claim.

Carl Eichenhofer, 66 IBLA 226 (Aug. 16, 1982)

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MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the consequence must be borne by the claimant.

Wade McNeil, Flora McNeil, 66 IBLA 228 (Aug. 16, 1982)

Lawrence Nordstrom, 67 IBLA 398 (Oct. 12, 1982)

James J. McFarlane, 68 IBLA 24 (Oct. 21, 1982)

Robert F. Thompson, 68 IBLA 120 (Oct. 26, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Dec. 30 of each calendar year. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

Alan T. Trees, James L. Barnes, 66 IBLA 334 (Aug. 26, 1982)

James A. Huff, Elizabeth H. Young, 69 IBLA 31 (Nov. 26, 1982)

James A. Huff, Elizabeth H. Young, 69 IBLA 368 (Jan. 3, 1983)

Eugene W. Walck, Jr., 72 IBLA 30 (Apr. 5, 1983)

Grace P. Crocker, 73 IBLA 78 (May 17, 1983)

A relocation of a mining claim is adverse to the original claim, as distinguished from an amended location which generally relates back to the original location in the absence of intervening rights. A decision declaring a claim, as relocated, abandoned and void for failure to record with BLM under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), will be reversed where an amended notice of location is timely recorded with BLM by a claimant asserting that he is the owner by chain of title of the claim, as relocated, notwithstanding the fact that the amended location notice references the original location notice.

J. B. Schaffer, 67 IBLA 64 (Sept. 9, 1982)

The effect of the issuance to the State of Alaska of a patent without a mineral reservation is to transfer the legal title from the United States, and to remove from the jurisdiction of this Department the consideration of all disputed questions concerning rights to the land, including questions as to the alleged superiority of a mining claim to the State selection. Where the lands on which the claim is situated have been patented to the State, BLM properly refused recordation of the claim, since it has no jurisdiction over the claim.

Harry J. Pike, 67 IBLA 100 (Sept. 14, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM Apr. 22, 1982, and the filing fee therefor is not paid to BLM until May 13, 1982, 102 days from the date of location, the recordation date of the notices is May 13, 1982.

Eugene J. Curless, 67 IBLA 135 (Sept. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, and recorded with BLM on or before Oct. 22, 1979, must file a notice of intention to hold the claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the annual statement is filed. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it becomes lost in the mail, the loss must be borne by the claimant.

James R. Grayson, 67 IBLA 138 (Sept. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for whatever reason, the claim is conclusively presumed to be abandoned.

Keith E. Ferrell, 67 IBLA 181 (Sept. 21, 1982)

Sec. 314 of the Federal Land Policy and Management Act of 1976 and 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim to file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. Failure to file the required instrument within the prescribed time period is conclusively deemed to constitute an abandonment of the claim.

Robert Brennan, 67 IBLA 218 (Sept. 23, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in both the county recorder's office and the proper Bureau of Land Management office. Failure to file the required instruments in both places within the prescribed time period is conclusively deemed to constitute an abandonment of the claim.

John Andrew Batok, 67 IBLA 272 (Sept. 28, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a copy of the notice of location and a notice of intention to hold the claim or evidence of assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of every year thereafter he must file an affidavit of assessment work or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was delayed in the mail, the statutory consequences must be borne by the claimant.

Carl H. Quandt, 67 IBLA 355 (Oct. 6, 1982)

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper BLM office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. There can be no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where the filing fee is not paid within 90 days after the date of location for a claim located after Oct. 21, 1976, the claim must be deemed abandoned and void.

Robert J. Mahy et al., 67 IBLA 370 (Oct. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 20, 1976, must file a copy of the official record of the notice or certificate of location for such claim with the proper Bureau of Land Management office on or before Oct. 22, 1979.

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of claims are submitted to BLM and the accompanying check for the filing fees is dishonored by the bank, the uncollectable check constitutes nonpayment of the filing fees.

Glen W. Taylor, 67 IBLA 393 (Oct. 8, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land must file a notice of intention to hold the claim or evidence of assessment work prior to Dec. 31 of each calendar year, both in the office where the location notice is recorded and in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed the consequences must be borne by the claimant.

Jack L. Wooley, 68 IBLA 13 (Oct. 18, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

The regulations governing recordation of mining claims are mandatory, and failure to comply therewith must result in a finding that the claim has been abandoned. Where, under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located on or before Oct. 21, 1976, fails to file a copy of the notice of location with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, the mining claim is properly declared abandoned and void.

F. F. Davenport, 68 IBLA 198 (Nov. 9, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim must file a notice of intention to hold or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the loss must be borne by the claimant.

Magma Power Co. et al., 68 IBLA 201 (Nov. 10, 1982)

Where a mining claimant submits a copy of his annual proof of labor to the BLM district office in Susanville, California, on Dec. 31, 1981, he has not complied with 43 CFR 3833.2-1. The instrument was submitted to the district office after the statutory period for such filings had expired. Further, the district office was not the "proper BLM office" in which to file such a document. The proper office is the BLM California State Office in Sacramento, California, as expressly provided in 43 CFR 1821.2-1(d), and 43 CFR 3833.0-5(g). Where the required instrument is not received and date stamped by the proper BLM office during the statutory time period, the mining claim is properly deemed to be abandoned.

John Lovelady, 68 IBLA 245 (Nov. 16, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located before Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of assessment work on the claim by Oct. 22, 1979, and prior to Dec. 31 of each calendar year following. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely, the consequences must be borne by the claimant.

Loyd R. Colby, 68 IBLA 260 (Nov. 16, 1982)

Russell F. Jourdigan, 69 IBLA 52 (Nov. 29, 1982)

Where mining claims were located between July 1960 and August 1966, and evidence of assessment work was not filed with the proper BLM office on or before Oct. 22, 1979, the claims are properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

Mildred McGee, 68 IBLA 292 (Nov. 19, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, a notice of intention to hold or evidence of performance of assessment work on the claim prior to Dec. 31 of the calendar year following the year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the consequence must be borne by the claimant.

Arden P. Griffith et al., 68 IBLA 295 (Nov. 19, 1982)

Where mining claims were located in Mar. 1967 and evidence of the assessment work was not filed with the proper BLM office on or before Oct. 22, 1979, the claims are properly declared abandoned and void pursuant to 43 U.S.C. § 1744 (1976).

Douglas E. Martin, 68 IBLA 322 (Nov. 19, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of assessment work performed on the claim, and prior to Dec. 31 of each calendar year thereafter a copy of the evidence of assessment work performed for that year or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed because it became lost in the mail, the consequence must be borne by the claimant.

Phil E. Parks, 69 IBLA 48 (Nov. 29, 1982)

Dudley L. Davis, 69 IBLA 127 (Dec. 8, 1982)

Lane Number 5, Inc., 70 IBLA 14 (Jan. 6, 1983)

Robert Paoluccio, II, et al., 70 IBLA 118 (Jan. 13, 1983)

Zada Anderson et al., 70 IBLA 122 (Jan. 13, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of performance of assessment work on the claim on or before Oct. 22, 1979, and thereafter prior to Dec. 31 of each calendar year, must file with BLM a copy of the evidence of assessment work performed for that year or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where the evidence of assessment work is not timely filed, for any reason, the consequence must be borne by the claimant.

Susan S. Simmons, 69 IBLA 84 (Nov. 30, 1982)

Estate of Woodie Nichols, 69 IBLA 382 (Jan. 4, 1983)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

B. Digby Young, 69 IBLA 88 (Nov. 30, 1982)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where notices of location of mining claims are submitted to BLM for recordation on Oct. 9, 1979, and the service fee therefor is not paid to BLM until Dec. 10, 1979, the recordation date of the notices is Dec. 10, 1979.

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper office of BLM on or before Oct. 22, 1979, or the claim will be deemed conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). Location notices relating to unpatented mining claims located before Oct. 21, 1976, for which the service fees were not paid to BLM by a negotiable check until Dec. 10, 1979, are not timely filed, and the claims are properly declared abandoned and void.

Maud H. Goehring Conway, Lewis Conway, 69 IBLA 91 (Nov. 30, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file, with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter, a copy of the evidence of assessment work or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for whatever reason, the statutory consequence must be borne by the claimant as set forth in 43 U.S.C. § 1744(c) (1976).

Coates-Lahusen, 69 IBLA 137 (Dec. 9, 1982)

Under 43 CFR 4.450-1, a private contest may be brought to have a claim invalidated for any reason not shown by the records of the BLM. Because compliance with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), can only be resolved by the records of BLM, no private contest may be maintained solely on the basis of that issue.

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Gold Depository & Loan Co., Inc. v. Mary Brock et al., 69 IBLA 194 (Dec. 15, 1982)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of the recorded notice of location and a notice of intention to hold the mining claim or evidence of assessment work performed on the claim. There is no provision for waiver of this mandatory requirement, and where the copy of the location notice or evidence of assessment work is not timely filed, the claim is properly declared abandoned.

Midas International, Inc., 69 IBLA 251 (Dec. 21, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of assessment work performed on the claim prior to Dec. 31 of each calendar year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely, for any reason, the statutory consequence must be borne by the claimant.

Elton P. Mascaki, 69 IBLA 273 (Dec. 21, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of the notice of location and a notice of intention to hold the claim or evidence of assessment work performed on the claim. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed, for any reason, the consequence must be borne by the claimant.

Charles W. Shannon, Ruth Runkel, 69 IBLA 300 (Dec. 23, 1982)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims located prior to Oct. 21, 1976, be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management on or before Oct. 22, 1979, is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)

Dee Wright, 69 IBLA 309 (Dec. 23, 1982)

Gerwin Blake Riding, 70 IBLA 59 (Jan. 10, 1983)

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite or tunnel site filed for recordation shall be accompanied by a service fee of $5. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Where mining claims are located between July 8 and July 18, 1982, and copies of the location notices are submitted to the Bureau of Land Management Oct. 14, 1982, without the required service fees, there is no recordation

MINING CLAIMS--Continued

RECORDATION--Continued

within the 90 days allowed by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Vance W. Richards, Leon S. Wright, 69 IBLA 394 (Jan. 4, 1983)

Where mining claims were located July 18 and 20, 1982, and a copy of the official record of the notices of location was not filed with the proper office of the Bureau of Land Management within 90 days thereafter, the claims are properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

David F. Matuszak, 70 IBLA 11 (Jan. 6, 1983)

The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), that evidence of assessment work or notice of intention to hold mining claims located prior to Oct. 21, 1976, be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management on or before Oct. 22, 1979, is mandatory, not discretionary. Filing of evidence only in the state recording office does not constitute compliance either with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Erma Jeller, Suzanne E. Barco, 70 IBLA 29 (Jan. 6, 1983)

Under 43 CFR 3833.1-2(b), the owner of an unpatented mining claim, millsite, or tunnel site located after Oct. 21, 1976, on Federal land shall file within 90 days after the date of location of that claim in the proper Bureau of Land Management office a copy of the official record of the notice or certificate of location of the claim or site.

Deeryl Riley, 70 IBLA 33 (Jan. 7, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Dec. 30 of each calendar year following the year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

William C. Wiedorer et al., 70 IBLA 55 (Jan. 10, 1983)

The requirements for location of a mining claim on the public domain are governed by relevant statutes of the state wherein the claim is located to the extent they do not conflict with Federal mining law. Where recordation of a certificate of location within 90 days of location of a claim is a required element of a mining claim location under state law and the certificate of location is not recorded until 2 years after segregation of the land from appropriation under the mining law, the claim is properly declared null and void ab initio as having been located on the land at a time when it is not open to location, regardless of the fact that claimant may have conducted preliminary activities on the land prior to segregation.

Thomas Stoeltzing et al., 70 IBLA 231 (Jan. 25, 1983)

MINING CLAIMS--Continued

RECORDATION--Continued

Where a proof of labor for unpatented mining claims was tendered to the proper office of the Bureau of Land Management prior to Oct. 22, 1979, for mining claims located before Oct. 21, 1976, the requirement of the Federal Land Policy and Management Act of 1976 was satisfied, even though the notices of location for the mining claims had not yet been filed for record with BLM.

Jay Edwin Collier, 70 IBLA 283 (Jan. 26, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed, for whatever reason, the consequence must be borne by the claimant.

Where it benefits the affected party to do so, a mining claim recordation regulation which is amended while the matter is pending may be applied in its amended form only where there are no intervening right which will be adversely affected.

Joseph L. Bush, Patty Bush, 71 IBLA 324 (Mar. 23, 1983)

When a mining claim owner files a proof of labor for assessment work performed in 1977 or 1979 with the proper office of the Bureau of Land Management in 1980, he has not complied with the recordation requirements of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and the claims are properly declared abandoned and void.

Nicholas J. Murphy, 71 IBLA 368 (Mar. 28, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of the recorded notice of location and a notice of intention to hold the claim or evidence of assessment work performed on the claim, and prior to Dec. 31 of each calendar year thereafter a copy of the evidence of assessment work performed for that year or a notice of intention to hold the claim. There is no provision for waiver of this mandatory requirement, and where there is no evidence that assessment work was performed, the consequence must be borne by the claimant.

White Rose Corp., 72 IBLA 80 (Apr. 13, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file both in the office where the location is of record and in the proper office of BLM a notice of intent to hold the mining claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work or notice of intent to hold the claim is not filed in both places, for whatever reason, the claim is conclusively presumed to be abandoned.

Eleanor A. Belser, 72 IBLA 232 (Apr. 26, 1983)

MINING CLAIMS--Continued

RECORDATION--Continued

Jacqueline Bales, 73 IBLA 383 (June 15, 1983)

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of unpatented mining lode or placer mining claims located after Oct. 21, 1976, must file in the proper BLM office within 90 days after the location of such claims, a copy of the official record of the notice or certificate of location. Failure to file such instruments timely is deemed conclusively to constitute an abandonment of the mining claims by the owner, and they are properly declared void.

Thomas C. Bell, 72 IBLA 319 (Apr. 28, 1983)

Herbert Cilch, 73 IBLA 171 (May 24, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Addison Girard Clark, 72 IBLA 321 (Apr. 28, 1983)

Dean W. Frazier, 73 IBLA 13 (May 5, 1983)

Joe T. Anderson, Art Pubash, Estate of Don T. Anderson, 75 IBLA 71 (Aug. 10, 1983)

John Dillingham, Mabel Dillingham, 75 IBLA 146 (Aug. 17, 1983)

Walter E. Nelson, Thomas C. Nelson, 75 IBLA 269 (Aug. 26, 1983)

H. P. Monroe, 75 IBLA 325 (Aug. 30, 1983)

Henry A. Hall, Barbara Hall, 75 IBLA 339 (Aug. 30, 1983)

Robert W. Hughes, 76 IBLA 99 (Sept. 21, 1983)

Crowbits Corp., American Pumice Products, Inc., 76 IBLA 236 (Oct. 17, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located after Oct. 21, 1976, must file a notice of intention to hold the mining claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year following the year in which the claim was located. There is no provision for waiver of this mandatory requirement, and where evidence of assessment is not filed timely because it was lost in the mail, the consequences must be borne by the claimant.

David L. Gelig, 72 IBLA 327 (Apr. 28, 1983)

MINING CLAIMS--Continued

RECORDATION--Continued

Where a mining claim was located in Sept. 1964 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim was properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

William E. Day, 72 IBLA 364 (May 2, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was lost in the mail, the consequence must be borne by the claimant.

Gary E. Bertle, 73 IBLA 4 (May 5, 1983)

Robert B. Hicks, 73 IBLA 145 (May 23, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, had to file with the proper office of the Bureau of Land Management, on or before Oct. 22, 1979, a copy of a notice of intention to hold the mining claim or evidence of assessment work performed on the claim. There is no provision for waiver of this mandatory requirement, and where the copy of the notice of intention to hold or evidence of assessment work was not timely filed, the claim is properly declared abandoned.

Arthur B. Fields, Sr., 73 IBLA 52 (May 12, 1982)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or to afford claimants any relief from the statutory consequences.

Charles E. Dean, 73 IBLA 108 (May 23, 1983)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed, for whatever reason, the consequence must be borne by the claimant.

A. E. Florez, 73 IBLA 142 (May 23, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Dan Loveladi, 73 IBLA 190 (May 26, 1983)

Rex Mining Co., 73 IBLA 284 (June 7, 1983)

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

IMCC Services, 73 IBLA 374 (June 15, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the location notice and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976, or those in 43 CFR 3833.2.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive the requirements of the Act, or to afford claimant any relief from the statutory consequences.

Dan Walker, 74 IBLA 153 (July 12, 1983)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim by Oct. 22, 1979, and prior to Dec. 31 of each year after the calendar year in which the claim was recorded with BLM. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Harold H. Block, 74 IBLA 156 (July 12, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file in the local office where the location notice is recorded and in the proper office of the Bureau of Land Management a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Page Investment Co., 74 IBLA 163 (July 12, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim by Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Les Saulsberry, 74 IBLA 223 (July 18, 1983)

Floyd R. Bekins, Jr., 75 IBLA 80 (Aug. 10, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file with the Bureau of Land Management within 90 days after location of the claim a copy of the location notice and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of BLM. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976, or those in 43 CFR 3833.2.

The conclusive presumption of abandonment which attends the failure of a claimant to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive the requirements of the Act, or to afford claimant any relief from the statutory consequences.

David R. Mathews, 74 IBLA 320 (July 28, 1983)

MINING CLAIMS--Continued

RECORDATION--Continued

Where mining claims are located on public land that is subsequently transferred to the State of Utah, the Department of the Interior has no further interest in or control over that land, and a mining claimant is not required to comply with the recordation and filing requirements of the Federal Land Policy and Management Act of 1976.

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Gordon J. Blake et al., 75 IBLA 1 (Aug. 2, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file in the local office where the location notice is recorded and in the proper office of the Bureau of Land Management a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year in which the claim was located. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Hackay Bar Corp., 75 IBLA 57 (Aug. 5, 1983)

Moonwalker, Inc., 76 IBLA 53 (Sept. 19, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on public land must file a notice of intention to hold the mining claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely, because it was lost in the mail, the consequence must be borne by the claimant.

Delbert A. Reese, 75 IBLA 74 (Aug. 10, 1983)

Rachel G. Conover, 75 IBLA 323 (Aug. 30, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Paul T. Ryan, Melvin V. Lubi, 75 IBLA 76 (Aug. 10, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where

MINING CLAIMS--Continued

RECORDATION--Continued

the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary.

Shamrock Mining Inc., 75 IBLA 110 (Aug. 11, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of assessment work on the claim before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Estate of Stanley Styles, 75 IBLA 272 (Aug. 26, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on Federal lands must file a notice of intention to hold this claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each calendar year. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the location notice for the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976, or those in 43 CFR 3833.2-1.

Edward G. Rich, 75 IBLA 275 (Aug. 26, 1983)

Edward H. Beck, 76 IBLA 80 (Sept. 21, 1983)

Michael J. Rouse, 76 IBLA 183 (Oct. 3, 1983)

C. G. Rhinehart, 76 IBLA 228 (Oct. 17, 1983)

J. Neil Smith, 77 IBLA 239 (Nov. 29, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each calendar year. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Cliff Sassetti, 76 IBLA 8 (Sept. 6, 1983)

Ferrell P. Cloyd, 76 IBLA 180 (Oct. 3, 1983)

MINING CLAIMS--Continued

RECORDATION--Continued

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Elliott Glasser, 76 IBLA 11 (Sept. 6, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file in the local office where the location notice is recorded and in the proper office of the Bureau of Land Management a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year after the calendar year in which the claim was located. Thus, where claims were located in July 1981, notice of intention to hold or a proof of labor had to be filed with BLM prior to Dec. 31, 1982. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

John Y. Fulding, 76 IBLA 218 (Oct. 17, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented millsite located after Oct. 21, 1976, must file a copy of the location notice with the Bureau of Land Management within 90 days after location. There is no statutory requirement that subsequent yearly notices of intention to hold the millsite be filed with BLM. The regulations, 43 CFR 3833.2-1(d), require that a notice of intention to hold the millsite claim be filed with BLM on or before Dec. 30 of the year following recordation of the millsite with BLM.

Eleanor A. Hill, 76 IBLA 234 (Oct. 17, 1983)

A mining claim located on lands previously withdrawn from appropriation under the mining laws is properly declared null and void ab initio and the notice of location submitted for recordation is rejected insofar as it covers withdrawn lands. However, BLM should not reject the notice as it pertains to lands open to location, provided the claim conforms to the rules governing lode claims after being amended to exclude the withdrawn areas.

New Spirit Mining Corp., 76 IBLA 252 (Oct. 17, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 21, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded

MINING CLAIMS--Continued

RECORDATION--Continued

and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Edmund J. Cowan, 76 IBLA 257 (Oct. 17, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file with BLM a notice of intention to hold the claim or evidence of performance of assessment work on the claim by Oct. 22, 1979. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

Henry G. Zacher, 77 IBLA 1 (Oct. 31, 1983)

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim with BLM on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. The owner of a mining claim located after Oct. 21, 1976, must file a copy of the notice of location with BLM within 90 days after the date of location, and must file either a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of the calendar year after the claim was located and prior to Dec. 31 of each year thereafter. These requirements are mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

Homestake Mining Co., 77 IBLA 235 (Nov. 29, 1983)

Where the evidence submitted by an appellant preponderates, a decision declaring unpatented mining claims abandoned and void for failure to comply with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), will be vacated.

Frank J. Tarantino, 77 IBLA 328 (Dec. 5, 1983)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

MINING CLAIMS--Continued

RECORDATION--Continued

Where a patent has been issued for the lands on which a claim is situated it is proper for BLM to refuse recordation of the claim, since it has no jurisdiction over the claim.

Henry J. Hudspeth, Sr., Betty A. Hudspeth, 78 IBLA 235 (Jan. 9, 1984)

For purposes of recordation under sec. 314 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2744, 2769, 43 U.S.C. § 1744 (1976), the filing of notices of location, evidencing a date of location subsequent to the time at which mining claim location notices for the same land were declared null and void ab initio, together with such other information required by the applicable regulations, constitutes compliance with the recording requirements of the Act.

George Schultz et al., 81 IBLA 29 (May 17, 1984)

Issuance of a patent without mineral reservation divests the Department of jurisdiction and authority to inquire into disputed questions of fact relating to the patented land or to make any determination of rights to that land. Where it has not retained jurisdiction over land encompassed by a mining claim, BLM may properly reject a claimant's recordation filing for that claim.

Rosander Mining Co., 84 IBLA 60 (Nov. 30, 1984)

RELOCATION

Where a mining claim located on land withdrawn at the time of location is declared void ab initio, such a location, and the decision declaring such a location void, do not affect the status of any location of the same land made prior to the withdrawal; nor can such a location, made by a party with an interest in the prior location, reestablish or protect rights to the prior claim.

Jack C. Franks, 49 IBLA 162 (July 30, 1980)

In the absence of a showing that a person holds a written deed giving him legal title to mining claims which have apparently been abandoned, the person filing notices of location in his own name is properly regarded as a "relocation" of the claims, that is, the initiation of new claims which are adverse to the previous claims. Where a person has "relocated" mining claims, these claims date from the time of relocation and do not relate back to the date of location of the earlier claims.

American Resources, Ltd., 52 IBLA 290 (Feb. 9, 1981)

An amended location notice generally relates back to the date of the original location notice. A location notice cannot be considered an amended location, so as to relate back to a location which predates a withdrawal, where the location notice describes additional or new land not contained in the original location.

Leiry D. Brockshire et al., 56 IBLA 73 (July 15, 1981)

MINING CLAIMS--Continued

RELOCATION--Continued

While it may be appropriate in some cases to refer a matter for a hearing before an Administrative Law Judge to determine whether a mining claim, the location notice for which is dated after withdrawal of the land, is based on an amended location and thus survives withdrawal of the land for mining purposes, the allowance of a request for a hearing is within the discretion of the Board, and this discretion is likely to be employed to deny the request for hearing where the appellant has failed to provide the Board with any evidence to support the allegation that the amended location can be proved.

Gary Willis, 56 IBLA 217 (July 22, 1981)

In order to amend a claim, it is necessary that the party seeking to so amend have present title to the claim, since, in the absence of such title, any act purporting to "amend" is actually in derogation of the original claim and must be treated as a relocation.

Where a party alleges that a location notice, denominated as a relocation, is, in fact, an amendment of an earlier location, and gaps in the chain of title to the original claims are apparent on the record, that party must submit evidence eliminating any such hiatus in the chain of title. In the absence of such evidence, the purported amendment must be treated as a relocation.

B. Gail Tibbetts et al. v. Bureau of Land Management, 62 IBLA 124 (Mar. 4, 1982)

An "amended location" of a mining claim is a subsequent location intended to further the rights acquired by the earlier locator while making some change in the location, such as changing the name of the claim or its owners of record (as where the original claim has been sold) or excluding excess acreage. In contrast to a "relocation," an "amended location" does relate back to the date of the filing of the original notice of location, so that the filer does receive the rights associated with the earlier location, including its superiority to subsequent withdrawals, to the extent that the amended location merely furthers rights acquired by a prior subsisting location, and does not include any new land. The owner of a claim, determined to be an amended location of a claim originally located on or before Oct. 21, 1976, is required to comply with the provisions of 43 U.S.C. § 1744(a) (1976) and 43 CFR 3833.2-1(a) insofar as these provisions deal with claims located on or before Oct. 21, 1976.

Gary S. Posenjak, 63 IBLA 326 (Apr. 27, 1982)

An amended location notice of a mining claim generally relates back to the date of the original location, but a location notice cannot be considered an amended location where the original location did not comport with the statutory requirements.

Rivaling River Mining Ass'n, 65 IBLA 164 (June 29, 1982)

An amended location notice generally relates back to the date of original location. A location notice cannot be considered an amended location where the original location did not comport with the statutory requirements. A location notice, even though styled "amended," may be considered an original location where the earlier location was improperly made.

Samuel P. Burr, Sr., 65 IBLA 167 (June 29, 1982)

MINING CLAIMS--Continued

RELOCATION--Continued

An amended location notice generally relates back to the date of the original location notice. A location notice cannot be considered an amended location, so as to relate back to a location which predates a withdrawal to the extent such location notice describes new land not contained in the original location.

Where there are factual questions relating to whether a refiling subsequent to a withdrawal was in the nature of an "amended location" or whether it constituted a "relocation," the matter will be referred for a hearing to allow the claimant the opportunity to show that the subsequent filing is an amended location, and that it is thus the successor in an unbroken chain of title dating back to the original location.

Fairfield Mining Co., Inc., 66 IBLA 115 (Aug. 10, 1982)

A relocation of a mining claim is adverse to the original claim, as distinguished from an amended location which generally relates back to the original location in the absence of intervening rights. A decision declaring a claim, as relocated, abandoned and void for failure to record with BLM under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), will be reversed where an amended notice of location is timely recorded with BLM by a claimant asserting that he is the owner by chain of title of the claim, as relocated, notwithstanding the fact that the amended location notice references the original location notice.

J. B. Schaffer, 67 IBLA 64 (Sept. 9, 1982)

A mining claim located on land which has been segregated from mineral location is properly declared null and void ab initio. In making such a finding it may be necessary to draw the distinction between an amended location of a claim which predated the withdrawal and a relocation or new location made subsequently.

R. J. Hall, 68 IBLA 122 (Oct. 27, 1982)

For the purpose of Departmental adjudication, an amended location is one made in furtherance of an earlier valid location, while a relocation is one which is adverse to the prior location.

An amended location notice generally relates back, where no adverse rights have intervened, to the date of the original location.

Coates-Labusse, 69 IBLA 137 (Dec. 9, 1982)

Where there are factual questions arising from affidavits presented by appellant relating to whether a filing subsequent to a withdrawal was in the nature of an "amended location," the matter will be referred for further investigation allowing the claimant reasonable time in which to show that the subsequent filing is an amended location, and that he is the successor in an unbroken chain of title dating back to the original location.

Charles Degitz, 69 IBLA 145 (Dec. 9, 1982)

MINING CLAIMS--Continued

RELOCATION--Continued

An amended location notice generally relates back to the date of the original location notice, that is, to the extent that an amended location merely furthers rights acquired by a prior subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights prior to the filing of the amended location and subsequent to the original location will not invalidate the claims.

Rhinehart Berg, 71 IBLA 131 (Mar. 9, 1983)

No amended location of a mining claim is possible if the original location was void.

Frank Belluzzo, 71 IBLA 178 (Mar. 10, 1983)

Withdrawal of land subject to valid existing rights does not prevent an amended location of a mining claim from relating back to the original location; a relocation, however, will not relate back.

To establish that a location of a claim after a withdrawal is an amendment of a location made before the withdrawal, a claimant must show that the earlier location included the portion of the claim subject to the withdrawal, that the persons making the amended location had an unbroken chain of title with the original locators, and that the location predating the withdrawal was properly made.

Grace P. Crocker, 73 IBLA 78 (May 17, 1983)

Mining claims located on land which has been withdrawn from mineral location are properly declared null and void ab initio. However, where on appeal the mining claimant provides evidence which tends to show that some of the claims are amended locations of claims which predate the withdrawal, the case will be remanded to BLM for a determination of which, if any, of the claims are amended locations.

Portage Creek Mining Co., 75 IBLA 309 (Aug. 30, 1983)

Withdrawal of land subject to valid existing rights does not prevent an amended location of a mining claim from relating back to the original location; a relocation, however, will not relate back.

Rick & Linda Anderson, 76 IBLA 212 (Oct. 17, 1983)

In order to establish that a notice of location of a mining claim is an amended location which relates back prior to a BLM decision which classified the land for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), the mining claimant must submit proof of a chain of title to him. In the absence of such proof, the purported amendment must be treated as a relocation.

Ronald R. Graham, Dorothy L. Graham, 77 IBLA 174 (Nov. 17, 1983)

A relocator has no rights by relation to the date and priority of the title which he has destroyed by his relocation.

Henry J. Hudspeth, Sr., Betty A. Hudspeth, 78 IBLA 235 (Jan. 9, 1984)

MINING CLAIMS--Continued

SPECIAL ACTS

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Water and Power Resources Service has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Florence Adkisson, 47 IBLA 121 (Apr. 28, 1980)

It is proper to declare mining locations null and void ab initio where the locations were not perfected by performance of the condition precedent set forth in the order opening lands in a reclamation withdrawal to mineral location and entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976).

Wayne N. Hamm, 54 IBLA 8 (Apr. 6, 1981)

SPECIFIC MINERAL(S) INVOLVED

Clay

In determining whether a deposit of clay is locatable as a valuable mineral deposit under the mining laws, there is a distinction between a deposit considered to be common or ordinary clay, which is not locatable, and a locatable deposit having exceptional qualities useful and marketable for purposes for which common clays cannot be used.

Common clay includes clay usable for structural and other heavy clay products, for pressed or face brick, as well as ordinary brick, tile, and pipe, for pottery, earthenware, stoneware, and cement.

A deposit of bentonite which can profitably be removed and marketed for pelletizing taconite is an exceptional clay locatable under the mining laws, even though blending and additives are necessary to make the deposit suitable for such use.

United States v. Kaycee Bentonite Corp. et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

Gold

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

When the Government contests a mining claim on a charge of lack of discovery of a valuable mineral deposit, it has assumed the burden of going forward with sufficient evidence to establish a prima facie case. Where a Government mineral examiner testifies that he has examined a claim and found the quantity of minerals insufficient to support a finding of discovery, a prima facie case of invalidity has been established and the burden shifts to the claimants to show by a preponderance of the evidence that a discovery has been made.

Where contestees present uncontroverted evidence showing that, over a period of 4 years, they and a partner have extracted 26 or 27 ounces of gold from their claim using a suction dredge, and where the Government has made no showing that suction dredge mining would be insufficient to support a valid claim, the contest is

MINING CLAIMS--Continued

SPECIFIC MINERAL(S) INVOLVED--Continued

Gold--Continued

properly dismissed without prejudice to the initiation of another contest complaint.

United States v. Clifford L. & Mary A. Williams, 65 IBLA 346 (July 16, 1982)

For a mining claim to be valid there must be a discovery of a valuable mineral deposit within the limits of the claim. There has been a discovery where minerals have been found in sufficient quantity and of sufficient quality that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

United States v. Oscar E. & Gary K. Anderson, 63 IBLA 170 (Oct. 15, 1982)

SURFACE USES

A verified statement filed under sec. 5 of the Surface Resources Act of 1955, 30 U.S.C. § 613 (1976), is properly rejected when the mining claim in connection with which it is filed has been declared abandoned and void for failure to comply with the recordation provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Paul E. Scott and Betty F. Scott, 53 IBLA 75 (Mar. 2, 1981)

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a group of mining claims on land withdrawn for power development or powersites where unrestricted placer mining on such land would result in substantial interference with the use of the land for timber harvesting or recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

United States v. R. James Steward, 54 IBLA 67 (Apr. 10, 1981)

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a mining claim on land withdrawn for power development or powersites, where unrestricted placer mining on such land would result in substantial interference with the use of the land for recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

United States v. Robert A. Pettigrew, 54 IBLA 149 (Apr. 17, 1981) 88 I.D. 453

MINING CLAIMS--Continued

SURFACE USES--Continued

BLM's decision to dismiss a protest by the holder of the surface estate in lands patented under the Stock-Raising Homestead Act against the sufficiency of the amount of a bond, put up by the claimant of mineral interests in these lands to cover damages to the surface estate from the claimant's mining and exploration activities, will be vacated and remanded for readjudication, where the record is devoid of facts of record to support this decision.

Soderberg Rawhide Ranch Co., 63 IBLA 260 (Apr. 19, 1982)

A Bureau of Land Management determination that mining claims located in a wilderness study area constitute valid existing rights under sec. 701(h) of the Federal Land Policy and Management Act of 1976, made in conjunction with a review of a proposed mine plan of operation, is an integral part of the review process, serving to identify the applicable standard governing regulation of mining activities on the claims. Where the claim operator withdraws the mine plan and indicates that he plans no activity on the claims, an appeal of the initial BLM determination must be dismissed because, in absence of the proposed operations, the determination is no longer ripe for review.

Douglas McFarland, Sierra Club, Desert Survivors, 65 IBLA 380 (July 20, 1982)

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a group of mining claims on land withdrawn for power development or power sites where unrestricted placer mining on such land would result in substantial interference with the use of the land for timber harvesting or recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

Robert E. Ehrman, Jr., 69 IBLA 290 (Dec. 23, 1982)

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a group of mining claims within land withdrawn for power development or powersites where unrestricted placer mining on such land would result in substantial interference with the use of land for other purposes. The Act gives the Secretary no discretion to permit limited or restricted placer mining on such withdrawn land. The Secretary may permit either unrestricted placer mining or none at all.

Gregg E. Miller, 74 IBLA 205 (July 18, 1983)

Acceptance by the Bureau of Land Management of mining claimant's verified statement under sec. 5 of the Act of July 23, 1955, 30 U.S.C. § 613 (1976), confirms only those rights to surface resources that the claimants held on July 23, 1955, as defined or limited by other existing law.

The Bureau of Land Management properly reserves to the United States in a mineral patent for C & C revested grant lands the timber now on a mining claim subject to the Act of June 9, 1916, 39 Stat. 218, and

MINING CLAIMS--Continued

SURFACE USES--Continued

the timber now or hereafter growing on a mining claim subject to the Act of Apr. 8, 1948, 62 Stat. 162.

Joseph A. Barnes et al., 78 IBLA 46 (Dec. 13, 1983) 90 I.D. 550

Under the Mining Claims Rights Restoration Act of 1955 it is proper to prohibit all placer mining operations on a mining claim located on land withdrawn for power development or powersite where unrestricted placer mining on such land would result in substantial interference with the use of the land for timber harvesting or other purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that after placer mining the locator must restore the surface of the claim to its condition immediately prior to mining operations.

Arthur A. Gotschall, 78 IBLA 81 (Dec. 16, 1983)

A decision approving a bond filed by a locator of mining claims for reserved minerals on land patented under the Stock-Raising Homestead Act will be affirmed in the absence of a showing that the amount of the bond is inadequate to cover damage to crops, improvements, and the value of the land for grazing purposes.

Robert S. Michael et ux., 79 IBLA 255 (Mar. 5, 1984)

A locator whose discovery is on lands open to location may extend the end lines and side lines of a lode mining claim across patented or withdrawn lands to define extralateral rights to lodes or veins apexing within that portion of the claim subject to location. This principle permits development of unappropriated mineral in irregular parcels of lands in compliance with the statutory requirements for parallel end lines.

Anthony Juskiewicz, 79 IBLA 267 (Mar. 7, 1984)

Federal law requires that mining locations be made in good faith for the purpose of mining, processing, or prospecting for valuable minerals. Title to mineral lands cannot be acquired by occupancy unless for the prime purpose of mining and extracting minerals. Even if a discovery could be shown to exist, proof of bad faith can invalidate a claim, since in such a situation the mineral values are incidental to the purpose for which the land is claimed.

United States v. Jon Zimmers, Claire Kelly, 81 IBLA 41 (May 17, 1984)

Under the Mining Claims Rights Restoration Act of 1955 it is proper to prohibit all placer mining operations on a mining claim located on land withdrawn for power development or powersite where unrestricted placer mining on such land would result in substantial interference with the use of the land for recreation or other purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that after placer mining the locator must restore the surface of the claim to its condition immediately prior to mining operations.

United States v. Robert R. Evans, 82 IBLA 155 (July 31, 1984)

TITLE

A notice of location which is in proper form and timely filed with the correct fee must be accepted and recorded by BLM notwithstanding the protest of a rival mining claimant that he has a superior and exclusive possessory right to the same ground. Such disputes are not within the jurisdiction of this Department, and can be resolved only by private litigation between the parties in courts of competent jurisdiction.

W. W. Allstead, 58 IBLA 46 (Sept. 21, 1981)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

The Department does not have jurisdiction to consider the relative superiority of the possessory rights of rival mineral claimants to the same ground. A final decision by a court of competent jurisdiction resolves all questions regarding such conflicting rights.

Harvey A. Clifton, 80 IBLA 96 (Apr. 3, 1984)

A perfected but unpatented mining claim is property in the fullest sense of the word, and its ownership, transfer, and use are governed by well-defined code or codes of law, and are recognized by states and the Federal Government.

California Portland Cement Corp., 83 IBLA 11 (Sept. 18, 1984)

TUNNEL SITES

The failure of a holder of a tunnel site claim which has been properly recorded under 43 U.S.C. § 1744(b) (1976) to file an annual notice of intention to hold the tunnel site is a curable defect and the tunnel site may not be deemed to have been abandoned absent a failure to comply with a notice of deficiency.

Robert R. Wilson, 57 IBLA 40 (Aug. 10, 1981)

John B. Erickson, 57 IBLA 157 (Aug. 25, 1981)

Heidelberg Silver Mining Co., Inc., 58 IBLA 10 (Sept. 16, 1981)

MINING CLAIMS--Continued

TUNNEL SITES--Continued

The Act of July 25, 1866, 14 Stat. 242, which granted a right-of-way for construction of a tunnel and a right to purchase lodes within 2,000 feet from the tunnel discovered by constructing the tunnel, did not segregate the surface of the land from mineral location. A Bureau of Land Management decision declaring a lode mining claim located within 2,000 feet of the tunnel right-of-way null and void ab initio will be reversed.

Intermountain Exploration Co., 76 IBLA 349 (Oct. 24, 1983)

Comstock Tunnel & Drainage Co., Sutro Tunnel Co., 79 IBLA 237 (Mar. 1, 1984)

The Act of July 25, 1866, 14 Stat. 242, which granted a right-of-way for construction of a tunnel and a right to purchase lodes within 2,000 feet from each side of the tunnel discovered by constructing the tunnel, did not segregate the surface of the land from mineral location. A Bureau of Land Management decision declaring a lode mining claim located within 2,000 feet of the tunnel right-of-way null and void ab initio will be reversed.

Jack E. Carrington, 81 IBLA 279 (June 12, 1984)

A validly located and maintained tunnel-site claim vests a right in the claimant to subsequently locate a mining claim based upon a discovery by the tunnel-site claimant in the course of driving the tunnel. The date of location of the mining claim so located will relate back to the date of location of the tunnel site.

The Department, which is entrusted with the administration of the public lands, is authorized to determine, for its own purposes, the validity of tunnel-site claims in the same way it determines the validity of lode or placer claims. The Department may make a factual determination that the claimant has or has not located the tunnel-site claim in the manner required by the statute. Since this determination is one of fact, it can be considered in a mining contest, if the issue is properly presented.

The provisions of 30 U.S.C. § 27 (1982) provide that a person who locates a tunnel-site claim must mark the claim from the portal of the tunnel. Therefore, the location of a tunnel-site claim without the prerequisite commencement of a tunnel will not be in compliance with the spirit or intent of the statute, resulting in the claim being void unless and until there is actual commencement of the tunnel. If the facts disclose that a tunnel-site location was made using a portal of an adit not driven for the purpose of establishing the tunnelsite claim, the tunnel site will be considered to be null and void unless there is a showing that this adit had been extended with the intent of using the adit as a part of a tunnel contemplated under the statutory provision.

United States v. Albert F. Parker et al., 82 IBLA 344 (Sept. 12, 1984) 91 I.D. 271

WITHDRAWN LAND

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Conrad F. Sovak, 45 IBLA 14 (Jan. 8, 1980)

Jacqueline E. Nelson, 47 IBLA 12 (Apr. 10, 1980)

Jack C. Franks, 49 IBLA 162 (July 30, 1980)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

W. Speakman, J. Antrim, 51 IBLA 283 (Dec. 15, 1980)

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

Sherman C. Smith, Michael Mitchell, Jr., 58 IBLA 188 (Sept. 28, 1981)

Floyd E. Benton, 62 IBLA 243 (Mar. 15, 1982)

Thomas Gillespie, 65 IBLA 10 (June 17, 1982)

John S. Fleming, 65 IBLA 357 (July 20, 1982)

Joe Kerron, Sr., et al., 65 IBLA 387 (July 23, 1982)

J. Pat Kaufman, 71 IBLA 183 (Mar. 10, 1983)

Robert J. King, L. K. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

Hanson Properties, Inc., 74 IBLA 364 (July 28, 1983)

M. Joan Bryan, Michael Rabatich, 76 IBLA 192 (Oct. 6, 1983)

Russell Hoffman, 83 IBLA 295 (Oct. 25, 1984)

John F. Malone, Vicki L. Malone, 84 IBLA 5 (Nov. 26, 1984)

When land is withdrawn from all forms of entry, location, and exploration subsequent to location of a mining claim, the validity of such claim cannot be recognized unless (1) it was perfected by a discovery at the time of withdrawal, and (2) it has been continuously supported by the same discovery to the present; that is, at the time of the hearing.

United States v. Richard G. Clemens et al., 45 IBLA 64 (Jan. 17, 1980)

A Forest Service special use permit issued to a state agency does not constitute a withdrawal of the land involved from appropriation under the mining law, and a contest will not lie against a subsequently located mining claim on a charge that a portion of the claim is void to the extent that it includes land embraced by the permit.

When land is withdrawn from location under the mining laws subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal to be valid.

A valid mining claim for lands previously withdrawn from location must be supported by discovery as of the date of withdrawal and a showing that marketability has continued since discovery and the minerals can presently be profitably extracted.

United States v. Clare Williamson and Larine Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Water and Power Resources Service has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Florence Adkisson, 47 IBLA 121 (Apr. 28, 1980)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on power-site lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

Harold H. Voris, 48 IBLA 206 (June 16, 1980)

When land is withdrawn from the operation of the mining laws subject to valid existing rights, as was the Death Valley National Monument on Sept. 28, 1976, the validity of a mining claim located prior to the withdrawal must be established as of the date of the withdrawal as well as of the date of the hearing.

United States v. Ubehebe Lead Mines Co., 49 IBLA 1 (July 15, 1980)

A mining claim located on land temporarily segregated from appropriation under the mining laws pursuant to 43 U.S.C. § 1714(b) (1976) is null and void ab initio.

Under 43 U.S.C. § 1714(b) (1976) a publication in the Federal Register of notification of an application for withdrawal, which publication temporarily segregates land from the operation of the mining laws, does not withdraw the land, and therefore the notice need not be signed by the Secretary or an individual in the Office of the Secretary who has been appointed by the President, by and with the advice and consent of the Senate.

Stephen W. Fox, 50 IBLA 186 (Sept. 30, 1980)
87 I.D. 462

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

George H. Pennimore et al., 50 IBLA 280 (Oct. 6, 1980)

Maurice Duval, Marianne Duval, 68 IBLA 1 (Oct. 12, 1982)

Mining claims located on land at a time the land is withdrawn from appropriation under the United States mining laws properly are declared null and void ab initio.

Marvin Mack, Betty K. Mack, 51 IBLA 30 (Oct. 30, 1980)

Where land is withdrawn from the operation of the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. In addition, even though there may have been a proper discovery at the time of a withdrawal or at some other time in the past, a mining claim cannot be considered valid unless the claim is at present supported by a sufficient discovery. The loss of the discovery, either through exhaustion of the minerals, changes in economic conditions, or other circumstances, results in the loss of the location.

United States v. W. S. Wood et al., 51 IBLA 301 (Dec. 18, 1980) 87 I.D. 628

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by the Pickett Act, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by the terms of 43 U.S.C. § 142 (1970) which provided that withdrawn lands shall remain open to location for metalliferous minerals.

Where BLM filed an application for a protective withdrawal pursuant to Exec. Order No. 10355 which would reserve the subject land from all forms of appropriation including location and entry under the mining laws and the application was duly noted on the official status plats, the lands were segregated from the date of notation to the extent that the withdrawal, if effected, would prevent such forms of appropriation. A protective withdrawal is not a temporary withdrawal under the Pickett Act, 43 U.S.C. § 141 (1970), and is not limited by the terms of 43 U.S.C. § 142 (1970) which provides that temporarily withdrawn lands shall remain open to location for metalliferous minerals.

A mining claim located on land which was segregated and closed to mineral entry is properly declared null and void ab initio.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981) 88 I.D. 31

Mining claims located on lands withdrawn from mineral entry are null and void ab initio.

American Resources, Ltd., 52 IBLA 290 (Feb. 9, 1981)

A mining claim located on land previously withdrawn from appropriation under the mining laws by a first form reclamation withdrawal is null and void ab initio.

Susan E. Mitchell, 53 IBLA 42 (Feb. 26, 1981)

Elmer G. Thomas et al., 66 IBLA 92 (July 30, 1982)

Portions of mining claims located on lands on which the minerals have been withdrawn from mineral entry are properly declared null and void ab initio; however, where the case record does not support a finding that all the claims in issue are partially situated on such land, the case will be remanded for readjudication.

Harl and Jewell Rightmire, 53 IBLA 125 (Mar. 5, 1981)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands segregates the lands from all subsequent appropriation, including location under the mining laws; however, the application to select has no segregative effect when at the time the application is filed, the land is withdrawn from all forms of appropriation under the public land laws, including selections by a state.

A millsite located on land withdrawn from all forms of appropriation under the public land laws, including location and entry under the mining laws, except locations for metalliferous minerals, is null and void ab initio because it is not a location for metalliferous minerals under the mining law.

John C. and Martha W. Thomas d.b.a. Tungsten Mining Co., 53 IBLA 182 (Mar. 17, 1981)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

A mining claim located on land at a time when the land is segregated from mining location by a proposed withdrawal confers no rights on the locator and is properly declared null and void ab initio.

Allen L. Brannon, Sr., 53 IBLA 251 (Mar. 19, 1981)

Where the land on which the mining claim is located is subsequently withdrawn, the validity of the claim must be determined both as of the date of the withdrawal and the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though the requirement of discovery was satisfied at a later date.

United States v. Leo D. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

It is proper to declare mining locations null and void ab initio where the locations were not perfected by performance of the condition precedent set forth in the order opening lands in a reclamation withdrawal to mineral location and entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976).

Wayne E. Mann, 54 IBLA 8 (Apr. 6, 1981)

A mining claim located on lands previously withdrawn from appropriation under the mining laws is null and void ab initio. Lands included in a withdrawal remain withdrawn until there is a formal revocation or modification of the order of withdrawal. It is immaterial whether the lands are presently being used for the purpose for which they were withdrawn and whether a future revocation of the withdrawal is being considered.

William C. Reiman, Richard H. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

Ronald W. Rann, 67 IBLA 32 (Sept. 7, 1982)

Where an executive order issued subsequent to the Pickett Act of June 25, 1910, as amended, 43 U.S.C. §§ 141, 142 (1970), does not specifically close all lands withdrawn under any authority other than the Act, the said lands are open to exploration, discovery, occupation, and purchase under the mining laws of the United States so far as the same apply to metalliferous minerals.

Western Nuclear, Inc., 55 IBLA 20 (May 26, 1981)

Sec. 9 of the Wild and Scenic Rivers Act withdraws from appropriation under the mining laws the minerals in Federal lands which constitute the bed or bank, or are situated within one-quarter mile of the bank, of any river listed as a potential addition to the Wild and Scenic Rivers System or actually designated as a wild river under the system. Land constituting the bed and banks and within one-quarter mile of the banks of the North Fork of the American River from Cedars to the Auburn Reservoir has been withdrawn from mineral location and entry since Jan. 3, 1975.

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Clarence E. Fitzgerald, 55 IBLA 31 (May 28, 1981)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

John C. Farrell, 55 IBLA 42 (May 28, 1981)

Lincoln Resources, Inc., 66 IBLA 310 (Aug. 24, 1982)

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

An amended location notice generally relates back to the date of the original location notice. A location notice cannot be considered an amended location, so as to relate back to a location which predates a withdrawal, where the location notice describes additional or new land not contained in the original location.

Leiry D. Brookshire et al., 56 IBLA 73 (July 15, 1981)

While it may be appropriate in some cases to refer a matter for a hearing before an Administrative Law Judge to determine whether a mining claim, the location notice for which is dated after withdrawal of the land, is based on an amended location and thus survives withdrawal of the land for mining purposes, the allowance of a request for a hearing is within the discretion of the Board, and this discretion is likely to be employed to deny the request for hearing where the appellant has failed to provide the Board with any evidence to support the allegation that the amended location can be proved.

Under the "equal-footing" doctrine, a state has title to lands beneath its navigable rivers, and this Board has no jurisdiction to determine the validity of such riverbed mining claims asserted under state law. However, where an unpatented mining claim is filed for record with the Bureau of Land Management pursuant to the Federal mining law and the public records disclose that all public lands embraced in the claim had been withdrawn from mining location before the claimant located the mining claim, the filing is properly rejected by BLM and the claim declared null and void ab initio.

Gary Willis, 56 IBLA 217 (July 22, 1981)

A mining claim located on land previously withdrawn from appropriation under the mining laws for an Indian reservation is null and void ab initio.

Steve Foster, Elmer Brewster, 56 IBLA 282 (July 28, 1981)

When land is withdrawn from location under the mining laws subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal to be valid.

United States v. D. J. Polashek, 57 IBLA 104 (Aug. 25, 1981)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

Mining claims located on land previously withdrawn from mineral entry are null and void ab initio. However, where there are factual questions relating to whether action taken subsequent to a withdrawal is in the nature of an amendment to a previous location or whether it constitutes a relocation, the mineral claimant will be granted the opportunity to show that the subsequent action was a permissible amendment.

R. N. Polk, Gene L. Brown, 57 IBLA 117 (Aug. 25, 1981)

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created thereby. Therefore, no contest proceeding, notice, or hearing is required preliminary to a decision holding that such claims are invalid.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

John A. Ross, Maxine Lidke, 73 IBLA 16 (May 5, 1983)

B. W. Copeland, 75 IBLA 87 (Aug. 11, 1983)

Failure to substantially comply with the requirements to annually perform assessment work on a claim which is located on withdrawn land results in a forfeiture of that claim to the United States.

United States v. Richard P. Haskins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void.

Richard Thorpe, Anne Thorpe, 59 IBLA 176 (Oct. 26, 1981)

George H. Pennimore et al., 63 IBLA 214 (Apr. 12, 1982)

Where a mining claim is situated on land subsequently withdrawn from operation of the mining laws, the validity of the claims must be tested by the value of the mineral deposit as of the date of withdrawal, as well as the date of the hearing. If the claim was not supported at the date of the withdrawal by a qualifying discovery of a valuable mineral deposit, the land within its boundaries would not be excepted from the effect of the withdrawal, and the claim could not thereafter become valid even though the value of the deposit subsequently increased due to a change in the market.

United States v. Leon Noyce and Thomas Rokita, 59 IBLA 268 (Oct. 29, 1981)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands, where the filing is regular on its face, segregates the lands from all subsequent appropriation, including location and entry under the mining laws and a millsite located while the land is so segregated is null and void ab initio.

John C. and Martha W. Thomas, d.b.a. Tungsten Mining Co. (On Reconsideration), 59 IBLA 364 (Nov. 9, 1981)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

Mining claims partially located on land withdrawn from such entry are null and void ab initio to the extent of the encroachment, and will not be validated by the modification or revocation of the order of withdrawal to open the land thereafter to mineral entry.

Kelly R. Healy, 60 IBLA 115 (Nov. 20, 1981)

Mining claims located on land which was segregated and closed to mineral entry are properly declared null and void.

Robert M. Rudio, Verne Andrews, 61 IBLA 220 (Jan. 28, 1982)

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James H. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio. BLM properly declares mining claims null and void to the extent that they were located in the Sawtooth National Recreation Area after Aug. 22, 1972, the date on which the recreation area was established and the lands withdrawn from mining location.

Clayton S. Hale, 62 IBLA 35 (Feb. 24, 1982)

When land is withdrawn from location under the mining law subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal.

Where the Government has established a prima facie case of invalidity of a mining claim because of a lack of discovery and the claimant testifies that he has not produced from his claim but was only investigating the market, and offers no evidence of marketability beyond speculation of future profitability, the claimant has failed to carry his burden of showing that a discovery is present within the limits of his claim.

United States v. Grosvenor B. Montapert et al., 63 IBLA 35 (Mar. 30, 1982)

A mining claim which is located after the land has been withdrawn from mineral entry is properly declared null and void.

James W. Gough, 65 IBLA 59 (June 23, 1982)

Where mining claims were originally located on land which was withdrawn from mineral location, the claims will be declared null and void ab initio.

An amended location notice generally relates back to the date of the original location notice. A location notice cannot be considered an amended location,

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

so as to relate back to a location which predates a withdrawal to the extent such location notice describes new land not contained in the original location.

Where there are factual questions relating to whether a refiling subsequent to a withdrawal was in the nature of an "amended location" or whether it constituted a "relocation," the matter will be referred for a hearing to allow the claimant the opportunity to show that the subsequent filing is an amended location, and that it is thus the successor in an unbroken chain of title dating back to the original location.

Fairfield Mining Co., Inc., 66 IBLA 115 (Aug. 10, 1982)

Mining claims located on land after the land was segregated and closed to mineral entry are properly declared null and void.

J & B Mining Co., Inc., 66 IBLA 279 (Aug. 18, 1982)

J & B Mining Co., Inc., 69 IBLA 73 (Nov. 30, 1982)

A decision rejecting an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration of lands within a reclamation withdrawal to mineral entry and location will be reversed on appeal where the record fails to disclose any objection to granting the application or any way in which it is contrary to the public interest.

Joe Ashburn, 66 IBLA 328 (Aug. 25, 1982)

To the extent that a mining claim is situated on land which was withdrawn from entry under the mining laws, the claimant must not only show that the discovery of a valuable mineral deposit presently exists but also that the claim was valid as of the date of the withdrawal. If the claim was not valid at the time of the withdrawal, it was not excepted from the effect of the withdrawal. The claim could not become valid thereafter by any additional exploratory work or through an increase of mineral value due to a change in the market.

United States v. Michael P. Beckley, Virginia B. Beckley, 66 IBLA 357 (Aug. 27, 1982)

Although land reserved for powersite purposes by a 1910 Executive Order issued pursuant to the "Pickett Act" of June 25, 1910, remained open to the location of mining claims for metalliferous minerals, that Act was superseded by sec. 24 of the Federal Power Act of June 10, 1920, which closed such lands to all mineral location until enactment of the Mining Claim Rights Restoration Act of Aug. 11, 1955.

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

George L. Hawkins, Wallace G. Heath, 66 IBLA 390 (Aug. 31, 1982)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

A mining claim located on land which has been segregated from mineral location is properly declared null and void ab initio. In making such a finding it may be necessary to draw the distinction between an amended location of a claim which predated the withdrawal and a relocation or new location made subsequently.

R. J. Wall, 68 IBLA 122 (Oct. 27, 1982)

Mining claims are properly declared null and void ab initio when they are located on land which, on the date of location, was included in an application for withdrawal from appropriation under the public land laws, including the mining laws and the mineral leasing laws.

Louise Woodall, 69 IBLA 108 (Nov. 30, 1982)

Where mining claims were originally located on land which was withdrawn from mineral location, the claims are null and void ab initio.

Where there are factual questions arising from affidavits presented by appellant relating to whether a filing subsequent to a withdrawal was in the nature of an "amended location," the matter will be referred for further investigation allowing the claimant reasonable time in which to show that the subsequent filing is an amended location, and that he is the successor in an unbroken chain of title dating back to the original location.

Charles Degitz, 69 IBLA 145 (Dec. 9, 1982)

A mining claim located prior to Aug. 11, 1955, on land withdrawn for a powersite is null and void ab initio.

Hacker Bar Corp., 69 IBLA 148 (Dec. 13, 1982)

A mining claim located on land after the land was segregated and closed to mineral entry, by notation of receipt of an application for withdrawal, is properly declared null and void ab initio.

Lester R. Holt, 69 IBLA 180 (Dec. 15, 1982)

Philip A. Cramer, 74 IBLA 1 (June 21, 1983)

Mining claims located for a nonmetalliferous mineral on land which is withdrawn from mineral location for nonmetalliferous minerals are properly declared null and void ab initio. Such claims are not preserved by a recitation in the location notices that the claims were located for "bentonite and other minerals" where the claimant himself admits that there has been no evaluation of the claims "for other minerals besides bentonite," which is nonmetalliferous.

L. H. Grooms, 70 IBLA 228 (Jan. 24, 1983)

The requirements for location of a mining claim on the public domain are governed by relevant statutes of the state wherein the claim is located to the extent they do not conflict with Federal mining law. Where recordation of a certificate of location within 90 days of location of a claim is a required element of a mining claim location under state law and the certificate of location is not recorded until 2 years after segregation of the land from appropriation under the

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

mining law, the claim is properly declared null and void ab initio as having been located on the land at a time when it is not open to location, regardless of the fact that claimant may have conducted preliminary activities on the land prior to segregation.

Thomas Stoelting et al., 70 IBLA 231 (Jan. 25, 1983)

An amended location notice generally relates back to the date of the original location notice, that is, to the extent that an amended location merely furthers rights acquired by a prior subsisting location and does not embrace additional or new land, withdrawal of land subject to existing rights prior to the filing of the amended location and subsequent to the original location will not invalidate the claims.

Rhinehart Berg, 71 IBLA 131 (Mar. 9, 1983)

Mining claims located on land previously withdrawn from entry under the mining laws are properly declared null and void ab initio.

Where lands which have been withdrawn from entry and location under the general mining laws by a public land order, in determining the rights of a mining claimant who located claims subsequent to that withdrawal, it is immaterial that the land in question is covered by a prior withdrawal for a different purpose.

Joseph E. Vogler, Doris L. Vogler, Dwerl Vogler, 72 IBLA 48 (Apr. 12, 1983)

Where the land on which a mining claim is located is subsequently withdrawn from entry under the mining laws, the validity of the claim must be determined as of the date of the withdrawal through the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not become valid thereafter even by the satisfaction of the discovery requirement at a later date.

A request by a mining claimant to drill on mining claims after the land has been withdrawn from mining is properly denied where the work would be an effort to make a discovery of a valuable mineral deposit within the claim rather than simply a confirmation or corroboration of a discovery prior to the withdrawal.

United States v. T. J. Jones, Robert E. Jones, 72 IBLA 52 (Apr. 12, 1983)

Where land is withdrawn from the operation of the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. In addition, even though there may have been a proper discovery at the time of the withdrawal or at some other time in the past, a mining claim cannot be considered valid unless the claim is at present supported by a sufficient discovery.

United States v. William Lavon Chappell et al., 72 IBLA 88 (Apr. 13, 1983)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

A mining claim located on land previously withdrawn from appropriation under the mining laws pursuant to the authority of sec. 17(d)(1) of the Alaska Native Claims Settlement Act is null and void ab initio.

Allan Kaiser, 72 IBLA 387 (May 5, 1983)

A mining claim located on land which has been segregated from mineral location is properly declared null and void ab initio.

O. Glenn Oliver, 73 IBLA 56 (May 12, 1983)

A mining claim located for a nonmetalliferous mineral when the land was withdrawn from mineral entry for nonmetalliferous minerals is properly declared null and void ab initio.

Withdrawal of land subject to valid existing rights does not prevent an amended location of a mining claim from relating back to the original location; a relocation, however, will not relate back.

To establish that a location of a claim after a withdrawal is an amendment of a location made before the withdrawal, a claimant must show that the earlier location included the portion of the claim subject to the withdrawal, that the persons making the amended location had an unbroken chain of title with the original locators, and that the location predating the withdrawal was properly made.

Grace P. Crocker, 73 IBLA 78 (May 17, 1983)

Land segregated pursuant to a Recreation Public Purpose Act classification was not available for the location of mining claims, and claims thereafter located are null and void ab initio.

Gloria Ann Sandvik, Judy Neff, 73 IBLA 82 (May 18, 1983)

In order to become entitled to a mining claim, a claimant must establish the presence of a valuable mineral deposit. 30 U.S.C. § 22 (1976). A valuable mineral deposit exists where the mineral found is of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. Castle v. Womble, 19 L.D. 455 (1894). This is the "prudent man test," approved by the U.S. Supreme Court in Chrisman v. Miller, 197 U.S. 313 (1905). It has been refined to require a showing of marketability, i.e., that the mineral can be presently extracted, removed, and marketed at a profit. United States v. Coleman, 390 U.S. 599 (1968). Where a claim is located on land subsequently withdrawn from appropriation under the mining laws, the claim must be supported by a discovery at the time of withdrawal, as well as the date of the hearing into its validity. Cameron v. United States, 252 U.S. 450 (1920).

United States v. Eva M. Pool et al., 74 IBLA 37 (June 27, 1983)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of an application by the State of Alaska to select lands segregates those lands from all subsequent appropriations, including locations under the mining law. A mining claim located on land which has been segregated and closed to mineral entry is properly declared null and void ab initio.

Fred Thompson, 74 IBLA 231 (July 19, 1983)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Shiny Rock Mining Corp., 75 IBLA 136 (Aug. 15, 1983)

In accordance with sec. 24 of the Federal Power Act of 1920, as amended, 30 U.S.C. § 818 (1976), and sec. 2(a) of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1976), the Bureau of Land Management properly declares the portion of a placer mining claim located within the boundaries of a pre-existing power project to be null and void ab initio.

The Bureau of Land Management properly declares null and void ab initio the portion of a placer mining claim located on land previously withdrawn and segregated from appropriation under the mining laws pursuant to the Act of Sept. 19, 1964 (78 Stat. 986; 43 U.S.C. §§ 1411-1418 (1976)).

W. G. Singleton, 75 IBLA 168 (Aug. 19, 1983)

Mining claims located on land which has been withdrawn from mineral location are properly declared null and void ab initio. However, where on appeal the mining claimant provides evidence which tends to show that some of the claims are amended locations of claims which predate the withdrawal, the case will be remanded to BLM for a determination of which, if any, of the claims are amended locations.

Portage Creek Mining Co., 75 IBLA 309 (Aug. 30, 1983)

A mining claim located upon lands withdrawn from mineral entry is properly declared null and void.

Withdrawal of land subject to valid existing rights does not prevent an amended location of a mining claim from relating back to the original location; a relocation, however, will not relate back.

Rick & Linda Anderson, 76 IBLA 212 (Oct. 17, 1983)

A mining claim located on lands previously withdrawn from appropriation under the mining laws is properly declared null and void ab initio and the notice of location submitted for recordation is rejected insofar as it covers withdrawn lands. However, BLM should not reject the notice as it pertains to lands open to location, provided the claim

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

conforms to the rules governing lode claims after being amended to exclude the withdrawn areas.

Bow Spirit Mining Corp., 76 IBLA 252 (Oct. 17, 1983)

The Act of July 25, 1866, 14 Stat. 242, which granted a right-of-way for construction of a tunnel and a right to purchase lodes within 2,000 feet from the tunnel discovered by constructing the tunnel, did not segregate the surface of the land from mineral location. A Bureau of Land Management decision declaring a lode mining claim located within 2,000 feet of the tunnel right-of-way null and void ab initio will be reversed.

Intermountain Exploration Co., 76 IBLA 349 (Oct. 24, 1983)

Mining claims are properly declared to be void ab initio when it is shown that the master plat in the local Bureau of Land Management office shows that the lands located are within an area withdrawn from mineral entry.

Larry McMaster et al., 76 IBLA 370 (Oct. 25, 1983)

A mining claim located on land at a time when the land is segregated from mining location by a withdrawal confers no rights on the locator and is properly declared null and void ab initio.

John L. Grassmeier, 77 IBLA 156 (Nov. 16, 1983)

A mining claim located on land which has been segregated from mineral location is properly declared null and void ab initio. Lands segregated by Acts of Congress from all forms of entry under the public land laws of the United States for a 10-year period for conveyance to the Colorado River Commission of Nevada acting for the State of Nevada are not available for location of mining claims where the Commission submitted a timely application for conveyance of the lands to the State in accordance with provisions of the Acts.

Malcolm L. Figert, Leonard Weiner, 77 IBLA 160 (Nov. 16, 1983)

When land is withdrawn from location under the mining law subsequent to the location of a mining claim, the claim must be supported by discovery at the date of withdrawal.

United States v. Jack R. & Ruth V. Niece, 77 IBLA 205 (Nov. 22, 1983)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Mining claims located on lands which are closed to mineral entry are null and void from their inception as a matter of law, and no property rights are created

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

thereby. Therefore, no contest proceeding, notice, or hearing is required preliminary to a decision holding that such claims are invalid.

Shiny Rock Mining Corp. (On Reconsideration), 77 IBLA 261 (Nov. 30, 1983)

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

A mining claim located on land previously withdrawn from appropriation under the mining laws by a first form reclamation withdrawal is null and void ab initio.

Ronald B. McLean, 77 IBLA 380 (Dec. 7, 1983)

A placer mining claim located for gold on land previously withdrawn from appropriation under the mining laws relating to metalliferous minerals by Public Land Order No. 4522, dated Sept. 13, 1968, is null and void ab initio.

Charles H. Phillips, 78 IBLA 320 (Jan. 24, 1984)

A mining claim located at a time the land is withdrawn from appropriation by the Act of May 29, 1928, is null and void ab initio. It is immaterial whether future revocation of the withdrawal is being considered.

Samuel P. Speerstra, 78 IBLA 343 (Jan. 24, 1984)

Lands withdrawn for a powersite reservation, with certain exceptions, are open to entry for location and patent of mining claims with a reservation of power rights in the lands to the United States subject to the Mining Claims Rights Restoration Act. Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Lamar & Christine Burnett, 78 IBLA 349 (Jan. 25, 1984)

Lands segregated on the public records by a Recreational and Public Purposes lease are not available for the location of mining claims, but a claimant may establish the exterior boundaries of a lode claim on land under a Recreation and Public Purposes lease, with the permission of the lessee, for the purpose of making end lines parallel so as to obtain extralateral rights to a vein or lode discovered on lands available for location.

Where a lode mining claim is located partially on patented or withdrawn land, such a claim is not null and void ab initio to the extent of its inclusion of such lands. While the claim may not afford the claimant any rights whatever in the lands into which the claim is partially projected, the configuration of such a claim might, in the proper circumstances, invest the claimant with extralateral rights in other land beyond or adjacent to that land which is closed to mineral entry.

Santa Fe Mining, Inc., 79 IBLA 48 (Feb. 9, 1984)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

A mining claim whose discovery is located on land segregated and closed to mineral entry by notation of receipt of an application for withdrawal is properly declared null and void ab initio.

Marilyn Dutton Hansen, 79 IBLA 214 (Feb. 28, 1984)

Lloyd J. Bechan, 81 IBLA 239 (June 6, 1984)

The Act of July 25, 1866, 14 Stat. 242, which granted a right-of-way for construction of a tunnel and a right to purchase lodes within 2,000 feet from the tunnel discovered by constructing the tunnel, did not segregate the surface of the land from mineral location. A Bureau of Land Management decision declaring a lode mining claim located within 2,000 feet of the tunnel right-of-way null and void ab initio will be reversed.

Where a lode mining claim is located partially on patented or withdrawn land, such a claim is not null and void ab initio to the extent of its inclusion of such lands. While the claim may not afford the claimant any rights whatever in the lands into which the claim is partially projected, the configuration of such a claim might, in the proper circumstances, invest the claimant with extralateral rights in other land beyond or adjacent to that land which is closed to mineral entry.

Comstock Tunnel & Drainage Co., Sutro Tunnel Co., 79 IBLA 237 (Mar. 1, 1984)

A locator may not locate a claim with a discovery on patented or withdrawn lands because such lands are not open to the operation of the mining laws. In such cases the claim is void ab initio.

A locator whose discovery is on lands open to location may extend the end lines and side lines of a lode mining claim across patented or withdrawn lands to define extralateral rights to lodes or veins apexing within that portion of the claim subject to location. This principle permits development of unappropriated mineral in irregular parcels of lands in compliance with the statutory requirements for parallel end lines.

Anthony Juskiewicz, 79 IBLA 267 (Mar. 7, 1984)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a power project is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

J. W. Roberts, Jean Roberts, 79 IBLA 279 (Mar. 16, 1984)

Publication of the notice of a withdrawal application in the Federal Register segregates the lands described in the application from settlement, sale, location, or entry under the general land laws, including the mining laws, to the extent specified in the notice.

A placer claim located on land segregated and closed to mineral entry by publication of notice of an application for withdrawal of the land in the Federal Register is properly declared null and void ab initio.

In the absence of specific evidence that a mining claim location notice dated subsequent to the date of withdrawal of the land upon which the claim was located was intended to be an amendment, rather than a relocation, of a claim located prior to the withdrawal,

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

a mining claimant cannot relate the date of a location to an earlier location and thus validate a claim which would otherwise be considered null and void ab initio.

John C. Neill, 80 IBLA 39 (Mar. 28, 1984)

A mining claim located upon lands withdrawn from mineral entry by a Secretarial order for the benefit of the Mission Indians is properly declared null and void ab initio.

Robert E. Dawson, Kenneth E. Dawson, 80 IBLA 99 (Apr. 3, 1984)

Mining claims located on lands that are withdrawn from location are null and void ab initio.

Howard J. Hunt, Howard S. Hunt, 80 IBLA 396 (May 14, 1984)

A mining claim wholly located on land which has been segregated from mineral location by the filing of a state school land indemnity selection application is properly declared null and void ab initio.

Amoco Minerals Co., 81 IBLA 23 (May 15, 1984)

Mining claims located for trace minerals on land previously withdrawn from mineral entry by Exec. Order No. 5327, as to nonmetalliferous minerals, and Public Land Order No. 4522, as to metalliferous minerals, are properly declared null and void ab initio.

Mineral Life Corp., 81 IBLA 103 (May 30, 1984)

Where lands have been withdrawn from mineral entry, any mining location on such land which is not then supported by a discovery of a valuable mineral deposit must be deemed invalid, even if such a discovery is made at a later date.

United States v. Janet B. Copple et al., 81 IBLA 109 (May 30, 1984)

The Act of July 25, 1866, 14 Stat. 242, which granted a right-of-way for construction of a tunnel and a right to purchase lodes within 2,000 feet from each side of the tunnel discovered by constructing the tunnel, did not segregate the surface of the land from mineral location. A Bureau of Land Management decision declaring a lode mining claim located within 2,000 feet of the tunnel right-of-way null and void ab initio will be reversed.

Jack E. Carrington, 81 IBLA 279 (June 12, 1984)

Where a lode mining claim is located partially on withdrawn lands, such a claim is not null and void ab initio to the extent of its inclusion of such lands. While the claim may not afford the claimant any rights whatever in the withdrawn lands into which the claim is partially projected, the configuration of such a claim might, in the proper circumstances, invest the claimant with extralateral rights in other land beyond or adjacent to that land which is closed to mineral entry.

Marvin F. Johnston, 81 IBLA 295 (June 12, 1984)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

Mining claims located on land previously withdrawn from mineral entry by a Secretarial order of Dec. 14, 1904, pursuant to sec. 3 of the Act of June 17, 1902, are properly declared null and void ab initio. Therefore, no property rights are created. It is immaterial whether the lands are or have been used for the purpose for which they were withdrawn.

Homer Owens, 81 IBLA 402 (June 29, 1984)

Where a lode mining claim is located partially on withdrawn or patented land, it is not null and void ab initio to the extent of its inclusion of such lands. A locator whose discovery is on lands open to location may extend the end lines and side lines of his claim across withdrawn or patented land to define the extralateral rights to lodes or veins which apex within the claim.

Western Nuclear, Inc., 82 IBLA 67 (July 12, 1984)

Mining claims located on land previously withdrawn from mineral entry by Public Land Orders Nos. 5653 and 5654, 43 FR 59756-57, are properly declared null and void ab initio.

Mac A. Stevens, 83 IBLA 164 (Oct. 15, 1984)

BLM may properly declare a mining claim null and void ab initio if it was located at a time when the land was withdrawn from mineral entry for the benefit of the Virgin River Gorge Recreation Lands Area, even though the claim is purported to have historical significance which might enhance the recreational value of the area.

Evan Hansen, Lew Hansen, 83 IBLA 260 (Oct. 23, 1984)

Lands withdrawn for a powersite reservation are open to entry for location and patent of mining claims, with certain exceptions, subject to the conditions in the Mining Claims Rights Restoration Act, 30 U.S.C. § 621 (1982). Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Leslie M. Corriea, 84 IBLA 26 (Nov. 26, 1984)

A mining claim is null and void ab initio when it is located on land withdrawn from entry and location under the mining laws, even though the claimant located the claim in good faith and had no actual knowledge that the land was closed to appropriation.

Mac A. Stevens, 84 IBLA 124 (Dec. 10, 1984)

Mining claims located on land closed to entry and location under the mining laws by a withdrawal order of the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act are null and void ab initio.

John Elmore, 84 IBLA 163 (Dec. 13, 1984)

MINING CLAIMS--Continued

WITHDRAWN LAND--Continued

Where a lode mining claim is located partially on withdrawn land, it is not null and void ab initio to the extent of its inclusion of such lands. A locator whose discovery is on lands opened to location may extend the end lines and side lines of his claim across withdrawn or patented land to define the extralateral rights to lodes or veins which apex within the claim.

Cosinco American, Inc., 84 IBLA 209 (Dec. 27, 1984)

Mining claims located on land unavailable for location and entry under the mining laws are null and void ab initio.

Bill & Judy Bass et al., 84 IBLA 233 (Dec. 31, 1984)

MINING CLAIMS RIGHTS RESTORATION ACT

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on power-site lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

Harold E. Yorks, 48 IBLA 206 (June 16, 1980)

Leiry D. Brookshire et al., 56 IBLA 73 (July 15, 1981)

Ronald B. McLean, 77 IBLA 380 (Dec. 7, 1983)

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a group of mining claims on land withdrawn for power development or powersites where unrestricted placer mining on such land would result in substantial interference with the use of the land for timber harvesting or recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or power-sites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

United States v. R. James Steward, 54 IBLA 67 (Apr. 10, 1981)

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a mining claim on land withdrawn for power development or powersites, where unrestricted placer mining on such land would result in substantial interference with the use of the land for recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or power-sites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

United States v. Robert A. Pettigrew, 54 IBLA 149 (Apr. 17, 1981) 88 I.D. 453

MINING CLAIMS RIGHTS RESTORATION ACT--Continued

A mining claim located after Aug. 11, 1955, is properly declared null and void ab initio when at the time of location the claim is located on lands withdrawn for power development or powersites and such lands are under examination and survey by a prospective licensee of the Federal Power Commission under an uncanceled preliminary permit. This preliminary permit, issued under the Federal Power Act and authorizing the prospective licensee to conduct its examination and survey, may not have been renewed in the case of such prospective licensee more than once.

Robert A. Pettigrew, 54 IBLA 257 (Apr. 28, 1981)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

John C. Farrell, 55 IBLA 42 (May 28, 1981)

Lincoln Resources, Inc., 66 IBLA 310 (Aug. 24, 1982)

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James H. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

Although land reserved for powersite purposes by a 1910 Executive Order issued pursuant to the "Pickett Act" of June 25, 1910, remained open to the location of mining claims for metalliferous minerals, that Act was superseded by sec. 24 of the Federal Power Act of June 10, 1920, which closed such lands to all mineral location until enactment of the Mining Claim Rights Restoration Act of Aug. 11, 1955.

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

George L. Hawkins, Wallace G. Heath, 66 IBLA 390 (Aug. 31, 1982)

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a group of mining claims on land withdrawn for power development or power sites where unrestricted placer mining on such land would result in substantial interference with the use of the land for timber harvesting or recreational purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or power-sites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that the locator must restore the surface of the claim to its condition immediately prior to mining operations.

Robert E. Ehrman, Jr., 69 IBLA 290 (Dec. 23, 1982)

MINING CLAIMS RIGHTS RESTORATION ACT--Continued

Under the Mining Claims Rights Restoration Act of 1955, it is proper to prohibit all placer mining operations on a group of mining claims within land withdrawn for power development or powersites where unrestricted placer mining on such land would result in substantial interference with the use of land for other purposes. The Act gives the Secretary no discretion to permit limited or restricted placer mining on such withdrawn land. The Secretary may permit either unrestricted placer mining or none at all.

Gregg M. Miller, 74 IBLA 205 (July 18, 1983)

In accordance with sec. 24 of the Federal Power Act of 1920, as amended, 30 U.S.C. § 818 (1976), and sec. 2(a) of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1976), the Bureau of Land Management properly declares the portion of a placer mining claim located within the boundaries of a pre-existing power project to be null and void ab initio.

W. G. Singleton, 75 IBLA 168 (Aug. 19, 1983)

Under the Mining Claims Rights Restoration Act of 1955 it is proper to prohibit all placer mining operations on a mining claim located on land withdrawn for power development or powersite where unrestricted placer mining on such land would result in substantial interference with the use of the land for timber harvesting or other purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that after placer mining the locator must restore the surface of the claim to its condition immediately prior to mining operations.

Arthur A. Gotschall, 78 IBLA 81 (Dec. 16, 1983)

Lands withdrawn for a powersite reservation, with certain exceptions, are open to entry for location and patent of mining claims with a reservation of power rights in the lands to the United States subject to the Mining Claims Rights Restoration Act. Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Lamar & Christine Burnett, 78 IBLA 349 (Jan. 25, 1984)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a power project is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

J. W. Roberts, Joan Roberts, 79 IBLA 279 (Mar. 16, 1984)

Under the Mining Claims Rights Restoration Act of 1955 it is proper to prohibit all placer mining operations on a mining claim located on land withdrawn for power development or powersite where unrestricted placer mining on such land would result in substantial interference with the use of the land for recreation or other purposes.

The Mining Claims Rights Restoration Act of 1955 gives the Secretary of the Interior no discretion to

MINING CLAIMS RIGHTS RESTORATION ACT--Continued

permit limited or restricted placer mining on land withdrawn or reserved for power development or powersites. The Secretary may permit either unrestricted placer mining or none at all. The only condition which he may impose on permission to mine is that after placer mining the locator must restore the surface of the claim to its condition immediately prior to mining operations.

United States v. Robert R. Evans, 82 IBLA 155 (July 31, 1984)

Lands withdrawn for a powersite reservation are open to entry for location and patent of mining claims, with certain exceptions, subject to the conditions in the Mining Claims Rights Restoration Act, 30 U.S.C. § 621 (1982). Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Leslie M. Corriea, 84 IBLA 26 (Nov. 26, 1984)

MINING OCCUPANCY ACT

GENERALLY

Where BLM issues a decision to cancel a mining claim occupancy lease, which decision is based on a Forest Service report showing that someone other than the lessee has occupied the leased premises and that lessee has admitted that she was away from them; where lessee asserts that the claim is nevertheless "a principal place of residence" and requests a hearing; and where the record is insufficient to resolve this question, the matter will be referred for a hearing.

Viola D. Le Master, 51 IBLA 291 (Dec. 17, 1980)

Where an applicant under the Mining Claims Occupancy Act of Oct. 23, 1962, as amended, 30 U.S.C. §§ 701-709 (1976), fails to respond to a request from BLM to submit within a prescribed period of time specific information necessary to determine whether the applicant is qualified, the case is properly closed by BLM, and a petition filed by the applicant 10 years later seeking to reinstate his application is properly denied, there being no provision for reinstatement of such an application and the statutory deadline for filing an application having passed.

Robert T. Brott, 63 IBLA 279 (Apr. 20, 1982)

PRINCIPAL PLACE OF RESIDENCE

Where BLM issues a decision to cancel a mining claim occupancy lease, which decision is based on a Forest Service report showing that someone other than the lessee has occupied the leased premises and that lessee has admitted that she was away from them; where lessee asserts that the claim is nevertheless "a principal place of residence" and requests a hearing; and where the record is insufficient to resolve this question, the matter will be referred for a hearing.

Viola D. Le Master, 51 IBLA 291 (Dec. 17, 1980)

MINING OCCUPANCY ACT--Continued

PRINCIPAL PLACE OF RESIDENCE--Continued

The Mining Claims Occupancy Act, 30 U.S.C. § 701 (1976), only requires that valuable improvements on an unpatented mining claim constitute a principal place of residence for a qualified applicant, not that such be the principal place of residence of the applicant.

Jack J. and LaVonn Curtis, 63 IBLA 306 (Apr. 26, 1982)

BLM may properly reject an application to purchase land pursuant to sec. 1 of the Mining Claims Occupancy Act, as amended, 30 U.S.C. § 701 (1976), where the applicant does not establish that the land was occupied as a principal place of residence by himself or his predecessor in interest for the 7 years prior to July 23, 1962.

Charles A. Mitchell, Sr., 77 IBLA 266 (Nov. 30, 1983)

MISTAKES

Even if it be established that the Department had not applied in previous years regulation 43 CFR 4115.2-1(e)(8) (1975), which requires termination of grazing privileges upon loss of ownership or control of base property, such failure to apply the regulation is not authority to further disregard the regulation.

Jimmie and Leona Ferrara, 47 IBLA 335 (May 21, 1980)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated.

Stephen Kenyon et al., 51 IBLA 368 (Dec. 30, 1980)

One who chooses the means of delivery of a document must accept the responsibility and bear the consequences of delay or nondelivery by that method.

James B. Pauley, 53 IBLA 1 (Feb. 26, 1981)

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

Carl B. Andersen, 61 IBLA 4 (Dec. 29, 1981)

Elmer F. Brewster, Steve Foster, 63 IBLA 51 (Mar. 30, 1982)

Where a tract of land (Tract "D") was included in a patent to a townsite trustee of four tracts (Tracts "A, B, C, and D"), but the trustee had not applied for or entered Tract "D," and where the inclusion and patenting of Tract "D" resulted in the transfer of acreage in excess of the maximum allowed by statute to be included in the townsite, the patent was erroneous insofar as it included Tract "D" and should be corrected by eliminating that tract.

Stephen Kenyon et al. (On Reconsideration), 65 IBLA 44 (June 23, 1982)

MISTAKES--Continued

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Paiute Oil & Mining Corp., 67 IBLA 17 (Sept. 3, 1982)

Irvin D. Bird, Jr., 73 IBLA 210 (May 27, 1983)

Shiny Rock Mining Corp., 75 IBLA 136 (Aug. 15, 1983)

Shiny Rock Mining Corp. (On Reconsideration), 77 IBLA 261 (Nov. 30, 1983)

Where the Board of Land Appeals has previously held that the record did not show that lands were ever open to the operation of the public land laws and concluded accordingly that they were not subject to color-of-title applications, and where the record is subsequently amended to show that the lands were, in fact, reopened to entry, the Board's previous decision will be vacated as will BLM's decision applying it as a basis for rejecting a color-of-title application.

Estate of John C. Brinton, 71 IBLA 160 (Mar. 10, 1983)

MULTIPLE MINERAL DEVELOPMENT ACT
(See also Hearings, Mining Claims--if included in this Index.)

GENERALLY

Where sodium ions are commingled in a brine with calcium, potassium, and chlorine ions and no valuable deposit of a sodium or potassium compound is present, contestees' evaporation of such brine does not violate the Multiple Mineral Development Act, 30 U.S.C. §§ 521-531 (1976).

United States v. Levon Bardsley (Trustee), Marlene B. Bardsley, Individually and as Administratrix of the Estate of Donald H. Bardsley (Deceased), 45 IBLA 367 (Feb. 7, 1980)

An application for permit to drill for oil and gas in a "potash enclave" in a designated "Potash Area" is properly denied where the applicant fails to show that its application comes within either of the two exceptions to the policy in favor of potash development enunciated in an order of the Secretary dated Oct. 7, 1975, 40 FR 51486 (Nov. 5, 1975).

Bass Enterprises Production Co., 48 IBLA 11 (May 27, 1980)

No mining claim located after the effective date of the Multiple Mineral Development Act can be adverse to any prospecting permit for coal or phosphate. No such claim renders the land unavailable for a prospecting permit for coal or phosphate under the restriction

MULTIPLE MINERAL DEVELOPMENT ACT--Continued

GENERALLY--Continued

of prospecting permits to lands which are "unclaimed, undeveloped."

The Effect of Mining Claims on Secretarial Authority to Issue Prospecting Permits and Preference Right Leases for Coal and Phosphate (Modifying Solicitor's Opinion M-36893 of Aug. 2, 1977, and its Supplement of Nov. 19, 1979, upon the same subject): The "Unclaimed, Undeveloped" Issue, M-36893 (Supp. II) (Jan. 8, 1981)
88 I.D. 247

The grant of an oil and gas permit under the Mineral Leasing Act, 30 U.S.C. § 181 (1976), prior to the location of a mining claim in 1929 precludes, as long as the permit is in force, the appropriation of land therein included under the mining laws.

United States v. Ernest Higbee et al., 52 IBLA 83 (Jan. 9, 1981)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969
(See also Environmental Policy Act--if included in this Index.)

GENERALLY

Public Land Order No. 2676 (1962), requires the approval of an authorized officer of the Department of the Army before the Secretary of the Interior can grant a right-of-way over lands subject to the public land order. The Department of the Interior has no authority to grant a right-of-way where the approval is withheld.

City of Anchorage, Alaska, and Jack G. Fisher, et al., Alaska, Concerned Chugach Citizens v. Chugach Electric Ass'n, Inc., 45 IBLA 171 (Jan. 30, 1980) 87 I.D. 21

The National Historic Preservation Act, Outer Continental Shelf Lands Act and National Environmental Policy Act authorize a stipulation which provides that a cultural resource included on or eligible for inclusion on the National Register which is discovered by an OCS lessee as a result of lease operations and which is salvaged, be made reasonably available to recognized scientific or educational institutions for study.

Clarification of Authorities and Responsibilities for Identifying and Protecting Cultural Resources on the Outer Continental Shelf, M-36928 (Nov. 24, 1980)
87 I.D. 593

BLM may deviate from provisions contained in an environmental impact statement with respect to regeneration cutting in a planned timber sale where the deviation is not so significant as to require preparation of a supplemental environmental impact statement.

BLM may properly proceed with a proposed timber sale where the environmental assessment of the sale considered all relevant factors, including the impact of road construction on soil erosion, wildlife and recreational resources.

In re Bald Point Timber Sale, 80 IBLA 304 (May 4, 1984)

ENVIRONMENTAL STATEMENTS

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

ENVIRONMENTAL STATEMENTS--Continued

if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record.

Julie Adams et al., 45 IBLA 252 (Feb. 4, 1980)

Sierra Club et al., 57 IBLA 79 (Aug. 21, 1981)

The grant of a right-of-way over public lands, authorizing the construction of a roadway involving some 6 acres of public lands in an area of approximately 5,700 acres, does not require the preparation of an environmental impact statement, as no major Federal action is present within the terms of 42 U.S.C. § 4332(c) (1976).

Oregon Wilderness Coalition, 45 IBLA 347 (Feb. 7, 1980)

Where a programmatic environmental impact statement (EIS) has been completed and this has been supplemented by a site-specific environmental analysis concerning the impacts, mitigating measures, and alternatives for a specified timber sale, the law does not require preparation of an individual EIS for the timber sale in the absence of a material change in circumstances or departure from policy covered in the overall EIS.

Preserve Our Scenic Environment, 47 IBLA 276 (May 15, 1980)

Where it is implicit in an administrative decision that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record.

The grant of a right-of-way over public lands, authorizing the construction of a roadway to provide access to a uranium mining property, where such grant is made contingent upon the necessary licenses being obtained prior to commencement of any mining activity, does not require the preparation of an environmental impact statement, as no major Federal action is present within the terms of 42 U.S.C. § 4332(C) (1976).

James I. Thompson, 51 IBLA 154 (Nov. 26, 1980)

An appeal seeking review of an informational BLM handout containing a proposal for various land uses because the proposal was made without the filing of an Environmental Impact Statement will be dismissed where the document in question implements no policy or action, does not adversely affect appellant, and where it appears that an EIS is being, or will be prepared in connection with any BLM recommendations or reports based on land use proposals for the Coos Bay District, as required by the National Environmental Policy Act of 1969.

Cascade Holistic Economic Consultants and Oregon Wilderness Coalition, 58 IBLA 332 (Oct. 16, 1981)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

ENVIRONMENTAL STATEMENTS--Continued

Where after completion of a final environmental statement covering the Josephine Sustained Yield Unit 10-Year Timber Management Plan, the State Director issues a decision implementing one of the alternatives in the EIS, an appeal disagreeing with certain portions of the EIS will be duly considered with regard for the public interest. However, where appellants seek to have their judgment substituted for that of the decisionmaker, the decisionmaker's action will ordinarily be affirmed in the absence of a showing of compelling reason for modification or reversal.

Cascade Holistic Economic Consultants et al., 60 IBLA 293 (Dec. 18, 1981)

BLM's incorporation into its western Oregon forest management planning process of Northern Spotted Owl conservation guidelines, developed by a State-Federal interagency task force, is not a major Federal action requiring a regional environmental impact statement where the spotted owls and the preservation of their habitat are significant considerations in existing sustained yield unit environmental impact statements.

National Wildlife Federation et al., 62 IBLA 73 (Feb. 25, 1982)

Analysis of the environmental impact of the design of a segment of a proposed highway crossing public domain land does not constitute an improper narrowing of the scope of the project for purposes of environmental review where the route of the entire project has already been determined after completion of an environmental impact statement, the portion of the highway across land administered by the Bureau of Land Management has logical termini and a substantial independent utility regardless of whether the balance of the project is constructed, and construction of the highway on BLM land does not foreclose significant alternatives with respect to the balance of the highway project.

A finding that a proposed action will not have a significant impact on the environment, and that hence no environmental impact statement is required, will be affirmed on appeal where the record establishes that a hard look has been taken at environmental problems, that relevant areas of environmental concern have been identified, and the determination is the reasonable result of the environmental analysis.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

A decision to implement a vegetative management program will be affirmed where it is based on an environmental assessment which reflects an evaluation of the environmental impacts of the program sufficient to support an informed judgment.

Dolores M. Lisman, 67 IBLA 72 (Sept. 10, 1982)

A decision to implement a vegetative management program will be affirmed insofar as it is based on an environmental assessment which reflects an evaluation of the environmental impacts of the program sufficient to support an informed judgment. However, to the extent the record does not show that a salient aspect of the program has been assessed, and that aspect falls within the scope of the Board's jurisdiction, it may not be implemented until an adequate analysis of all relevant factors has been prepared.

SOCATS et al. (On Reconsideration), 72 IBLA 9 (Apr. 4, 1983)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

ENVIRONMENTAL STATEMENTS--Continued

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer in good faith, based upon a proper and sufficient record compiled in accordance with established environmental analysis procedures, and is the reasonable result of the study of such record.

Southwest Resource Council, Inc., National & Arizona Wildlife Federations, 73 IBLA 39 (May 11, 1983)

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based on a proper and sufficient environmental analysis compiled according to established procedures, and is the reasonable conclusion from such record.

Colorado Open Space Council, 73 IBLA 226 (May 31, 1983)

Protest to a decision to implement a management and/or control program for black-tailed prairie dogs is properly denied where the decision is based on an environmental assessment which reflects an evaluation of the environmental impacts sufficient to support an informed judgment.

Defenders of Wildlife, 79 IBLA 62 (Feb. 13, 1984)

The National Environmental Policy Act of 1969, 42 U.S.C. § 4332(2)(C) (1976), requires preparation of an environmental impact statement whenever a proposed major Federal action will significantly affect the quality of the human environment.

The test for determining the extent to which treatment of a subject in an environmental impact statement for a multistage project may be deferred depends on two factors: (1) whether obtaining more detailed useful information is "meaningfully possible" at the time when the environmental impact statement for an earlier stage is prepared, and (2) how important it is to have the additional information at an earlier stage in determining whether or not to proceed with the project.

Where a multistage project can be modified or changed in the future to minimize or eliminate environmental hazards disclosed as a result of information not presently available, and where the Government reserves the power to make such modification or change thereafter, deferment of analysis of that unavailable information does not violate the National Environmental Policy Act.

When a proposed action is a critical agency decision which will result in irreversible and irretrievable commitments of resources to an action which will produce a significant impact on the environment, an environmental impact statement is required.

Sierra Club, The Mono Lake Committee, 79 IBLA 240 (Mar. 1, 1984)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

ENVIRONMENTAL STATEMENTS--Continued

Analysis of the environmental impact of a proposed prospecting plan under a hardrock mineral prospecting permit issued pursuant to 16 U.S.C. § 520 (1976), should properly consider the potential cumulative impact of increased vehicular traffic on an access road due to prospecting activity under the permit and related activity on adjacent mining claims.

A finding that a proposed action will not have a significant impact on the environment, and that hence no environmental impact statement is required, will be affirmed on appeal where the record establishes that a hard look has been taken at environmental problems, that relevant areas of environmental concern have been identified, and the determination is the reasonable result of the environmental analysis.

John A. Wejedly, Contra Costa Youth Ass'n, 80 IBLA 14 (Mar. 28, 1984)

A determination that a proposed action will not have a significant impact on the environment will be affirmed on appeal where the record establishes environmental problems have been considered, relevant areas of environmental concern have been identified, and the determination is reasonable.

Utah Wilderness Ass'n, 80 IBLA 68 (Mar. 30, 1984) 91 I.D. 165

Where application is made for suspension of unitized oil and gas leases in order to preserve them from expiration pending approval of an application for permission to drill, and where the suspension is granted at the discretion of the authorized officer on condition that permission to drill may be denied upon a finding that drilling operations would result in unacceptable impacts on the wilderness characteristics of the area, an environmental impact statement on the effects of such drilling which fails to consider the alternative of refusing permission to drill is an inadequate basis for a decision to permit drilling.

Sierra Club et al. (On Judicial Remand), 80 IBLA 251 (May 2, 1984)

An agency has a continuing duty to gather and evaluate data pertinent to the environmental impacts of a Federal action after release of an environmental impact statement (EIS) in connection with the action. A supplemental EIS may not be required where some deviation from the action outlined in the EIS is proposed, the change is supported on a rational basis of record, and the adverse impact would be reduced as a result of the change.

In re Thompson Creek Timber Sale, 81 IBLA 242 (June 7, 1984)

Where an administrative decision is made that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that an environmental impact statement need not be filed, that decision will be affirmed on review if it appears to be the reasonable conclusion of a proper and sufficient environmental analysis compiled according to established procedures and it was made by an authorized officer, in good faith, based upon such record.

United States v. Albert O. Hussan et al., 81 IBLA 271 (June 8, 1984)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

ENVIRONMENTAL STATEMENTS--Continued

A decision to implement a vegetative management program with herbicide spraying will be reversed where it is based on an environmental assessment which fails to include a "worst case" evaluation of the environmental impacts of the proposed program, and where the record fails to document effects upon the environment of the proposed spraying program.

Save Our ecoSystems, Inc., 81 IBLA 326 (June 19, 1984)

A decision to utilize the herbicide 2,4-D in a vegetation management program will be vacated where it is based on an environmental assessment which lacks a worst case analysis and the record discloses uncertainty as to the effect of the herbicide on the human environment.

Sierra Club, Grand Canyon Chapter, Arizona, 81 IBLA 352 (June 25, 1984)

A decision to utilize herbicides including 2,4-D in a vegetation management program will be vacated where it is based on an environmental assessment which lacks a worst case analysis and the record discloses uncertainty regarding the effect of the herbicides on the human environment.

Although a worst case analysis may be performed in the context of an environmental assessment prepared to supplement a programmatic environmental impact statement, the environmental assessment becomes the functional equivalent of an environmental impact statement and the minimum 45-day comment period for a draft environmental impact statement is applicable.

Applegate Citizens Opposed to Toxic Sprays (ACOTS), Southern Oregon Citizens Against Toxic Sprays (SOCATS), 81 IBLA 398 (June 29, 1984)

Denial of a protest of a determination to proceed with a private exchange will be vacated and the case remanded where the record fails to reflect an evaluation of the environmental impacts sufficient to support an informed judgment.

Where the record shows that missing information is material to an agency decision on a private land exchange, it must be gathered and included in an environmental assessment. Only where the costs of obtaining the information are exorbitant or the means of obtaining it are beyond the state of the art must the agency weigh the need for the action against the risk and severity of possible adverse impacts of proceeding in the face of uncertainty. And only in the case of a determination to proceed in the face of uncertainty must a worst case analysis be conducted in accordance with 40 CFR 1502.22.

National Wildlife Federation, 82 IBLA 303 (Sept. 5, 1984)

A finding that proposed mining operations will not have a significant impact on the human environment, and that hence no environmental impact statement is required, will be affirmed on appeal where the record establishes that relevant areas of environmental concern have been identified, particularly the effect of excessive stream turbidity due to sediment runoff on fish populations and habitat and local water use, and the determination is the reasonable result of the environmental analysis in light of proposed measures to minimize the environmental impact.

William E. Tucker et al., 82 IBLA 324 (Sept. 7, 1984)

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969--Continued

ENVIRONMENTAL STATEMENTS--Continued

A management plan decision for the Yaquina Head Outstanding Natural Area implementing actions to remove various structures and develop a visitors center and to impose restrictions on hang gliding will be affirmed on appeal where the decision is based on an environmental assessment which reflects an evaluation of reasonable alternatives and is sufficient to support an informed judgment. Such a determination may not be overcome by a mere difference of opinion.

Oregon Shores Conservation Coalition, Bruce Waugh, 83 IBLA 1 (Sept. 17, 1984)

A decision to implement a vegetative management program affecting rights-of-way including application of the herbicide 2,4-D will be vacated where it is based upon an environmental analysis which does not include a worst case analysis as required by 40 CFR 1502.22, and which fails to document possible effects of proposed spraying upon the human environment.

Where a programmatic environmental impact statement has been completed and has been supplemented by a site-specific environmental assessment discussing the impacts, mitigating measures, and alternatives for specified spraying projects, which form the basis for a final decision to use herbicides, including 2,4-D, the environmental assessment must also contain a worst case analysis pursuant to 40 CFR 1502.22.

Save Our ecoSystems, Inc., 84 IBLA 82 (Dec. 5, 1984)

Where BLM has adopted staged leasing by notifying potential geothermal lessees that all postlease plans for exploration and development are subject to site-specific environmental review and that development might be limited or denied if such reviews were to disclose that unacceptable impacts on other land uses or resources would result, it is not necessary to prepare an environmental impact statement prior to leasing.

Sierra Club, The Mono Lake Committee (On Reconsideration), 84 IBLA 175 (Dec. 19, 1984)

NATIONAL HISTORIC PRESERVATION ACT

GENERALLY

Sec. 106 of the National Historic Preservation Act places a duty upon the Department to insure that issuance of authorizations on the OCS will not affect significant cultural resources without providing the Advisory Council on Historic Preservation the opportunity to comment. A rule of reason applies to the extent of the OCS lands to be studied and the degree of effort required.

Archival research is first required to determine whether significant cultural resources may be affected by activities on an OCS lease or right-of-way.

Cultural resource surveys should only be undertaken when the results of archival research indicate the likelihood that significant cultural resource will be affected by the undertaking and that the resource is capable of being detected at a reasonable cost and effort.

When cultural resources are identified on the OCS, it is appropriate to consider them for nomination to the National Register of Historic Places.

Sec. 106 of the National Historic Preservation Act authorizes the Department to require either by regulation or by stipulation in an OCS lease or right-of-way

NATIONAL HISTORIC PRESERVATION ACT--Continued

GENERALLY--Continued

that the lessee or holder make cultural resource studies where evidence indicates that such resources may be affected by operations, and that information discovered be made available to the Department.

The National Historic Preservation Act, Outer Continental Shelf Lands Act and National Environmental Policy Act authorize a stipulation which provides that a cultural resource included on or eligible for inclusion on the National Register which is discovered by an OCS lessee as a result of lease operations and which is salvaged, be made reasonably available to recognized scientific or educational institutions for study.

The Outer Continental Shelf is not within the jurisdiction of a State Historic Preservation Office (SHPO). However, as a matter of comity, the recommendations of a SHPO as to OCS cultural resources should be carefully considered.

Clarification of Authorities and Responsibilities for Identifying and Protecting Cultural Resources on the Outer Continental Shelf, M-36928 (Nov. 24, 1980) 87 I.D. 593

APPLICABILITY

The National Historic Preservation Act, 16 U.S.C. § 470f (1982), provides that the head of any Federal agency having authority to license any undertaking shall take into account the effect on any property eligible for inclusion on the Register of Historic Places and provide the Advisory Council on Historic Preservation the opportunity to comment. Consultation with the Advisory Council is not necessary, however, where during the consideration of an application for a special recreation use permit for the Iditarod National Historic Trail, BLM makes a determination of no effect pursuant to 36 CFR 800.4(b)(1) and that determination is supported by the record in the case.

Sharon Long et al., 83 IBLA 304 (Oct. 30, 1984)

NATIONAL PARK SERVICE

Mining claims located in units of the National Park System must be recorded within 1 year of the date of enactment of the Mining in the Parks Act, sec. 8 of the Act of Sept. 28, 1976, 16 U.S.C. § 1907 (1976), rather than within 3 years of the enactment of the Federal Land Policy and Management Act of 1976, Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976).

Elden A. LeRoy, Dorothy A. LeRoy, 49 IBLA 320 (Aug. 20, (1980)

Pursuant to 43 CFR 3833.1-1, an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 Oct. 20, 1976), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907 (1976), conclusively presumed to be abandoned and void.

Gordon L. Cooper, 51 IBLA 191 (Dec. 5, 1980)

Pursuant to 43 CFR 3833.1-1 and 36 CFR 9.5(a), an unpatented mining claim in any national park system unit in existence on Sept. 28, 1976, which was not recorded on or before Sept. 28, 1977, in accordance with the Federal Register notice (41 FR 46357 (Oct. 20, 1976)), or 36 CFR 9.5 is, pursuant to 16 U.S.C. § 1907

NATIONAL PARK SERVICE--Continued

(1976), conclusively presumed to be abandoned and void.

Abram H. Kreider, 57 IBLA 68 (Aug. 18, 1981)

George D. Hooker et al., 66 IBLA 168 (Aug. 12, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed with the proper office of BLM on or before Dec. 30 of each year, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

W. LeRoy Ewell, 58 IBLA 121 (Sept. 24, 1981)

Riter Ekker, Kerry B. Ekker, 58 IBLA 251 (Oct. 6, 1981)

Pursuant to sec. 314 of FLPMA and 43 CFR 3833.2-1(b), the owner of unpatented mining claims situated within any unit of the National Park System must file in the proper office of BLM a notice of intention to hold the claims on or before Dec. 30 of each year following the year in which the claims were recorded with the National Park Service as required by the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), and 36 CFR 9.5. Where a permit to do assessment work has been issued by NPS, the owner of the claims may file evidence of assessment work in lieu of the notice of intention to hold the claims. Failure to file either a notice of intention to hold the unpatented mining claims or evidence of assessment work with the proper BLM office within the time period prescribed conclusively constitutes abandonment of the claims.

Uranus, Inc., 58 IBLA 139 (Sept. 25, 1981)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were timely recorded in accordance with 16 U.S.C. § 1907 (1976), may not conclusively be deemed abandoned and void if a notice of intention to hold is not filed in 1978 for record in the unit of the national park system where the location notice is recorded, as the filing requirement is not statutory, but only regulatory, so the defect is curable. Notice of such defect should be given and the claimant allowed 30 days within which to correct the defect. An unpatented mining claim located before Oct. 21, 1976, on land within a unit of the national park system and timely recorded under the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), may not be deemed abandoned and void where a copy of the recorded instrument showing evidence of assessment work is filed with the proper office of BLM on or before Oct. 22, 1979, and on or before Dec. 30 of each year thereafter, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Morrill A. Nielson et al., 62 IBLA 249 (Mar. 15, 1982)

Pursuant to 43 CFR 3833.4 and 36 CFR 9.5(d), unpatented mining claims located on lands within any unit of the national park system which were recorded in accordance with the Mining in the Parks Act, 16 U.S.C. § 1907 (1976), are properly deemed abandoned and void if a notice of intention to hold is not properly filed for record in the office where the location notice is recorded and a copy of the recorded instrument filed

NATIONAL PARK SERVICE--Continued

with the proper office of BLM on or before Oct. 22, 1979, for claims located prior to Oct. 21, 1976, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

B. Gail Tibbetts, 62 IBLA 252 (Mar. 15, 1982)

NATIONAL PARK SERVICE AREAS

GENERALLY

A noncompetitive oil and gas lease offer for acquired land within the boundaries of the Fort Laramie National Historic Site administered by the National Park Service is properly rejected since the Mineral Leasing Act for Acquired Lands specifically excludes lands within national parks or monuments from its terms.

Ed Pendleton, 57 IBLA 146 (Aug. 25, 1981)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the lands applied for are not withdrawn from operation of the Mineral Leasing Act. An oil and gas lease offer is properly rejected where the lands sought are within the Lake Mead National Recreation Area, and the National Park Service has declined, under 43 CFR 3566.3, to give consent to issuance of the lease.

Do Ann T. Gaeth, 69 IBLA 79 (Nov. 30, 1982)

Frances Kunkel, 69 IBLA 205 (Dec. 16, 1982)

Unless the statute creating the area specifically provides otherwise, areas within the national park system are not open for location of mining claims.

H. E. Bingham et al., 73 IBLA 19 (May 9, 1983)

Tom Brown, 74 IBLA 34 (June 27, 1983)

An oil and gas lease offer is properly rejected where the lands sought are within the Lake Mead National Recreation Area, and the National Park Service has declined, under 43 CFR 3566.3, to give consent to issuance of the lease.

S. Dawson, 73 IBLA 301 (June 7, 1983)

Chevron U.S.A., Inc., 74 IBLA 92 (June 30, 1983)

An oil and gas lease offer is properly rejected where the lands sought are within the Lake Mead National Recreation Area, and regulation 43 CFR 3501.3 requires consent of the Regional Director, National Park Service, for a lease in this area, and such consent is refused.

Edward Seggerson, Jr. (On Reconsideration), 74 IBLA 267 (July 25, 1983)

Bureau of Land Management properly rejects combination prospecting permit/mineral lease applications for lands within the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area

NATIONAL PARK SERVICE AREAS--Continued

GENERALLY--Continued

that are not open to mineral leasing under 43 CFR 3566.2-2.

David Britton, 74 IBLA 271 (July 25, 1983)

Steve D. Mayberry, Mobile Jennings, Mark Jennings, 82 IBLA 319 (Sept. 12, 1984)

LAND

Mining

The Secretary of the Interior is not precluded from contesting a mining claim by the provisions of sec. 6, Act of Sept. 28, 1976, P.L. 94-429, 16 U.S.C. § 1905 (1976), where a contest complaint has been filed within 2 years of the date of enactment of the statute.

United States v. Roy Peterson & Charles R. Sweet, 47 IBLA 92 (Apr. 23, 1980)

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

Edward Seggerson, Jr., 67 IBLA 189 (Sept. 22, 1982)

BLM may properly declare lode mining claims located wholly on land within the Lake Mead National Recreation Area, established pursuant to the Act of Oct. 8, 1964, 16 U.S.C. § 460n (1982), null and void ab initio because such land is implicitly withdrawn from mineral entry.

Marvin F. Johnston, 81 IBLA 295 (June 12, 1984)

NAVAL PETROLEUM RESERVES

The conclusion that the Appropriations Act is independent leasing authority is not an implied repeal, pro tanto, of the Mineral Leasing Act of 1920 because the Naval Petroleum Reserves Production Act of 1976 explicitly precluded the operation of the MLA on the NPR-A, and the Appropriations Act modified that withdrawal only for the purpose of the oil and gas leasing program authorized in the Appropriations Act.

Authorization for Oil and Gas Leasing on the National Petroleum Reserve--Alaska, M-36940 (Oct. 15, 1981) 91 I.D. 1

NAVIGABLE WATERS

Where riparian public land has been eroded away entirely by the actions of a navigable river and the river subsequently returns to its original banks, restoring the eroded land through accretion, title to the accreted land is deemed to be in the remote riparian owner to whose land the accretion attaches, rather than the United States.

Ralph F. Rosenbaum et al., 66 IBLA 374 (Aug. 30, 1982) 89 I.D. 415

NAVIGABLE WATERS--Continued

An oil and gas offer embracing land in the bed of a navigable river, which is State land, is properly rejected.

Lee E. McDonald, 68 IBLA 272 (Nov. 17, 1982)

The exemption under sec. 404(r) for an otherwise Federal project is available for projects receiving contributory financing from state or local entities, provided that the other conditions for the exemption are met and the project remains in Federal control.

Federal Water Pollution Control Act - Sec. 404 Compliance for Projects Funded in Part by State and Local Entities, M-36915 (Supp. I), (June 2, 1983) 90 I.D. 255

An island within the public domain in a navigable stream and actually in existence at the time of the admission to the Union of the state within which it is situated remains the property of the United States.

Once an island in a navigable stream which is public land washes away totally and then after statehood a new island forms in the same place, title to the new land is in the state.

David A. Provinse, 78 IBLA 85 (Dec. 16, 1983)

Where riparian public land has been completely eroded away by the actions of a navigable river, title is lost to the United States and, where said land is subsequently restored through accretion by the continued action of the river, title belongs to the riparian owner.

David A. Provinse, 81 IBLA 148 (May 31, 1984)

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All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

Willene Minnier, 45 IBLA 1 (Jan. 8, 1980)

Robert W. Hansen, Federal Bentonite Co., 46 IBLA 93 (Feb. 28, 1980)

M. E. Rogers, 47 IBLA 196 (May 7, 1980)

Floyd Zaiger, 47 IBLA 204 (May 7, 1980)

Edwin Forsberg, 47 IBLA 235 (May 13, 1980)

Roy Treneary, 47 IBLA 289 (May 15, 1980)

William J. Walker, Lewis Sandberg, 47 IBLA 389 (May 22, 1980)

Paul B. Rhodes, 48 IBLA 90 (May 29, 1980)

Helen E. Wallace, 48 IBLA 127 (May 30, 1980)

Kenneth K. Parker, 48 IBLA 129 (May 30, 1980)

James E. Cooper, 48 IBLA 175 (June 9, 1980)

A. J. Grady, 48 IBLA 218 (June 16, 1980)

Joe Bapic, 48 IBLA 255 (June 26, 1980)

Morrill A. Nielson, 48 IBLA 398 (July 11, 1980)

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Rose M. Keegel, 49 IBLA 106 (July 28, 1980)

Ross Weaver, 49 IBLA 111 (July 28, 1980)

Glen Hocking, 49 IBLA 217 (Aug. 11, 1980)

Margaret J. Wilson, 49 IBLA 228 (Aug. 12, 1980)

Nils Tyrrel, 49 IBLA 267 (Aug. 18, 1980)

Tod Anderson, 50 IBLA 66 (Sept. 17, 1980)

Michael Jon McFarland, 51 IBLA 173 (Nov. 26, 1980)

Edward W. Kramer, 51 IBLA 294 (Dec. 17, 1980)

Robert W. Miller, Marjorie Ripper Miller, 51 IBLA 364 (Dec. 29, 1980)

William H. Davis, 52 IBLA 125 (Jan. 13, 1981)

Henri Guzek, 52 IBLA 200 (Jan. 26, 1981)

Kenneth G. Walker, 52 IBLA 214 (Jan. 30, 1981)

Lloyd M. Buttjereit, 52 IBLA 363 (Feb. 19, 1981)

Robert G. Sunder, Jeanne E. B. Sunder, 52 IBLA 375 (Feb. 19, 1981)

James B. Pauley, 53 IBLA 1 (Feb. 26, 1981)

Clayton V. Curtis, 54 IBLA 184 (Apr. 22, 1981)

D. L. Nielsen, R. W. Tompkins, 57 IBLA 114 (Aug. 25, 1981)

Walter Adomkus, 67 IBLA 177 (Sept. 21, 1982)

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

John F. Sherwood, 48 IBLA 180 (June 9, 1980)

Armando Mejalca, 48 IBLA 351 (July 11, 1980)

Vernon G. & Shirley S. Wickham, 50 IBLA 1 (Sept. 5, 1980)

Melark, Inc., 52 IBLA 5 (Jan. 5, 1981)

Dale E. Henkins, 52 IBLA 9 (Jan. 5, 1981)

Pearl C. Barnett, 52 IBLA 273 (Feb. 6, 1981)

Joe Bastone, 52 IBLA 288 (Feb. 9, 1981)

Lowell L. Patten, 52 IBLA 299 (Feb. 10, 1981)

Coronado Oil Co., 52 IBLA 308 (Feb. 10, 1981)

L. L. Falter, John E. Weeks, 52 IBLA 313 (Feb. 10, 1981)

James C. Prebelich, 53 IBLA 34 (Feb. 26, 1981)

W. Keith Howard, 53 IBLA 92 (Mar. 2, 1981) 88 I.D. 341

St. Francis Mining Co., 53 IBLA 133 (Mar. 5, 1981)

Clyde W. Luke, Betty J. Luke, 53 IBLA 136 (Mar. 9, 1981)

Paula Troester Saragoza et al., 53 IBLA 247 (Mar. 19, 1981)

John Platt, Jr., et al., 53 IBLA 313 (Mar. 25, 1981)

Joseph Ojurovich, 54 IBLA 100 (Apr. 15, 1981)

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Bill C. Ross, 54 IBLA 116 (Apr. 16, 1981)

Charles W. McGowan III, 54 IBLA 119 (Apr. 16, 1981)

Mascot Silver-Lead Mines, Inc., 54 IBLA 121 (Apr. 16, 1981)

James W. Quakenbush, 54 IBLA 155 (Apr. 21, 1981)

Dell Warren, 54 IBLA 159 (Apr. 21, 1981)

William L. Schindler, 54 IBLA 221 (Apr. 23, 1981)

Emery Crowley et al., 54 IBLA 229 (Apr. 27, 1981)

William Adolph Yonkee et al., 54 IBLA 232 (Apr. 27, 1981)

William H. Hand, 54 IBLA 303 (Apr. 29, 1981)

Sidney Hodges, John Golden, 55 IBLA 17 (May 26, 1981)

Earl Kreniller, 55 IBLA 28 (May 27, 1981)

Joe Benham, 55 IBLA 45 (May 29, 1981)

Betty L. Henry, 55 IBLA 47 (May 29, 1981)

Vincent M. D'Amico, Walt C. Steppel, 55 IBLA 116 (June 3, 1981)

Mark L. Gilmore, 55 IBLA 128 (June 3, 1981)

Margaret E. Peterson, 55 IBLA 136 (June 4, 1981)

Alberta K. Romerio, 55 IBLA 140 (June 4, 1981)

Joseph Ojurovich, 55 IBLA 182 (June 15, 1981)

W. LeGrande Law, 55 IBLA 193 (June 16, 1981)

Thomas Williams, 56 IBLA 55 (July 10, 1981)

Gary M. Greenlaw, Ronald D. Sharp, 56 IBLA 109 (July 16, 1981)

Walter D. Cosdon, 56 IBLA 112 (July 16, 1981)

Stephen G. Rudisill, Evelyn J. Rudisill, 56 IBLA 158 (July 20, 1981)

Rolland Marshall, 56 IBLA 187 (July 20, 1981)

Allen Turner, 56 IBLA 280 (July 28, 1981)

Timothy Edward Monte, 56 IBLA 315 (July 29, 1981)

Fred W. Croxen III, 56 IBLA 318 (July 29, 1981)

Caroline E. Brown, 56 IBLA 334 (July 30, 1981)

Donald E. Black, 56 IBLA 354 (Aug. 3, 1981)

Estate of Mary B. Ritchie, 56 IBLA 361 (Aug. 3, 1981)

Edith Gion, 56 IBLA 375 (Aug. 3, 1981)

Lele J. Fillmore, 56 IBLA 385 (Aug. 3, 1981)

Norman L. Hood, 57 IBLA 1 (Aug. 5, 1981)

Dave E. Newman, 57 IBLA 23 (Aug. 6, 1981)

Robert E. Wilson, 57 IBLA 40 (Aug. 10, 1981)

L. Grace Wadsworth, 57 IBLA 242 (Aug. 27, 1981)

Intermountain Exploration Co., 57 IBLA 271 (Aug. 31, 1981)

Intermountain Exploration Co., 57 IBLA 274 (Aug. 31, 1981)

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Del Rupp, 57 IBLA 297 (Aug. 31, 1981)

L. M. Peck, 57 IBLA 339 (Sept. 1, 1981)

Virgie Dowler, 57 IBLA 389 (Sept. 10, 1981)

Steven V. Miskoff, 58 IBLA 32 (Sept. 16, 1981)

James W. Tibbals, Janet D. Tibbals, 58 IBLA 42 (Sept. 17, 1981)

Donald Jardine, 58 IBLA 49 (Sept. 21, 1981)

Kathryn Mackenzie, 58 IBLA 64 (Sept. 22, 1981)

Pabey Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

Grant Kirkham, Roberta Kirkham, 58 IBLA 131 (Sept. 24, 1981)

Albert L. Fillerup, 58 IBLA 194 (Sept. 29, 1981)

Tom Applegarth, 58 IBLA 224 (Sept. 30, 1981)

Heirs of Raymond D. Carson et al., 58 IBLA 265 (Oct. 7, 1981)

Richard W. Thom, 58 IBLA 291 (Oct. 13, 1981)

Bernard E. Packard et al., 58 IBLA 308 (Oct. 16, 1981)

Lee R. Newson, 58 IBLA 325 (Oct. 16, 1981)

Wayne Cook, 58 IBLA 350 (Oct. 19, 1981)

Lloyd P. Webster, 58 IBLA 363 (Oct. 20, 1981)

Ben M. Powell III, 59 IBLA 146 (Oct. 26, 1981)

Bruce A. DeRosier, 59 IBLA 283 (Oct. 30, 1981)

John W. Baccus, 59 IBLA 288 (Oct. 30, 1981)

Anton J. Meyer, 59 IBLA 311 (Nov. 4, 1981)

Vivian Sullivan Karlson, 60 IBLA 10 (Nov. 13, 1981)

Frank E. Evans, 60 IBLA 44 (Nov. 17, 1981)

Dr. Jose Trabal, 60 IBLA 97 (Nov. 19, 1981)

Robert G. Milton, 60 IBLA 104 (Nov. 20, 1981)

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

Ronald M. Guntert, Marion G. Guntert, 60 IBLA 200 (Nov. 27, 1981)

Carl H. Andersen, 61 IBLA 4 (Dec. 29, 1981)

Cimarron Corp., 61 IBLA 90 (Dec. 31, 1981)

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Mooney, 61 IBLA 210 (Jan. 26, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Otey Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Samedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

Martin Slisco et al., 62 IBLA 260 (Mar. 15, 1982)

Cheryl R. Cooksey, 62 IBLA 307 (Mar. 18, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

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Martha E. Ebbrecht, 62 IBLA 387 (Mar. 24, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

Charles Y. Neff, 64 IBLA 234 (May 27, 1982)

Marvin E. Mukala, 64 IBLA 313 (June 10, 1982)

Charles L. Roberts, 65 IBLA 67 (June 23, 1982)

W. A. Shepherd, Viola M. Shepherd, 65 IBLA 72 (June 23, 1982)

J. Barry Van Hoogen, 65 IBLA 175 (June 29, 1982)

William Scott Olsen, 65 IBLA 274 (July 12, 1982)

Viola Peck Whitney, 65 IBLA 361 (July 20, 1982)

Joe Karren, Sr., et al., 65 IBLA 387 (July 23, 1982)

Dennis M. Joy, 66 IBLA 260 (Aug. 17, 1982)

Eugene J. Curless, 67 IBLA 135 (Sept. 16, 1982)

Keith E. Ferrell, 67 IBLA 181 (Sept. 21, 1982)

Robert J. Maby et al., 67 IBLA 370 (Oct. 8, 1982)

Gregory A. Voetsch, Sr., 69 IBLA 124 (Dec. 8, 1982)

Richard W. Rowe, 69 IBLA 135 (Dec. 8, 1982)

Dee Wright, 69 IBLA 309 (Dec. 23, 1982)

Epserch Exploration, Inc., 70 IBLA 25 (Jan. 6, 1983)

Erma Jellen, Suzanne K. Marco, 70 IBLA 29 (Jan. 6, 1983)

Gerwin Blake Biding, 70 IBLA 59 (Jan. 10, 1983)

Nicholas J. Murphy, 71 IBLA 368 (Mar. 28, 1983)

Eleanor A. Belser, 72 IBLA 232 (Apr. 26, 1983)

Inez McDorman, Audrey Pilger, 72 IBLA 383 (May 5, 1983)

James D. Ross, Maria J. Ross, 72 IBLA 395 (May 5, 1983)

Adobe Oil & Gas Corp., 73 IBLA 263 (June 7, 1983)

Harold L. Long, 73 IBLA 280 (June 7, 1983)

Ray McKee, Cheryl McKee, 73 IBLA 311 (June 7, 1983)

Barbara Payne, 73 IBLA 381 (June 15, 1983)

Jacqueline Bolen, 73 IBLA 383 (June 15, 1983)

United Ventures, 74 IBLA 31 (June 24, 1983)

Page Investment Co., 74 IBLA 163 (July 12, 1983)

Shirley Powerinke, 74 IBLA 210 (July 18, 1983)

Hughes Minerals, Inc., 74 IBLA 217 (July 18, 1983)

Josephine Sloper, 74 IBLA 234 (July 19, 1983)

Paul T. Ryan, Melvin V. Lunt, 75 IBLA 76 (Aug. 10, 1983)

Peick Associates, 76 IBLA 292 (Oct. 18, 1983)

Thomas H. Bloch, 76 IBLA 364 (Oct. 25, 1983)

Our Turn Nov Ass'n, 77 IBLA 24 (Oct. 31, 1983)

James Neil Fletcher, 78 IBLA 330 (Jan. 24, 1984)

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Harriet C. Shaffel, 79 IBLA 228 (Feb. 29, 1984)

Mac A. Stevens, 83 IBLA 164 (Oct. 15, 1984)

All persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations.

Don and Mary L. Clark, 49 IBLA 11 (July 15, 1980)

Canyon View Mining Co., 49 IBLA 184 (July 31, 1980)

Alfred Letcher, 49 IBLA 193 (Aug. 6, 1980)

John Lincoln, Jr., 49 IBLA 335 (Aug. 25, 1980)

Gordon L. Cooper, 51 IBLA 191 (Dec. 5, 1980)

Santa Monica Hospital Medical Center Foundation, 51 IBLA 194 (Dec. 5, 1980)

Abram M. Kreider, 57 IBLA 68 (Aug. 18, 1981)

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations regardless of their actual knowledge of what is contained in such regulations or statutes.

George L. Harrison, 49 IBLA 157 (July 30, 1980)

Those who deal with the Government are presumed to have knowledge of the law and regulations duly adopted pursuant thereto.

Don Sampson, Perry Adkison, Ward I. Jones, 50 IBLA 84 (Sept. 17, 1980)

D. E. Bailey, 57 IBLA 120 (Aug. 25, 1981)

Mrs. Walter E. Bolles, 58 IBLA 257 (Oct. 6, 1981)

Eugene M. Goatcher, 58 IBLA 337 (Oct. 19, 1981)

Any document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the post office of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

Lite Sabin, 51 IBLA 226 (Dec. 15, 1980) 87 I.D. 610

Where BLM sends by certified mail a notice to an offeror at his record address that he must file a certificate as to his qualification to hold an oil and gas lease, and the letter is returned to BLM marked "Not Deliverable as Addressed, Unable to Forward," and it is established that nondelivery was due to post office error, the appellant will not be considered to have received notice, and the rejection of the lease offer will be set aside.

Brooks Griggs, 51 IBLA 232 (Dec. 15, 1980) 87 I.D. 612

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GENERALLY--Continued

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

John Swanson, 51 IBLA 239 (Dec. 15, 1980)

Willard Pease Oil & Gas Co., 52 IBLA 379 (Feb. 19, 1981)

Any document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the post office of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

A BLM determination disqualifying a first-drawn oil and gas lease offer for an applicant's failure to furnish additional evidence will be set aside where it appears that in unnecessarily mailing the request to furnish additional evidence "Restricted Delivery," BLM effectively precluded the communication from reaching the applicant.

Betty Alexander, 53 IBLA 139 (Mar. 9, 1981)

Under the "notation rule," where a reservoir right-of-way affecting certain land is noted on the official records of the Bureau of Land Management, that notation is effective to bar leasing of the oil and gas therein under the Mineral Leasing Act of 1920. This result follows even if the reservoir right-of-way should have been terminated.

BDM Interests, 57 IBLA 163 (Aug. 27, 1981)

BLM has satisfied its burden of giving notice of the inclusion of leased lands in a KGS and of the concomitant increase in annual rental to $2 per acre or fraction thereof when it notifies the lessees of record, regardless of its failure to notify the holder of operating rights under the lease.

Robert L. Wright, Shell Oil Co., 60 IBLA 142 (Nov. 24, 1981)

The law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it; therefore, where the Bureau of Land Management served notice of an oil and gas lease rental increase on an office of a corporate lessee which the lessee claimed was not its address of record for the lease, the lessee cannot assert ignorance of the increase because reasonable care would dictate that the office receiving the notice inform the proper office.

Getty Oil Co., 61 IBLA 226 (Jan. 28, 1982) 89 I.D. 26

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable

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GENERALLY--Continued

statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The presumption of abandonment under sec. 314 of FLPMA need not have been preceded by any particular notice from BLM, because the public is deemed to know the content of relevant statutes and regulations.

David and Roirdon Doremus, 61 IBLA 367 (Feb. 17, 1982)

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations involving protection of cultural and paleontological resources on the leased lands within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror asserts on appeal that it actually never received the stipulations, its failure to execute the stipulations and return them to BLM may be treated as a curable defect, and priority of filing will be determined as of the date the signed stipulations are received by BLM.

First Mississippi Corp., 62 IBLA 184 (Mar. 9, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 175 (May 26, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation at the time of filing, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 285 (June 4, 1982)

Security Resources Corp., 70 IBLA 319 (Jan. 31, 1983)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of additional stipulations, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulations. Where there is no evidence that an offeror had actual knowledge of the stipulations at the time of filing,

NOTICE--Continued

GENERALLY--Continued

the offeror is not bound to accept the lease with the added stipulations.

John D. La Rue, 66 IBLA 347 (Aug. 26, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. However, the offeror's consent to the additional stipulation will be assumed, and the lease presumed to be validly issued, unless the offeror objects to the stipulation within 30 days of its receipt. Any deficiency in the notice procedure for the stipulation is cured when the offeror fails to object timely to imposition of the new stipulation.

Energy Energy (On Reconsideration), 67 IBLA 260 (Sept. 27, 1982)

Harry E. Veal, 73 IBLA 86 (May 18, 1983)

William A. Stevenson, Alter Oil Corp., Imperial Resources, Inc., Donald W. Stevenson, Overthrust Partnership, 73 IBLA 305 (June 7, 1983)

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror subsequently submits the signed stipulations prior to the filing of a junior offer, the Board will remand the case to BLM so that his offer may be considered with priority as of that time.

James M. Chudnov, 68 IBLA 87 (Oct. 22, 1982)

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations, and are not entitled to rely on interpretations thereof used in another state office.

Fen F. Tzeng, 68 IBLA 381 (Nov. 23, 1982)

Any document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the Postal Service of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

Frank C. Lytle, III, 69 IBLA 210 (Dec. 16, 1982)

No lease for lands on which there is a well capable of producing oil and gas in paying quantities shall expire because the lessee fails to produce, unless the lessee fails to place the well in a producing status within 60 days of receipt of notice to do so. Upon a BLM determination that a lease has expired at the end of its extended term because the well on the leasehold is not capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

C & K Petroleum, Inc., Twin Arrow, Inc., 70 IBLA 354 (Feb. 3, 1983)

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GENERALLY--Continued

The Department is obligated to notify only the lessee of record about the termination of an oil and gas lease for cessation of production. If the lessee has created an interest in any other person, whether by assignment, agreement, or otherwise, such other person must look to the lessee of record to provide notice of the termination of the lease or for redress if such notice is not provided.

KernCo Drilling Co. et al., 71 IBLA 53 (Feb. 22, 1983)

A noncompetitive over-the-counter oil and gas lease issued with stipulations of which the offeror has had no prior notice, either actual or constructive, constitutes, in legal effect, a counter offer which will not preclude offeror from withdrawing his offer within 30 days of receipt of the lease and stipulations.

Robert P. Schafer, 71 IBLA 191 (Mar. 14, 1983)

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Impel Energy Corp., 71 IBLA 237 (Mar. 18, 1983)

Where, pursuant to 43 CFR 3112.4-1, BLM sends notice by certified mail to a simultaneous oil and gas lease applicant at her record address that she must execute and return the enclosed lease form with the required stipulations and rental, and the notice is returned to BLM marked "Unclaimed" by the Postal Service, and where nondelivery did not occur as a result of the negligence of the Postal Service, the applicant is considered to have been served at the time of return to BLM by the Postal Service of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the notice.

Michele M. Dawursk, 71 IBLA 343 (Mar. 28, 1983)

Where, pursuant to 43 CFR 3112.4-1, BLM sends notice by certified mail to a simultaneous oil and gas lease applicant at his record address that he must execute and return the enclosed lease form with the required stipulations and rental, and the notice is returned to BLM marked "Unclaimed" by the Postal Service, and where nondelivery did not occur as a result of the negligence of the Postal Service, the applicant is considered to have been served at the time of return to BLM by the Postal Service of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the notice.

Robert A. Cambridge, 72 IBLA 66 (Apr. 12, 1983)

Where, pursuant to 43 CFR 3112.4-1, BLM sends notice by certified mail to a simultaneous oil and gas lease applicant at his record address that he must execute and return the enclosed lease form with the rental, and the delivery stub shows the date the first attempted delivery was made but has no date for the second attempted delivery, and the Postal Service held the BLM notice for the required time, negligence by the Postal Service is not established; appellant was constructively served and thus had notice, and as he

NOTICE--Continued

GENERALLY--Continued

failed to pay the rental within the required 30 days, BLM correctly rejected appellant's oil and gas lease application.

William F. Heins III, 74 IBLA 133 (June 30, 1983)

Estoppel will not lie against the Government where the record establishes that a party is properly chargeable with knowledge of the true facts, regardless of whether those facts were actually known by that party.

Celeste C. Grynberg, 74 IBLA 180 (July 18, 1983)

Where documents sent to a prospective oil and gas lease offeror are returned because the addressee has moved, and, on appeal from a rejection of his application for failure to submit an offer and tender the first year's rental, the applicant establishes that he had left a current forwarding address with the postal authorities, the provisions of 43 CFR 1810.2(b) relating to constructive receipt do not apply, and the rejection of the application will be reversed.

L. Lee Horschman, 74 IBLA 360 (July 28, 1983)

The failure of an Administrative Law Judge to give proper notice of an Indian probate hearing will be held to excuse a party's failure to attend the hearing and to present evidence.

Estate of Richard Evans Walker, 12 IBIA 44 (Oct. 28, 1983)

The Bureau of Land Management's transmission of a decision to a person's address of record by certified mail constitutes constructive service even though the attempt by the post office to deliver the document at that address was unsuccessful. Such delivery meets the requirements of the regulations governing communications by mail, 43 CFR 1810.2(b).

Red Rock Golf & Recreational Ass'n, Inc., 77 IBLA 87 (Nov. 9, 1983)

When, pursuant to 43 CFR 3112.4-1, BLM sends notice by certified mail to a simultaneous oil and gas applicant at the address of record that the executed lease agreement and rental must be returned to BLM within 30 days of receipt, and the notice is returned to BLM marked "UNCLAIMED" by the Postal Service, and where nondelivery did not occur as a result of negligence of the Postal Service, the applicant is considered to have been served at the time BLM receives the returned, undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the notice. A tender of the lease agreement by the applicant more than 30 days subsequent to the date of constructive delivery is properly rejected.

Tom Hurd, 80 IBLA 107 (Apr. 3, 1984)

With respect to a known party claiming a property interest adversely affected by a decision to issue conveyance under the Alaska Native Claims Settlement Act, both the regulations at 43 CFR 2650.7 and the requirements of due process mandate an effort to serve notice of the decision, coupled with a 30-day appeal period from date of service. Where such a party files a notice of appeal within 30 days of service of the decision, but not within 30 days of publication of

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GENERALLY--Continued

that decision in the Federal Register, it is error for the Bureau of Land Management to dismiss the appeal as untimely.

Goodnews Bay Mining Co., et al., 81 IBLA 1 (May 14, 1984)

"Last address of record." For the purposes of 43 CFR 1810.2(b), in the context of BLM's processing of a lease application, the address stated on the application is to be used as the "last address of record" unless the applicant has filed written notice of a change of address with the BLM office where the application was filed.

When BLM mails a decision to a lease applicant at an address other than the applicant's address of record, BLM cannot attribute constructive notice of the decision to the applicant under the provisions of 43 CFR 1810.2(b).

Victor M. Onet, Jr., 81 IBLA 144 (May 31, 1984)

Where a competitive oil and gas lease imposes additional stipulations without prior notice to the offeror, the offeror may accept or reject the lease containing the additional stipulations. The imposition of additional stipulations without notice to the offeror defers the 15-day period in 43 CFR 3132.5(e) until the offeror has notice of the stipulations to be included in the lease.

Texaco U.S.A. et al., 82 IBLA 61 (July 11, 1984)

Shell Oil Co. et al., 83 IBLA 22 (Sept. 21, 1984)

Where the record in a case establishes that the person authorized by a Native group to act as its agent had actual notice of a certificate of ineligibility for such group, and that the notice of appeal was not transmitted within 30 days of such notice, the notice of appeal must be dismissed. The timely filing of a notice of appeal is jurisdictional, and the Board has no authority to waive a jurisdictional requirement.

Nabesna Native Corp., Inc. (On Reconsideration), 83 IBLA 82 (Sept. 28, 1984)

A motion to dismiss an appeal on the grounds that the appellant failed to file a timely notice of appeal within 30 days of actual notice of the BLM decision will be denied where there is no evidence in the record of when the appellant had such notice.

Sharon Long et al., 83 IBLA 304 (Oct. 30, 1984)

BLM may approve a petition for reinstatement, filed under sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 188(d), (e) (1982), for a noncompetitive oil and gas lease, which terminated automatically prior to Jan. 12, 1983, for failure to pay the annual rental on or before the lease anniversary date where the lessee has complied with the statutory requirements for reinstatement. In cases where petitions have been filed prior to publication of the requirement to pay back rentals at the new rate of $5 per acre, or notification of that requirement by BLM, petitioner is properly given an opportunity to tender the additional amount required.

Robert P. Creson, 83 IBLA 362 (Nov. 15, 1984)

NOTICE--Continued

GENERALLY--Continued

The Surface Disturbance Notice (N-2) is not a stipulation; it is merely notice to the oil and gas lessee that prior to disturbing the surface of the leased lands, it should contact the surface managing agency. Such notice may be included in a noncompetitive oil and gas lease by BLM without the consent of the offeror.

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation relating to cultural resource protection, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where the offeror files a timely objection within 30 days of receipt of the lease, and seeks cancellation of the lease and return of the first year's rental, it is improper to deny such request.

Robert & Frances Kunkel, 84 IBLA 140 (Dec. 11, 1984)

CONSTRUCTIVE NOTICE

In the absence of evidence of actual knowledge that a lease offer was made in violation of the regulations, reliance by an assignee of the lease on the Bureau of Land Management decision to issue the lease is not unreasonable and will support assignee's claim of bona fide purchaser status where there is no pending inquiry, protest, or appeal proceeding.

David Burr et al., 56 IBLA 225 (July 22, 1981)

Where an authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. 43 CFR 1810.2.

Larry L. Lovenstein, 57 IBLA 95 (Aug. 25, 1981)

With respect to a known party claiming a property interest adversely affected by a decision to issue conveyance under the Alaska Native Claims Settlement Act, both the regulations at 43 CFR 2650.7 and the requirements of due process mandate an effort to serve notice of the decision, coupled with a 30-day appeal period from date of service. Where such a party files 1 notice of appeal within 30 days of service of the decision, but not within 30 days of publication of that decision in the Federal Register, it is error for the Bureau of Land Management to dismiss the appeal as untimely.

Goodnews Bay Mining Co., et al., 81 IBLA 1 (May 14, 1984)

Where BLM mails a notice to a first-drawn applicant in a simultaneous oil and gas lease drawing requiring the applicant to submit a lease offer and tender the first year's rental in accordance with 43 CFR 3112.4-1(a), the applicant will be deemed to have received the notice if it was sent to the applicant's last address of record, regardless of whether it was in fact received by him. However, when a letter is returned to BLM as undeliverable, BLM should examine the case record to see if it contains an updated address. If an updated address would be found upon proper examination, the notice must be sent to the new address to effect service.

Stephen C. Ritchie, 81 IBLA 162 (May 31, 1984)

OFFICERS AND EMPLOYEES
(See also Federal Employees & Officers--if included in this Index.)

The presumption of regularity supports the acts of public officers and, in the absence of clear evidence to the contrary, they are presumed to have properly discharged their official duties.

Don Cook, 60 IBLA 255 (Dec. 4, 1981)

In the Department's appellate process involving review of decisions made by subordinate officers and employees, the Secretary, or an appeals board with authority to act as fully and finally as might the Secretary, is not so limited in the scope of review and decisionmaking as to be required to affirm such decisions as are supported merely by "substantial evidence" or which are perceived not to be arbitrary or capricious, unless such a limitation on the scope of appellate review has been imposed by the Secretary himself in a duly promulgated regulation or he has been so constrained by enacted law. Otherwise, the Secretary, as chief executive officer of the Department with full supervisory powers, has plenary authority to review de novo all official actions and to decide appeals on the basis of a preponderance of the evidence in cases involving substantive rights, or on the basis of public policy or public interest in cases involving the exercise of discretion.

United States Fish & Wildlife Service, 72 IBLA 218 (Apr. 25, 1983)

OIL AND GAS

GENERALLY

Where lessee's approved application to drill is conditioned upon agreement to recontour the drill site cut into a 65% slope "as much as possible to the original form," the obligation to comply is contractual, and the lessee will not be excused from compliance because of its objection that the value of the land does not justify the cost of recontouring, or on the basis that it believes the fill material will erode away, but BLM does not agree. In the circumstances, BLM's requirement to recontour to a 35% slope to partially fill the cut is not unreasonable.

Fuel Resources Development Co., 84 IBLA 17 (Nov. 26, 1984)

OIL AND GAS LEASES
(See also Mineral Leasing Act, Outer Continental Shelf Lands Act--if included in this Index.)

GENERALLY

The Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

John C. Efird, 45 IBLA 84 (Jan. 17, 1980)

M. S. Mack, 45 IBLA 99 (Jan. 17, 1980)

Bernard Concorelli, 46 IBLA 53 (Feb. 20, 1980)

Harry Ptasynski, 48 IBLA 246 (June 17, 1980)

Southern Union Exploration Co., 51 IBLA 149 (Nov. 26, 1980)

William C. Welch, 60 IBLA 248 (Dec. 4, 1981)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Harold B. Leeds, 60 IBLA 383 (Dec. 23, 1981)

It is proper for the authorized officer of the Bureau of Land Management to reject an offer for an oil and gas lease for lands, the title of which is in controversy.

David A. Provinse, 45 IBLA 111 (Jan. 23, 1980)

Where on appeal from rejection of a simultaneous oil and gas lease offer, it is alleged that the offer designated "Milner Productions" was actually submitted on behalf of a sole proprietorship, and the drawing entry card does not show the last name, first name, and middle initial of an individual offeror, the lease offeror will be deemed unqualified under 30 U.S.C. § 181 (1976), and the offer not fully executed under 43 CFR 3112.2-1(a).

Tom Milner, 45 IBLA 119 (Jan. 23, 1980)

Where an offer for a noncompetitive oil and gas lease for acquired lands contains a defective description of the lands sought and prior to lease issuance a second offer is filed correctly describing the same lands, the lease must be cancelled to the extent of the conflict in the two offers.

Sam P. Jones, 45 IBLA 208 (Jan. 30, 1980)

Lands within a proposed addition to the National Desert Wildlife Range are not subject to noncompetitive oil and gas leasing because the proposed withdrawal, if effective, would preclude oil and gas leasing, the same as the existing withdrawal.

Tucker & Snyder Exploration, Inc., 45 IBLA 248 (Feb. 4, 1980)

Noncompetitive oil and gas leases extended beyond their primary term pursuant to 43 CFR 3107.4-3 expire by operation of law at the end of the extension unless one of the statutory grounds for extension is established.

Duncan Miller, 46 IBLA 285 (Mar. 27, 1980)

The Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), expressly precludes leasing in national parks and national monuments. Therefore, the Department of the Interior has no authority to issue an oil and gas lease for lands in the Death Valley National Monument and an offer to lease land within the monument must be rejected.

Fred B., Anna B., and Kristine A. Cerminaro, 46 IBLA 301 (Mar. 31, 1980)

Fred B. Cerminaro, 52 IBLA 116 (Jan. 13, 1981)

Where the offeror designated on a drawing entry card (DEC) is "Energy Investment Co.," allegedly a sole proprietorship, but the DEC is signed by an individual, who states that he intended to file as an individual, the lease offer is properly rejected because under 30 U.S.C. § 181 (1976), a sole proprietorship is not a qualified offeror and the offer, as an individual's

OIL AND GAS LEASES--Continued

GENERALLY--Continued

offer, has not been properly executed pursuant to the instructions on the DEC.

E. J. Haugen, 47 IBLA 109 (Apr. 28, 1980)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on environmental analysis reports for the Uinta National Forest, special protective stipulations are not unreasonable, per se.

Diane B. Katz, 47 IBLA 177 (May 7, 1980)

Where a question of fact exists as to when accreted land was formed in front of a patented upland lot along the Yellowstone River and whether title to the accreted land is in the United States and, therefore, subject to oil and gas leasing, a hearing may be ordered by this Board pursuant to 43 CFR 4.415.

It is proper for the authorized officer of the Bureau of Land Management to reject an offer for an oil and gas lease for lands, the title of which is in controversy.

Elgin L. E. Johnson, Marilyn Johnson, 47 IBLA 366 (May 21, 1980)

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Vernon and Rita Benson, 48 IBLA 64 (May 29, 1980)

Jack J. Bender, 54 IBLA 375 (May 19, 1981) 88 I.D. 550

Robert G. Lynn, 60 IBLA 117 (Nov. 24, 1981)

Where on appeal from rejection of a first-drawn simultaneous oil and gas lease offer, it is alleged that (1) the offer signed by Katherine H. Dunlap was actually submitted on behalf of Charles L. Dunlap whose name appears on the front of the drawing entry card, (2) the front does not show the last name, first name, and middle initial of Katherine Dunlap as offeror, and (3) Charles Dunlap did not submit the information required under 43 CFR 3102.7, the offer will be deemed not fully executed and must be rejected under 43 CFR 3112.2-1(a).

Charles L. Dunlap, 48 IBLA 136 (May 30, 1980)

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental due is $1,863, the offer will be disqualified under 43 CFR 3112.4-1 when the offeror submits a check for only $1,836 within the time required, but fails to submit the $27 deficiency within the allowed time.

Edward Goodman, 48 IBLA 152 (June 9, 1980)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Under 30 U.S.C. § 188(b) (1976), an oil and gas lease issued after Aug. 21, 1935, under the provisions of 30 U.S.C. § 226 (1976), is subject to cancellation by the Secretary for lease violation unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas. A lease known to contain such deposits is subject to cancellation in accordance with 30 U.S.C. § 184(h)(1) (1976), which requires a proceeding in Federal district court instituted by the Attorney General.

Hoarter Consulting Corp., 48 IBLA 166 (June 9, 1980)

Sec. 28 of the Mineral Leasing Act of 1920, 30 U.S.C. § 185 (1976), is not applicable to on-lease oil and gas production facilities which are included in a surface use and operations plan, and which are authorized by the approval of an application to conduct leasehold operations or construction activities.

Sec. 29 of the Mineral Leasing Act of 1920, 30 U.S.C. § 186 (1976), has consistently been interpreted as not providing authority separate from sec. 28 of the Mineral Leasing Act, 30 U.S.C. § 185 (1976), for oil and gas pipeline rights-of-way. Instead, it reserves to the United States the right to allow other rights-of-way or to lease other minerals on Federal land already leased for the extraction of one mineral, and allows the reservation of the right to dispose of the surface of land leased for mineral extraction "insofar as said surface is not necessary to the use of the lessee in extracting and removing deposits thereon."

The Secretary has broad power to regulate all on-lease activities by oil and gas lessees and operators pursuant to the conditions contained in oil and gas leases and his general regulatory authority under the Mineral Leasing Act. The procedures for regulating activities on oil and gas leases, established under Secretarial Order 2948 and the BLM-USGS Cooperative Procedures Agreement implementing that order, reserve to the Department the authority to protect the United States legal interests in the property. The Secretary has broad discretion either to continue this procedure, or to substitute any other delegation of his authority and any other reasonable regulatory procedure which he concludes would equally protect the United States interests.

All facilities related to an oil and gas lease which are located on Federal land outside the lease, regardless of their nature, may be constructed only after appropriate rights-of-way have been granted. Similarly, on-lease oil and gas transportation facilities and on-lease commercial facilities require rights-of-way. Depending on the nature of the facility, the right-of-way would be granted pursuant to either sec. 28 of the Mineral Leasing Act of 1920, 30 U.S.C. § 185 (1976), or Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976).

Right-of-Way Requirements for Gathering Lines and Other Production Facilities Located Within Oil and Gas Leaseholds, M-36921 (June 19, 1980) 87 I.D. 291

The Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis in evaluating a lease bid.

Where, following remand because the record fails to disclose a rational basis for rejection of the high bid at a competitive oil and gas sale, the Geological

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Survey supplies the factual basis and a reasoned analysis supporting the conclusion that the bid is inadequate, BLM may so conclude and properly reject the bid.

Ojai Oil Co., 49 IBLA 33 (July 21, 1980)

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental is due within 15 days from the receipt of notice that such payment is due, the offer will be disqualified under 43 CFR 3112.4-1 when the rental is not received in the proper office within 15 days from the receipt of notice that such payment is due.

Where payment must be accomplished within a specific number of days from receipt of notice, that number includes holidays and weekends which occur in the interim unless it is provided otherwise.

Gordon E. Jacober, 49 IBLA 91 (July 22, 1980)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease for an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days of receipt of notice that such payment is due.

Earl F. Hartley, 49 IBLA 140 (July 30, 1980)

A determination by the Geological Survey that lands are within an undefined known geologic structure will not be disturbed in the absence of a clear showing that the determination was improperly made.

CO2-In-Action, Inc., 50 IBLA 54 (Sept. 15, 1980)

Ambra Oil and Gas Co., 50 IBLA 67 (Sept. 22, 1981)

When land has previously been included in a lease that has been canceled, it is available for subsequent leasing only in accordance with the provisions of the simultaneous filing system provided under 43 CFR 3112.

David A. Provinse, 50 IBLA 271 (Oct. 6, 1980)

It is proper for the Bureau of Land Management to reject and over-the-counter offer for an oil and gas lease of land formerly included in a lease which expired by operation of law at the end of its primary term, because under 43 CFR 3112.1-1 land in an expired lease is subject to the filing of new lease offers only in accordance with simultaneous filing procedures.

Martha S. Findeiss, 50 IBLA 359 (Oct. 16, 1980)

Although under the Departmental regulations a competitive bidder in an oil and gas lease sale, must, where there is another party in interest, submit the signed statements required by 43 CFR 3102.7, failure to comply with the regulation does not require rejection of the bid. This result follows because in noncompetitive offerings the critical element is determining the first qualified offeror. For competitive bidding, the

OIL AND GAS LEASES--Continued

GENERALLY--Continued

amount of the bid replaces priority of filing as the dominant factor.

Black Hawk Resources Corp., 50 IBLA 399 (Oct. 24, 1980) 87 I.D. 497

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

A noncompetitive oil and gas offer to lease must be rejected where either before or after the filing of the offer and prior to the time of the issuance of the lease the land is determined to be within the known geologic structure of a producing oil or gas field.

James Huslov, Sr., 51 IBLA 19 (Oct. 28, 1980)

Where BLM incorporates by reference a Geological Survey memorandum into its decision rejecting a competitive oil and gas lease offer and where such memorandum was the principal basis on which the decision rejecting the offer was made, the memorandum must be made available to the offeror.

Southern Union Exploration Co., 51 IBLA 89 (Nov. 5, 1980)

In the event that some of the land applied for in an oil and gas lease offer was unavailable, the applicant was entitled to a refund of excess rental paid, and failure of BLM to return the excess rental to the offeror after the lease issuance and prior to the next annual rental being due and payable does not prevent the lease from terminating by operation of law.

Wilfred Plouis, 51 IBLA 125 (Nov. 20, 1980)

Where BLM sends by certified mail a notice to an offeror at his record address that he must file a certificate as to his qualification to hold an oil and gas lease, and the letter is returned to BLM marked "Not Deliverable as Addressed, Unable to Forward," and it is established that nondelivery was due to post office error, the appellant will not be considered to have received notice, and the rejection of the lease offer will be set aside.

Brooks Griggs, 51 IBLA 232 (Dec. 15, 1980) 87 I.D. 612

The grant of an oil and gas permit under the Mineral Leasing Act, 30 U.S.C. § 181 (1976), prior to the location of a mining claim in 1929 precludes, as long as the permit is in force, the appropriation of land therein included under the mining laws.

United States v. Ernest Higbee et al., 52 IBLA 83 (Jan. 9, 1981)

A BLM determination disqualifying a first-drawn oil and gas lease offer for an applicant's failure to furnish additional evidence will be set aside where it appears that in unnecessarily mailing the request to furnish additional evidence "Restricted Delivery," BLM effectively precluded the communication from reaching the applicant.

Betty Alexander, 53 IBLA 139 (Mar. 9, 1981)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

The MLA refers only to "gas" or "natural gas" without any qualifying adjectives, thus supporting a nonrestrictive reading of those terms to include coalbed gas. Coalbed gas is leasable under the oil and gas leasing provision of the MLA, 30 U.S.C. § 226 (1976).

Ownership of and Right to Extract Coalbed Gas in Federal Coal Deposits, M-36935 (May 12, 1981) 88 I.D. 538

Adjudication of an appeal before the Board of Land Appeals is necessarily based on the information included in the case file. Where there is nothing in the case file to support BLM's basis for rejecting an oil and gas lease offer, BLM's decision rejecting the offer will be reversed.

Patricia B. Amorose, 55 IBLA 190 (June 16, 1981)

A cashier's check is an acceptable form of remittance for payment of the filing fee accompanying a simultaneous oil and gas lease offer under 43 CFR 3112.2-2. A cashier's check is a draft drawn by a bank upon itself, issued by an authorized officer of the bank, and directed to another person. Where a check submitted as a filing fee appears on its face to be a valid cashier's check, a Bureau of Land Management decision refusing such a check will be reversed and the case remanded to BLM.

Eva McGhee, William J. Bott, 55 IBLA 292 (June 26, 1981)

Filing fees submitted in the form of an instrument drawn by a bank on its own assets, and which is signed by an officer of the bank and is a direct obligation of the issuing bank are acceptable under 43 CFR 3112.2-2.

Eloise Miller, David Miller, 56 IBLA 7 (June 30, 1981)

Failure of the high bidder at a competitive oil and gas lease sale to execute a lease results in forfeiture of the deposit submitted with the high bid. Refund of the deposit because offeror elects after the sale to withdraw his offer is not allowed.

Howell Spear, 56 IBLA 151 (July 20, 1981)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect the wilderness characteristics of the land pending a study as required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulations are not unreasonable, per se.

John R. Anderson, 57 IBLA 149 (Aug. 25, 1981)

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear showing that the determination was improperly made, nor will the applicable rental be reduced without such showing.

Roy L. McKay, 57 IBLA 401 (Sept. 14, 1981)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

The provisions of 43 CFR 3102.5-2 must be strictly construed and where an oil and gas lease applicant or his agent fail to comply therewith, the application must be rejected.

Bernard S. Stoerger, 60 IBLA 67 (Nov. 19, 1981)

Where on appeal from rejection of a simultaneous oil and gas lease offer, it is alleged that the offer designated "J.F.C. Oil & Gas" was actually submitted on behalf of a sole proprietorship, and the drawing entry card does not show the last name, first name, and middle initial of an individual offeror, the lease offeror will be deemed unqualified under 30 U.S.C. § 181 (1976), and the offer not fully executed under 43 CFR 3112.2-1(a) (1979).

J.F.C. Oil and Gas, 60 IBLA 191 (Nov. 27, 1981)

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened. The Department is authorized to accept only the offer of the first-qualified applicant, one who has fully complied with all the regulations.

Jeff Co., 61 IBLA 74 (Dec. 31, 1981)

John F. Jacobs, 66 IBLA 219 (Aug. 16, 1982)

Where the offerors designated on an offer to lease for oil and gas are "McClain Hall and Arthur R. Frank, d/b/a Frank's Surface Radiation Evaluations" and the offer form is signed by the named individuals who state that they intend to file as individuals, the lease offer is proper since it is possible to determine the full names of the offerors and the words "d/b/a Frank's Surface Radiation Evaluations" should have been treated as surplusage.

McClain Hall, Arthur R. Frank, 61 IBLA 202 (Jan. 26, 1982)

Federal statutes governing mineral leasing on the public lands, and regulations duly promulgated pursuant thereto, supersede state laws governing agency relationships to the extent of any inconsistency therewith for purposes of determining the first-qualified offeror for a Federal oil and gas lease.

LSNJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

LSNJ Exploration Group, 74 IBLA 185 (July 18, 1983)

LBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

Where an oil and gas lease applicant who is an employee, but not a client of a leasing service and has no agreement with the leasing service, uses the service's parcel selection information to complete her application, the leasing service is not her agent within the meaning of 43 CFR 3102.2-6 and the documents required by that regulation need not be filed.

Lillian E. Pinkles, 63 IBLA 81 (Mar. 30, 1982)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened.

Ispel Energy Corp., 64 IBLA 92 (May 12, 1982)

The provisions of 43 CFR 3102.6-2 must be strictly construed and where an oil and gas lease applicant or his agent fails to comply therewith by neglecting to include a list of clients' names and addresses, the application must be rejected.

Daniel D. Wyles, 64 IBLA 339 (June 10, 1982)

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is then in the fact-finder's hands free from any rule. Where BLM has rejected oil and gas lease applications because of alleged failure of applicant to have filed the proper and complete corporate qualifications, and appellant adduces evidence in support of its contention that the documents were in fact timely filed, preponderance of the evidence decides the case. Appellant in this case has carried its burden of proof of showing that BLM most probably received the documents.

Pennzoil Co., 64 IBLA 392 (June 17, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect bighorn sheep habitat in an area where it is hoped that these animals will be reestablished, the imposition of protective stipulations will be affirmed.

Ted C. Findeiss, 65 IBLA 210 (June 30, 1982)

Oil and gas leases may be acquired and held only by citizens of the United States, associations of citizens (including partnerships), corporations, and municipalities. The Mineral Leasing Act does not prohibit the creation of joint tenancies when oil and gas leases are issued. Where the two offerors are designated on a competitive oil and gas lease bid as "Turner C. Smith, Jr. and Signe D. Smith, husband and wife, as Joint Tenants, DBA Turner Smith & Associates" and the bid is signed by each person individually, the bid is acceptable in that form since it is possible to determine the full names of the offerors.

Although, under the Departmental regulations in effect at the time of the sale, a competitive bidder in an oil and gas lease sale, where there are other parties in interest, was required to submit the signed statements required by 43 CFR 3102.2-7 (1981), failure to comply with the regulation does not require rejection of the bid. Whereas, in noncompetitive offerings, the critical element is determining the first qualified offeror, in competitive bidding, the amount of the bid replaces priority of filing as the dominant factor.

Turner C. Smith, Jr., Signe D. Smith, 66 IBLA 1 (July 23, 1982) 89 I.D. 386

OIL AND GAS LEASES--Continued

GENERALLY--Continued

It is proper for the Bureau of Land Management to reject an over-the-counter offer for an oil and gas lease of land formerly included in a lease which expired by operation of law, because under 43 CFR 3112.1-1 such land is subject to leasing only under the simultaneous filing system, 43 CFR Subpart 3112.

Todd S. Welch, 66 IBLA 350 (Aug. 26, 1982)

Minerals Management Service is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

L. B. Blake, 67 IBLA 103 (Sept. 15, 1982)

The provisions of 43 CFR 3102.2-6 must be strictly construed and where an oil and gas lease applicant or his agent fails to comply therewith, the application must be rejected.

Alvin B. Gendelman, 67 IBLA 333 (Oct. 1, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect bighorn sheep habitat, the imposition of protective stipulations will be affirmed.

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect the wilderness characteristics of the land pending a study as required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulations are not unreasonable, per se.

Ida Lee Anderson, John R. Anderson, 67 IBLA 340 (Oct. 5, 1982)

Minerals Management Service is the Secretary's technical expert in matters concerning geological evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

The bids received at a sale of competitive oil and gas leases on any parcel do not necessarily represent an accurate test of fair market value, as bidders may consider other factors in making their bids.

Mary M. Gonzales, 67 IBLA 351 (Oct. 5, 1982)

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record shows that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper Departmental purposes, a decision requiring the stipulations will be affirmed.

Ted C. Findeiss, 68 IBLA 167 (Oct. 29, 1982)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Where an application is drawn first in a simultaneous oil and gas lease drawing and the applicant is notified by the Bureau of Land Management that the rental due is $61, the application will be disqualified and rejected under 43 CFR 3112.4-1 and 3112.6-1, when the applicant submits a payment of $60 within the specified time, but fails to submit the $1 deficiency within the allowed time.

J. Gene Everette, 68 IBLA 225 (Nov. 15, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. Rejection of an offer is proper where the record demonstrates leasing might adversely affect sensitive biological species in the Algodones Dunes Outstanding Natural Area.

Eagle Exploration Co., 69 IBLA 96 (Nov. 30, 1982)

An oil and gas offer describing land which cannot be encompassed within a 6-mile square or within an area not exceeding six surveyed sections in length or width is defective and must be rejected.

Richard W. Rowe, 69 IBLA 135 (Dec. 8, 1982)

The provisions of 43 CFR 3102.2-1, 3102.2-4, and 3102.2-6 must be strictly construed and where an oil and gas lease applicant or his agent fails to comply therewith, the application must be rejected.

Westates Group No. 8, 69 IBLA 186 (Dec. 15, 1982)

Where the regulations require an oil and gas lease applicant who is receiving the assistance of any other person or entity which is in the business of providing assistance to participants in a Federal oil and gas leasing program to file a copy of any agreement with such person or entity and the applicant fails to do so, the application properly is rejected.

Howard K. Davis, 70 IBLA 7 (Jan. 6, 1983)

The Minerals Management Service is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

Read & Stevens, Inc., 70 IBLA 377 (Feb. 8, 1983)

A Federal oil and gas lease conveys to the lessee the exclusive right to develop the leased deposits. In view of the exclusivity of this grant, no one may lawfully install equipment for such development on a Federal leasehold unless he holds such authority by or through the lessee.

Another person claiming through or under a lessee has the same right to remove equipment as the lessee himself and must exercise it within the same time period the lessee would have had to do so.

OIL AND GAS LEASES--Continued

GENERALLY--Continued

With regard to oil and gas leases, forfeitures are favored by the law, so that such leases are to be construed liberally in favor of the lessor and provisions for forfeiture strictly enforced.

Where an oil and gas lease limits the lessee's right to remove equipment placed on the lease to a certain period of time following the lease's termination, any equipment left on the leasehold after that period becomes the property of the lessor.

The Department is obligated to notify only the lessee of record about the termination of an oil and gas lease for cessation of production. If the lessee has created an interest in any other person, whether by assignment, agreement, or otherwise, such other person must look to the lessee of record to provide notice of the termination of the lease or for redress if such notice is not provided.

KernCo Drilling Co. et al., 71 IBLA 53 (Feb. 22, 1983)

The Minerals Management Service is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

The bids received at a sale of competitive oil and gas leases on any parcel do not necessarily represent an accurate test of fair market value, as bidders may consider other factors in making their bids.

Harvey E. Yates Co., 71 IBLA 134 (Mar. 9, 1983)

Where BLM informs an offeror for an over-the-counter oil and gas lease that it is prepared to issue a lease provided certain stipulations are signed and returned within 30 days of receipt of BLM's decision, the decision is interlocutory and the 30-day period for filing a notice of appeal will not begin until the compliance period has been concluded.

John R. Anderson, 71 IBLA 172 (Mar. 10, 1983)

A protest to issuance of an oil and gas lease filed after the lease has issued is not timely. Where, however, the "protest" is filed by an individual with subsidiary priority such protest shall be deemed to be an appeal from the rejection of the protestant's application or offer to lease.

Goldie Skodras, 72 IBLA 120 (Apr. 14, 1983)

Patricia C. Alker, 79 IBLA 123 (Feb. 22, 1984)

The provisions of 43 CFR 3102.6-2, relating to filing of a signed statement or copy of a written agreement with persons who assist an applicant in a Federal oil and gas leasing program, are strictly construed. In the event an offeror fails to comply therewith, the offer is properly rejected.

Tyrex Oil Co., 73 IBLA 241 (June 1, 1983)

Minerals Management Service is the Secretary's technical expert in matters concerning geological evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis. However, when the Bureau of Land Management relies on that analysis in rejecting a bid as inadequate, it must

OIL AND GAS LEASES--Continued

GENERALLY--Continued

ensure that a reasoned explanation is provided for the record to support the decision.

The bids received at a sale of competitive oil and gas leases on any parcel do not necessarily represent an accurate test of fair market value, as bidders may consider other factors in making their bids.

Edward L. Johnson, 73 IBLA 253 (June 2, 1983)

An oil and gas lease offer for less than 640 acres of land is properly rejected when the offer fails to include other adjoining lands which were available for leasing at the time the offer was filed, although included in a prior outstanding lease offer.

Edward E. Nichols, 75 IBLA 4 (Aug. 2, 1983)

Minerals Management Service was the Secretary's technical expert in matters concerning geological evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary was entitled to rely on its reasoned analysis. However, when the Bureau of Land Management relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision.

Ambra Oil & Gas Co., 75 IBLA 11 (Aug. 2, 1983)

Where a group of simultaneous oil and gas lease applications was received in Nov. 1982 with a single check to cover the filing fees, it was error for the Bureau of Land Management to deposit the check without first examining the applications to ascertain the adequacy of the amount of the check as required by 43 CFR 3112.5(a)(3) (1982).

Charles Anderson, 76 IBLA 402 (Oct. 27, 1983)

Where a 1941 private oil and gas lease provides that the lease be held by production beyond its 3-year term and where there was no evidence of production beyond 1956 on the leased lands when the Forest Service acquired the lands in 1976, an "assignment" of such lease in 1979 is invalid since the lease terminated when production ceased.

Constitution Petroleum Co., Inc., 78 IBLA 3 (Dec. 12, 1983)

Where a junior offeror challenges the issuance of a lease to a senior offeror on the basis that the senior offer improperly included 320 acres of land not available for noncompetitive leasing and thereby asserts that the lease could have only issued for less than 640 acres of land, the appeal is properly rejected where the record shows that, irrespective of the 320 acres in question, there still remained 640 acres of other public land within the lease offer as required by 43 CFR 3110.1-3(a).

John D. LaRue, 78 IBLA 239 (Jan. 10, 1984)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

The Secretary of the Interior may require an oil and gas lease offeror to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease for land located in a national forest. Where on appeal an offeror registers objections concerning such stipulations, and the Forest Service subsequently clarifies the nature of the stipulations and the offeror raises no further complaints, the imposition of the stipulation will be upheld.

James B. Chudnow, Laurent A. Giesbert, 78 IBLA 317 (Jan. 24, 1984)

43 CFR 3112.1-1 provides that all lands which are not within a known geological structure and are covered by a lease which expires by operation of law are subject to leasing only in accordance with 43 CFR Subpart 3112.

Joe N. Johnson, 78 IBLA 382 (Jan. 31, 1984)

Departmental regulation 43 CFR 3105.6 provides that consolidation of leases may be approved if it is determined that there is sufficient justification. Where appellant has not shown that consolidation would be beneficial to the United States and has not offered any evidence to show that BLM abused its discretion in denying the consolidation, the denial of such request will be affirmed.

Conoco, Inc., 80 IBLA 161 (Apr. 11, 1984) 91 I.D. 181

Where application is made for suspension of unitized oil and gas leases in order to preserve them from expiration pending approval of an application for permission to drill, and where the suspension is granted at the discretion of the authorized officer on condition that permission to drill may be denied upon a finding that drilling operations would result in unacceptable impacts on the wilderness characteristics of the area, an environmental impact statement on the effects of such drilling which fails to consider the alternative of refusing permission to drill is an inadequate basis for a decision to permit drilling.

Sierra Club et al. (On Judicial Remand), 80 IBLA 251 (May 2, 1984)

Where BLM's request for additional information may reasonably be interpreted as not subject to a specific time limit, its rejection of an offer for failure by the offeror to submit the requested materials within 30 days must be reversed.

Two Rich Partnership, 82 IBLA 148 (July 30, 1984)

Departmental regulation 43 CFR 3105.6 (1982) permits consolidation of leases in the interest of conservation. Where, however, some leases sought by appellant to be consolidated were located in a known geologic structure, and some were not, the Bureau of Land Management properly denied consolidation.

Yukasovich Drilling Co., 83 IBLA 9 (Sept. 18, 1984)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

An oil and gas lease application must be rejected pursuant to 43 CFR 3112.2-1(d) (1982) where the applicant uses the address of another person or entity which is in the business of providing assistance to those participating in the simultaneous oil and gas leasing system. Where a person or entity assists oil and gas lease applicants by forming them into partnerships for this purpose, arranging for the filing of their applications by a filing service, receiving remuneration for such services, and by processing and collecting the applicants' mail through the use of a common address; this constitutes assistance to participants in the oil and gas leasing program pursuant to 43 CFR 3100.0-5(d) (1982).

Margaret G. Pascale, 83 IBLA 268 (Oct. 25, 1984)

Pursuant to sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, amending sec. 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1982), the royalty rate imposed on a reinstated oil and gas lease may not be less than 16-2/3 percent unless the Secretary finds that there are uneconomic or other circumstances which could cause undue hardship or premature termination of production, or if in the Secretary's judgment, it would be otherwise equitable to reduce the royalty rate. Where a lessee fails to provide credible evidence of such circumstances, a reduction in the royalty rate below 16-2/3 percent is not justified.

Sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982 provides the Secretary of the Interior with discretionary authority to reinstate terminated leases. Reinstated leases which were terminated for "inadvertent" failure to make timely rental payment shall be subject to the conditions contained in 30 U.S.C. § 188(e) (1982).

Gulf Oil Corp., 83 IBLA 289 (Oct. 25, 1984)

Where lessee's approved application to drill is conditioned upon agreement to recontour the drill site cut into a 65% slope "as much as possible to the original form," the obligation to comply is contractual, and the lessee will not be excused from compliance because of its objection that the value of the land does not justify the cost of recontouring, or on the basis that it believes the fill material will erode away, but BLM does not agree. In the circumstances, BLM's requirement to recontour to a 35% slope to partially fill the cut is not unreasonable.

Fuel Resources Development Co., 84 IBLA 17 (Nov. 26, 1984)

Although Federal oil and gas leasing is subject to extensive supervision by the Secretary of the Interior, and although the Secretary has broad discretion over whether or not to lease particular lands within the public domain, once he has granted the lease he may not derogate the rights of the Federal lessee acquired under the Mineral Leasing Act and the lease granted pursuant thereto.

BLM may not grant to a party, other than the oil and gas lessee, a right-of-way to dispose of salt water by pumping it into the lessee's plugged oil and gas well located on producing leased lands, where the grant effectively precludes lessee's rights to further explore, drill, and develop the leasehold under the lease and the Mineral Leasing Act by utilizing its own well.

Penroc Oil Corp. et al., 84 IBLA 36 (Nov. 27, 1984)

OIL AND GAS LEASES--Continued

GENERALLY--Continued

Pursuant to 30 U.S.C. § 188(b) (1982), when the lessee fails to pay rentals on or before the anniversary date of the lease, and no oil and gas in paying quantities is being produced on the leased premises, the lease shall automatically terminate by operation of law. The Secretary may reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1982), if the full rental is paid within 20 days of the lease anniversary date, and the failure to timely pay the rental was justifiable or not due to a lack of reasonable diligence. Reliance upon receipt of a courtesy notice can neither prevent a lease from terminating by operation of law nor serve to justify a failure to timely pay the rental. When the lessee has actual notice that the rental was due, and the failure to timely pay the rental was due to the lessee's own neglect, the failure to timely pay is neither justifiable nor demonstrative of reasonable diligence. Therefore a petition for reinstatement must be rejected.

Harry L. Beyers, 84 IBLA 158 (Dec. 13, 1984)

ACQUIRED LANDS LEASES

If acquired lands sought for oil and gas leasing have been surveyed under the rectangular system of public land surveys, and their description can be conformed to that system, the lands must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner.

The responsibility of furnishing a proper and adequate description of lands in an oil and gas lease offer is upon the offeror, and any difficulties in ascertaining a proper metes and bounds description do not preclude the requirement that such lands be correctly described.

A description of land applied for in an oil and gas lease offer for acquired lands is proper so long as it meets the requirements of the applicable regulation whether it includes some land not available for lease or omits some that is.

Where an offer for a noncompetitive oil and gas lease for acquired lands contains a defective description of the lands sought and prior to lease issuance a second offer is filed correctly describing the same lands, the lease must be cancelled to the extent of the conflict in the two offers.

Sam P. Jones, 45 IBLA 208 (Jan. 30, 1980)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

Arthur E. Beinhart and Irvin Rubenstein, 46 IBLA 27 (Feb. 20, 1980)

Before an oil and gas lease for Federal acquired lands can issue, the consent of the agency administering the surface is required by statute, and an applicant for such a lease must execute any special stipulations required by the administering agency as a condition to the giving of its consent. In such

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

cases the Department of the Interior has no jurisdiction to waive execution of the special stipulations or to alter the terms thereof.

Thomas Connell, 46 IBLA 331 (Apr. 4, 1980)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Sept. 30, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Irma Spear, 52 IBLA 360 (Feb. 19, 1981)

Where oil and gas deposits in lands acquired by the United States and devoted to use for military purposes become "surplus property" under the Federal Property and Administrative Services Act, such deposits may be leased only under the provisions of that Act, and are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

Where title to the minerals in a tract of acquired land which is the subject of an oil and gas lease offer cannot be determined from records in the possession of the BLM, the burden is on the applicant to search the land records to ascertain the chain of title and establish the eligibility of the tract for leasing. Applicant may be required to furnish evidence from the county recorder's office in the nature of a title abstract sufficient to allow BLM to determine the status of title to the oil and gas in the tract sought for leasing. Rejection of the offer in the exercise of the Secretary's discretion over leasing is proper where an applicant declines to provide such information.

Where there is uncertainty regarding title to the oil and gas in an acquired land tract embraced in an oil and gas lease offer, and the evidence provided by the applicant does not provide a sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the BLM. However, if the applicant provides new evidence on appeal tending to show the existence of a Federal interest in the oil and gas in the tract, the case may be remanded for consideration of the new evidence.

Edward C. Shepardson, 53 IBLA 79 (Mar. 2, 1981)

Where a regulation allows land description by legal subdivision, section, township and range, by metes and bounds, and by "tract acquisition numbers," but is insufficiently clear to allow a determination as to when one, rather than another of these methods of description should be used, an oil and gas lease offeror who has described the lands sought by tract acquisition numbers will not be held to have lost his statutory preference right for failure to comply with the regulation if the description afforded is accurate for the purpose.

Walter R. Wilson, Jr., 55 IBLA 96 (June 1, 1981)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

Dennis Harris, 55 IBLA 280 (June 25, 1981)

Rachalk Production, Inc., 64 IBLA 6 (May 3, 1982)

A noncompetitive oil and gas lease offer for acquired land within the boundaries of the Fort Laramie National Historic Site administered by the National Park Service is properly rejected since the Mineral Leasing Act for Acquired Lands specifically excludes lands within national parks or monuments from its terms.

Ed Pendleton, 57 IBLA 146 (Aug. 25, 1981)

Where an acquired lands noncompetitive oil and gas lease offer is partially rejected on the basis of a recommendation made by the Bureau of Reclamation and merely concurred in by the Forest Service and on appeal the offeror alleges that the present policy of the Bureau of Reclamation is to lease with appropriate stipulations and the record fails to support adequately the original recommendation, the case will be remanded in order to determine whether a lease may issue for such lands.

Endres E. Hartley, 57 IBLA 293 (Aug. 31, 1981)

Acquired lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, while the offer is pending, the land is determined to be within a known geologic structure.

R. L. Mulholland, 61 IBLA 175 (Jan. 26, 1982)

Elcoea, Inc., 68 IBLA 130 (Oct. 28, 1982)

It is improper for the Bureau of Land Management to reject a noncompetitive oil and gas lease offer for acquired lands where the offer is an "exact reproduction" of the approved offer form except that it is on white, rather than yellow, paper and it bears a notation stating that it is a reproduction.

Texas Oil and Gas Corp., 61 IBLA 312 (Feb. 4, 1982)

Where 43 CFR 3101.2-3(b)(3) allows the use of the acquisition number assigned by the acquiring agency to identify the tract sought to be leased, as shown on a map accompanying the offer, an acquired lands oil and gas lease offer with such tract description and accompanied by such map is acceptable.

Moran Exploration, Inc., 63 IBLA 392 (Apr. 30, 1982)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in an oil and gas lease offer be obtained prior to the issuance of a lease for such land. Absent such consent, the Department of the Interior is without authority to issue a lease.

Altex Oil Corp., Rocky Energy, Inc., 66 IBLA 307 (Aug. 24, 1982)

Joseph C. Hanna, 71 IBLA 187 (Mar. 10, 1983)

Florence Wentworth, 72 IBLA 248 (Apr. 27, 1983)

Robert G. Lynn, 72 IBLA 355 (Apr. 29, 1983)

Altex Oil Corp., 73 IBLA 73 (May 17, 1983)

Joe E. Shelton, 73 IBLA 250 (June 2, 1983)

Frederick L. Smith, 78 IBLA 345 (Jan. 25, 1984)

Where minerals not owned by the United States have been leased for oil and gas purposes under the terms of the Mineral Leasing Act for Acquired Lands, the lease must be canceled because only acquired minerals owned by the United States are subject to leasing under the Act.

R. L. Mulholland, 67 IBLA 14 (Sept. 3, 1982)

It is proper to reject an oil and gas lease submitted for less than an entire tract of acquired land, not surveyed under the rectangular system of public land surveys, where the boundary of the tract is not described by course and distance between the successive angle points of the boundary of the tract. Where there is an exclusion of an area within the boundary of the tract, the exclusion must likewise be described by course and distance between its angle points.

Chevron, U.S.A., Inc., 67 IBLA 266 (Sept. 27, 1982)

Katherine C. Thoux, 69 IBLA 391 (Jan. 4, 1983)

Where 43 CFR 3101.2-3(b)(3) allows the use of the acquisition number assigned by the acquiring agency to identify the tract sought to be leased, an acquired lands oil and gas lease offer using such a description must be accompanied by a map clearly marked showing the location of the requested lands or the offer will be rejected.

Yester Songer, 69 IBLA 177 (Dec. 15, 1982)

Under sec. 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1976), the Secretary of the Interior is without authority to waive compliance with a condition imposed by the agency having jurisdiction over the acquired lands as a prerequisite to giving its consent to issuance of a noncompetitive oil and gas lease. Moreover, the Department has no authority to require that the agency provide a rational justification for imposition of the condition.

Amoco Production Co., 69 IBLA 279 (Dec. 21, 1982)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

An offer to lease acquired lands for oil and gas which cannot be embraced within a 6-mile square or within an area not exceeding six surveyed sections is defective and unless the exception expressed in 43 CFR 3110.1-3(b) applies, should be rejected.

Yester Songer, 69 IBLA 296 (Dec. 23, 1982)

An acquired lands oil and gas lease offeror may properly be required to furnish the Bureau of Land Management with certain title information from the county recorder's offices as a precondition to lease issuance if the Bureau has insufficient title information. However, where the oil and gas plat bears the notation that the United States holds a 50 percent mineral interest, it is unreasonable for the Bureau to require the offeror to submit information from the county records to establish the 50 percent mineral interest in the United States without first attempting to verify its records.

James B. Chudnow, 70 IBLA 150 (Jan. 18, 1983)

It is proper to reject an acquired lands oil and gas lease offer submitted for less than an entire tract of acquired lands, not surveyed under the rectangular system of public land surveys, where the boundary of the land sought is not described by course and distance between each successive pair of angle points of the boundary of the tract.

Thomas Connell, 70 IBLA 289 (Jan. 27, 1983)

An acquired lands oil and gas lease offer is properly rejected when the metes and bounds description in the offer is stated as starting from corner 1 of tract S-18, when in actuality, the metes and bounds description originates from corner 2 of tract S-18. BLM is not required to alter, modify, or correct the metes and bounds description in an over-the-counter acquired lands oil and gas lease offer in order to resolve a disparity in the land description.

Thomas Connell, 70 IBLA 292 (Jan. 27, 1983)

It is proper to reject oil and gas lease offers for less than an entire tract of acquired lands that are not surveyed under the rectangular system of public land surveys, where the desired lands are neither described in the offers by metes and bounds, as in the deed by which the United States acquired title to them, nor described by courses and distances between successive angle points, tying by course and distance into the description of the lands in the deed.

Hapco Production Co., Inc., 70 IBLA 339 (Feb. 2, 1983)

Under 43 CFR 3101.2-3(c) an offer or application for accreted lands not described in the deed to the United States, must include a description by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions appertain.

Paul C. Kohlman, Lee E. McDonald, 71 IBLA 357 (Mar. 28, 1983)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over the acquired land described in the lease offers be obtained prior to the issuance of leases for such land. Where the Corps of Engineers does not consent to lease lands noncompetitively, but indicates a willingness to lease competitively, the Department of the Interior is without authority to lease the lands noncompetitively.

Sam P. Jones, 74 IBLA 242 (July 19, 1983)

A noncompetitive oil and gas lease offer for an undivided one-half interest in acquired land must be rejected where the land has been determined to be within the known geologic structure of a producing oil or gas field, even when leasing might be considered in the public interest because the offeror is the owner of the other one-half interest.

North D. Ware, Gail L. Ware, 74 IBLA 256 (July 22, 1983)

It is proper to reject an oil and gas lease offer submitted for a tract of acquired land, not surveyed under the rectangular system of public land surveys, where the boundary of the tract is not described by course and distance between the successive angle points on the boundary of the tract.

The responsibility of furnishing a proper and adequate description of lands in an oil and gas lease offer is upon the offeror, and difficulties in ascertaining a proper metes and bounds description do not preclude the requirement that such lands be correctly described.

Husky Oil Co., 74 IBLA 264 (July 25, 1983)

An over-the-counter oil and gas lease offer which describes acquired land by tract acquisition number must be accompanied by a map showing the location of the requested lands or the offer will be rejected.

Bob W. Howard, 75 IBLA 133 (Aug. 15, 1983)

A BLM decision rejecting a noncompetitive oil and gas lease offer for acquired lands, because the mineral estate was reserved by the grantor when the land was conveyed to the United States, will be affirmed on appeal where the offeror, who asserts that the mineral estate has vested in the United States under the Michigan Dormant Minerals Act, fails to submit any evidence in support thereof.

Space Investors, 75 IBLA 183 (Aug. 22, 1983)

An oil and gas lease offer for acquired lands is properly rejected where it contains an incomplete land description, specifically, the failure to specify the section as required by 43 CFR 3101.2-3(a).

William R. Bayliss, 76 IBLA 165 (Sept. 27, 1983)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

The Act establishing the Flaming Gorge National Recreation Area requires that any oil and gas lease or permit be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe. 16 U.S.C. § 460v-4 (1976). Where BLM conditions the grant of a lease upon stipulations required by the Forest Service, the Department of the Interior has no authority to waive compliance with the Act.

Thomas F. Stroock, 77 IBLA 137 (Nov. 15, 1983)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (Supp. V 1981), authorizes the Secretary of the Interior to lease all deposits of oil and gas, inter alia, which are owned by the United States and which are within the lands acquired by the United States. Where the mineral interest in lands sought by appellant is owned by the State of Colorado, BLM may not issue a lease pursuant to 30 U.S.C. § 352, even though the United States owns the surface. BLM's management of the public lands pursuant to sec. 302 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732 (1976), does not extend to lands whose mineral estate is owned by the State of Colorado and whose surface is managed by the Army.

Donald Ernest Williams, 77 IBLA 144 (Nov. 15, 1983)

BLM may properly reject a noncompetitive oil and gas lease offer for acquired lands to the extent it includes acquired military lands which were subject to a Secretarial moratorium on noncompetitive oil and gas leasing.

A noncompetitive oil and gas lease offer for acquired lands may properly describe the requested land by acquisition tract number assigned by the acquiring agency, in accordance with 43 CFR 3101.2-3(b)(3), where the land has not been surveyed.

Bruce Anderson, 77 IBLA 376 (Dec. 7, 1983)

Where a 1941 private oil and gas lease provides that the lease be held by production beyond its 3-year term and where there was no evidence of production beyond 1956 on the leased lands when the Forest Service acquired the lands in 1976, an "assignment" of such lease in 1979 is invalid since the lease terminated when production ceased.

Constitution Petroleum Co., Inc., 78 IBLA 3 (Dec. 12, 1983)

Where an acquired lands oil and gas lease offeror signs an offer form in ink, photocopies exact reproductions of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-2(a) (1981), and it is improper to reject that offer because the photocopies were not personally signed.

Where a noncompetitive acquired lands oil and gas lease offeror submits one original lease offer form together with six copies of the front of the original form and six copies of the back of the form, the offeror has failed to comply with 43 CFR 3111.1-2(a) (1981), which specifies that each copy must be an exact reproduction of one page of both sides of the official approved one-page form. However, failure to submit

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

properly reproduced copies of the form is a curable defect under 43 CFR 3111.1-1(e)(4) (1981).

James L. Camblos III, Christine C. Camblos, 78 IBLA 369 (Jan. 30, 1984)

Where oil and gas deposits in lands acquired by the United States and devoted to use for military purposes become "surplus property" under the Federal Property and Administrative Services Act, such deposits may be leased only under the provisions of that Act, and are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

Jerald A. Waters, 78 IBLA 387 (Jan. 31, 1984)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease application be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease. Where an offeror seeks to lease lands under the jurisdiction of the Department of the Navy, and that Department refuses consent, no lease may issue.

Union Oil Co. of California, Stephen E. Bubala, 79 IBLA 86 (Feb. 16, 1984)

Where 43 CFR 3101.2-3(b)(3) (1982) allowed the use of the acquisition tract number assigned by the acquiring agency to identify land sought to be leased, an acquired lands oil and gas lease offer using numbers assigned by the acquiring agency and accompanied by a map on which the location of individual tracts within the administrative unit is clearly marked and labeled is acceptable.

Leon F. Scully, Jr., Paul D. Beaird, 79 IBLA 117 (Feb. 22, 1984)

BLM may, in its discretion, decline to issue an oil and gas lease, pursuant to an over-the-counter offer, where its records do not clearly show that the title to the oil and gas is in the United States. Prior to such action, however, BLM should afford the offeror an opportunity to show that the United States does, in fact, own title to the oil and gas interests in the lands sought to be leased.

Russell H. Green, Jr., 81 IBLA 201 (June 1, 1984)

BLM may properly reject an over-the-counter noncompetitive oil and gas lease offer for acquired military lands which were subject to a Secretarial moratorium on noncompetitive oil and gas leasing at the time that the offer was filed, even where the Secretary has thereafter rescinded the moratorium, but has provided that the land will be leased under the simultaneous oil and gas leasing system.

Barrick Exploration Co., 82 IBLA 172 (Aug. 7, 1984)

OIL AND GAS LEASES--Continued

ACREAGE LIMITATIONS

The Secretary may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act. When the Secretary determines not to lease a certain area for oil and gas and that determination is based upon considerations of public interest, his exercise of discretion is neither arbitrary nor capricious. Where BLM rejects an isolated 15-acre tract for oil and gas because of its relatively small size, such decision will be reversed as arbitrary and capricious.

Frances H. Bodke, 53 IBLA 98 (Mar. 4, 1981)

The Bureau of Land Management may properly reject a noncompetitive oil and gas lease offer where the acreage applied for, as determined from a protracted survey, exceeds the maximum allowable acreage under 43 CFR 3110.1-3(a).

Bruce LeBaire, 63 IBLA 300 (Apr. 26, 1982)

The Mineral Leasing Act of 1920, as amended, establishes the maximum acreage a person may hold, own, or control at one time. If an offeror files a group of offers, any one of which causes his to exceed the acreage limitations, the entire group must be rejected under 43 CFR 3101.1-5(c)(3)(ii).

Offers for less than 640 acres are not null and void but remain pending until BLM determines a proper showing under 43 CFR 3110.1-3(a) has been made, or the offers are rejected for lack of an adequate showing. While such offers remain pending, the lands described therein are chargeable to the offeror's acreage account.

Exceeding the maximum acreage limit of 43 CFR 3101.1-5 when filing an offer to lease is not a minor defect which may be cured.

Where lease offers include lands which are in national parks and Indian reservations, or which are otherwise unavailable for leasing, the acreage described is chargeable to the offeror until such time as BLM makes its determination of the status and availability of the land and rejects the offers as to the lands not available.

Jerry M. Pritchard, 70 IBLA 154 (Jan. 18, 1983)

Irvin Wall, 70 IBLA 183 (Jan. 20, 1983) 90 I.D. 3

Under 30 U.S.C. § 184(d) (1982), no person, association, or corporation shall take, hold, own, or control at one time oil and gas leases or interests therein on land exceeding 246,080 acres in any one State other than Alaska. Under 43 CFR 3101.1-5 (1981), acreage applications and offers for oil and gas leases were included in calculating the total holdings. If an offeror filed a group of applications, any one of which caused him to exceed the acreage limitations, the entire group were required to be rejected pursuant to 43 CFR 3101.1-5(c)(3)(ii) (1981).

Exceeding the maximum acreage limit when filing an offer to lease was not a minor defect which was subject to cure.

Irvin Wall (On Reconsideration), 80 IBLA 339 (May 10, 1984)

OIL AND GAS LEASES--Continued

APPLICATIONS

Generally

Where a simultaneous noncompetitive oil and gas lease offer is filed by an applicant whose address of record is in Oklahoma City, Oklahoma, and who writes the word "Oklahoma" on the line on the drawing entry card (DEC) designated by preprinted word as "City" and incorporates the preprinted word "City" as part of this address, it is improper to reject the DEC as not being fully executed.

David F. Owen, 45 IBLA 26 (Jan. 14, 1980)

David F. Owen, 46 IBLA 263 (Mar. 27, 1980)

When an oil and gas lessee submits the amount of rental stated in a bill rendered by an authorized officer and the amount is found to be in error resulting in a deficiency, generally such lease shall not have automatically terminated for failure to pay the annual rental timely and new offers to lease the lands must be rejected.

Lucinda E. Boyce, 45 IBLA 60 (Jan. 14, 1980)

A drawing entry card which is not dated in the space provided on the card is not fully executed as required by 43 CFR 3112.2-1, and is properly rejected.

John L. Bessinger, 45 IBLA 62 (Jan. 17, 1980)

An undated simultaneous oil and gas drawing entry card is properly rejected for noncompliance with 43 CFR 3112.2-1(a) which requires that the card be "fully executed."

Margaret M. Wysocki, 45 IBLA 79 (Jan. 17, 1980)

Where an offeror who suffers from an arthritic condition which restricts his ability to write allows his secretary to sign his name for him on a drawing entry card, and where the secretary exercises no authority to do anything with the card other than as specifically directed by him, the secretary is an amanuensis and not an agent, so that the agency statements prescribed by 43 CFR 3102.8-1(a) are not required.

W. H. Brown, 45 IBLA 81 (Jan. 17, 1980)

It is proper to reject a drawing entry card where the offeror affixes his name to the front of the card in disregard of the instructions instead of inserting it in the appropriate spaces on the card in the order specified thereon (last name, first name, middle initial).

L. E. Diefenderfer, 45 IBLA 108 (Jan. 17, 1980)

It is proper for the authorized officer of the Bureau of Land Management to reject an offer for an oil and gas lease for lands, the title of which is in controversy.

Land included in an outstanding oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing and an offer filed for such land must be rejected.

David A. Provines, 45 IBLA 111 (Jan. 23, 1980)

APPLICATIONS--Continued

Generally--Continued

An entry card in a simultaneous oil and gas lease drawing is not to be rejected where the required information is clearly and legibly printed on the face of the card and the only potential defect is the misspelling of a word, where the misspelling does not hinder the processing of the offer.

David F. Owen, 45 IBLA 206 (Jan. 30, 1980)

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is dated more than 10 days prior to the beginning of the filing period.

George L. Labunen, 45 IBLA 310 (Feb. 6, 1980)

M. L. McCarroll, 55 IBLA 215 (June 18, 1981)

"Signed and fully executed." The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) includes the use of a rubber stamp to affix a signature to a drawing entry card, provided that it is the applicant's intention that the stamp be his signature.

Under 43 CFR 3102.8-1(a)(2), if a lease offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding.

Elizabeth McClellan, 45 IBLA 342 (Feb. 7, 1980)

43 CFR 3112.2-1(a) requires that the simultaneous oil and gas lease drawing entry card be "signed and fully executed." Strict compliance with the regulation is required to enable the Bureau of Land Management State Offices to administer the oil and gas leasing program efficiently and accurately. However, this does not mandate rejection of a card showing an initial in the blank space for a first name, provided the offeror can be identified from the information given and the card is signed in the same manner.

Kathleen A. Rubenstein, 46 IBLA 30 (Feb. 20, 1980)

The Bureau of Land Management properly rejects an oil and gas lease offer for land patented in 1874 under the placer mining laws.

Republic Oil and Mining Co., 46 IBLA 120 (Feb. 29, 1980)

An oil and gas lease offer is properly rejected, where an official of the bank on which the offeror's check to cover the filing fee was drawn, corroborates that the check was uncollectible.

Charles A. Pattison, 46 IBLA 130 (Mar. 19, 1980)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where a drawing entry card sets out the names of two applicants but one applicant fails to sign the card, the card is not in compliance with 43 CFR 3112.2-1(a) which requires that the card be "fully executed," and the lease offer is properly rejected.

Rose B. Carrington, Richard W. Carrington, 46 IBLA 149 (Mar. 19, 1980)

The Secretary of the Interior has the discretionary authority to refuse to lease public land for oil and gas where leasing would not be in the public interest, even though the land applied for is not withdrawn from operation of the Mineral Leasing Act. The refusal to lease must be supported by facts of record that the lease would not be in the public interest because it is incompatible with uses of the land which are worthy of preservation or would otherwise be undesirable.

W. E. Haley, 46 IBLA 151 (Mar. 19, 1980)

An oil and gas lease offer filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied either by corporate qualification papers or by any reference to a serial number where such information might be found, as required by 43 CFR 3102.4-1. Such omissions cannot be cured after the drawing.

Where a corporate simultaneous oil and gas lease offeror alleges no facts which could disprove its failure to comply with 43 CFR 3102.4-1, no hearing will be granted as requested.

Cheyenne Resources, Inc., 46 IBLA 277 (Mar. 27, 1980) 87 I.D. 110

The Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), expressly precludes leasing in national parks and national monuments. Therefore, the Department of the Interior has no authority to issue an oil and gas lease for lands in the Death Valley National Monument and an offer to lease land within the monument must be rejected.

Fred R., Anna R., and Kristine A. Cerminaro, 46 IBLA 301 (Mar. 31, 1980)

A sight draft is an acceptable form of remittance to satisfy 43 CFR 3112.2-1(a)(1) governing filing fees for simultaneous oil and gas lease offers.

William E. Jeffers, Jr., 46 IBLA 322 (Apr. 4, 1980)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate is applicable to leases to be issued subsequent to that date for over-the-counter offers filed prior to the effective date of the regulation.

Before an oil and gas lease for Federal acquired lands can issue, the consent of the agency administering the surface is required by statute, and an applicant for such a lease must execute any special stipulations required by the administering agency as a condition to the giving of its consent. In such

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

cases the Department of the Interior has no jurisdiction to waive execution of the special stipulations or to alter the terms thereof.

Thomas Connell, 46 IBLA 331 (Apr. 4, 1980)

It is proper to reject a drawing entry card lease offer, given first priority at a drawing, where the offeror's name is affixed by a rubber stamp with initials first, rather than last name first, outside the appropriate boxes.

D. R. Cantine, 46 IBLA 382 (Apr. 10, 1980)

S. A. Cantine, R. C. Diefenderfer, 47 IBLA 7 (Apr. 10, 1980)

An oil and gas lease offer is properly rejected where the offeror's check to cover the filing fee is dishonored by the bank because of insufficient funds in the account on which the check is drawn.

Mary E. Cummings, 47 IBLA 10 (Apr. 10, 1980)

A simultaneous oil and gas drawing entry card must be fully executed by an applicant, and where the applicant omits from his address the state and zip code, the lease offer is properly rejected.

Rick C. Wright, 47 IBLA 45 (Apr. 11, 1980)

It is improper to reject a drawing entry card lease offer, given first priority at a drawing where the offeror, a corporation, inserts its corporate name in the appropriate spaces on the drawing entry card in the order of last name first, and first name last in accordance with the instruction on the card. Any reversals of corporate names henceforth may invalidate the offers so involved.

Mar-Win Development Co., 47 IBLA 140 (Apr. 30, 1980)

Oil and gas lease offers embracing lands withdrawn specifically from oil and gas leasing and by Public Land Order No. 674, of Oct. 7, 1950, reserved for an agency of the Department of Defense, are properly rejected. Lands declared surplus are not subject to leasing by this Department.

Edward C. Shepardson, 47 IBLA 223 (May 13, 1980)

When six offerors sign a drawing entry card (DEC) in two signature boxes, four in one box and two in the other, and the same date of signing is entered in each of the two appropriate boxes on the DEC for the date, adjacent to the two signature boxes, so that it is evident that the date applies equally to all six signatures on the card, the failure to enter four other dates on the offer is not grounds for rejection of the DEC.

Carlyle Kessenger, Jr., et al., 47 IBLA 246 (May 13, 1980)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

It is proper for the authorized officer of the Bureau of Land Management to reject an offer for an oil and gas lease for lands, the title of which is in controversy.

Eldon L. R. Johnson, Marilyn Johnson, 47 IBLA 366 (May 21, 1980)

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to an apparently valid previously filed offer, and where it subsequently issues a second conflicting lease for the same lands to the senior offeror, its decision cancelling the lease issued to the senior offeror will be vacated, as the statute governing oil and gas leasing of non-KGS lands dictates that the person first making application for a lease (the senior offeror) is qualified to hold it. Where the junior offeror and his successors in interest have not been joined to BLM's proceedings nor named as parties on appeal, the matter will be remanded to BLM with instructions to allow them to show cause why the leases issued pursuant to the junior offer should not be cancelled insofar as they conflict with the senior, legally superior offer.

Even though created by a lease issued to a junior noncompetitive over-the-counter oil and gas lease offer in derogation of the superior rights to the same land of a senior offeror, oil and gas lease rights based on the junior offer may not be cancelled where they have been acquired by a bona fide purchaser, and, where assignees of such lease rights have not had the opportunity to show that they acquired and hold these rights as bona fide purchasers, the matter will be remanded to BLM to allow them to so show, and to allow the senior offeror to show to the contrary.

George P. Walter, Jr., 47 IBLA 396 (May 22, 1980)

A noncompetitive oil and gas lease offer for lands patented under a railroad land grant must be rejected because the United States does not own the mineral deposits in the lands.

Diane B. Katz, 48 IBLA 118 (May 30, 1980)

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental due is $1,863, the offer will be disqualified under 43 CFR 3112.4-1 when the offeror submits a check for only $1,836 within the time required, but fails to submit the $27 deficiency within the allowed time.

Edward Goodman, 48 IBLA 152 (June 9, 1980)

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to prove an accusation that the offeror/agent agreement gives

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

the agent an enforceable interest in the lease to be issued.

Geosearch, Inc., 48 IBLA 190 (June 9, 1980)

A drawing entry card lease offer submitted on an old edition of Form 3112-1 should not be rejected solely for failure to complete the DEC where the omission is of information (the name of the state which is the location of the lands sought) not required on the current edition of Form 3112-1.

William E. Hathorn, 48 IBLA 349 (July 11, 1980)

An entry card in a simultaneous oil and gas lease drawing need not be rejected under 43 CFR 3112.2-1(a) where the offeror's name and address are affixed with a rubber stamp outside the preprinted boxes but are otherwise legible and in the designated manner on the face of the card.

Bessie B. Landin, Kristie R. Cobb, 48 IBLA 354 (July 11, 1980)

Wayne E. DeBord et al., 50 IBLA 216 (Sept. 30, 1980) 87 I.D. 465

A drawing entry card oil and gas lease offer is properly rejected where the card bears a date more than 10 days prior to the beginning of the filing period.

William J. Barrett, 49 IBLA 30 (July 21, 1980)

In deciding a case where the name of the offeror trustee is affixed to the oil and gas drawing entry card in the wrong order, instead of being inserted in the appropriate spaces of the card in the order last name, first name, middle initial, the Board will conform to the Court of Appeals' decision in Brick v. Andrus, Civil No. 79-1766 (D.C. Cir. June 6, 1980), and reverse the rejection of the lease offer for this reason.

Leland A. Hodges (Trustee), 49 IBLA 50 (July 21, 1980)

It is not proper to reject a drawing entry card lease offer, given first priority at a drawing, where the only deficiency is that the offeror did not insert his name in the order set forth on the card, i.e., last name, first name, middle initial; but rather inserted his name in this order: first name, middle initial, last name.

Robert R. Furman, 49 IBLA 64 (July 21, 1980)

Use of a common address is not grounds for rejection of a successful simultaneous oil and gas lease offer.

Where an oil and gas lease offer which prima facie met the requirements of the regulations is rejected by the Bureau of Land Management because the offeror did not satisfactorily complete an inquiry sent to the

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

offeror and on appeal the information is submitted together with an explanation, the offer need not be rejected.

Betty C. Cranor, Arthur E. Ross, 49 IBLA 66 (July 22, 1980)

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental is due within 15 days from the receipt of notice that such payment is due, the offer will be disqualified under 43 CFR 3112.4-1 when the rental is not received in the proper office within 15 days from the receipt of notice that such payment is due.

Where payment must be accomplished within a specific number of days from receipt of notice, that number includes holidays and weekends which occur in the interim unless it is provided otherwise.

Gordon E. Jacober, 49 IBLA 91 (July 22, 1980)

43 CFR 3112.2-1(a) requires that the simultaneous oil and gas lease drawing entry card be "signed and fully executed." Strict compliance with the regulation is required to enable the Bureau of Land Management State Offices to administer the oil and gas leasing program efficiently and accurately. However, this does not mandate rejection of a card where the first drawn applicant has placed the abbreviation for junior, "Jr." above the space provided for his middle initial, separated it with a comma, and lined through that phrase on the card, provided no ambiguity exists as to the identity of the applicant.

The exclusion from the drawing of oil and gas drawing entry cards for trivial and inconsequential alterations which do not affect the appearance or feel of the cards in any significant way and which obviously were not intended to adversely affect the integrity of the drawing is arbitrary and capricious.

David F. Owen, 49 IBLA 131 (July 28, 1980)

A drawing entry card lease offer submitted on an authorized, though superseded, version of Form 3112-1 should not be rejected solely for failure to complete the DEC where the omission is of information (the name of the state which is the location of the lands sought) not required on the current printing of the form.

William E. Hathorn, L. B. Porter, 49 IBLA 281 (Aug. 18, 1980)

When an offeror prints her name on the front of a drawing entry card oil and gas lease offer as "Reagan, Wavis K.," and signs her name on the back of the card as "Kay Reagan," the card may not be rejected because she violated no regulation by signing the offer in that manner, and she properly followed instructions on the face of the card by inserting her full name, last name first, then first name and initial.

Clarisse G. Purcell, 49 IBLA 275 (Aug. 18, 1980)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in oil and gas leases which expired and have not subsequently been posted by BLM as available for simultaneous noncompetitive offers.

Jack E. Lee, 49 IBLA 358 (Aug. 29, 1980)

Charles B. Whitlock, 57 IBLA 252 (Aug. 28, 1981)

Robert C. Bond, 62 IBLA 391 (Mar. 24, 1982)

Under 43 CFR 3102.6-1(a)(2), if a lease offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, giving full details of the agreement or understanding if it is a verbal one, and a copy of any written agreement or understanding. The regulation requirement is not met where statements are filed by the offeror and an agent with whom it has not actually contracted, but with whom the offeror's primary agent contracted to perform leasing services. To show the necessary agency and contractual authority, the complete chain of agency-contract authority and relationships must be shown when the offer is filed.

Cliff Meyer, 50 IBLA 157 (Sept. 30, 1980)

Where a BLM office is not satisfied that an oil and gas lease offer drawn with first priority is in full compliance with the regulations, it should require the offeror to provide such information in support of his offer as will resolve the question, and should the offeror fail to respond fully within a reasonably prescribed time it is appropriate to reject that offer and consider the offer which has been drawn with next priority.

Lorene K. Ayers (Appellant), W. O. Pettit, Jr. (Appellee), 50 IBLA 240 (Sept. 30, 1980)

When land has previously been included in a lease that has been canceled, it is available for subsequent leasing only in accordance with the provisions of the simultaneous filing system provided under 43 CFR 3112.

David A. Provines, 50 IBLA 271 (Oct. 6, 1980)

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such waiver to the client, and without any contractural consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and the successful drawee is required to make a showing as to sole party in interest under 43 CFR 3102.7.

Where an oil and gas leasing service has an interest in the offers of its clients, and where it files offers for multiple clients on one particular parcel, the service has increased the probability of its success in the drawing, and all of its clients' offers for that parcel must be rejected under 43 CFR 3112.5-2.

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by a State Office of BLM, of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM State Office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Donald M. Coyer, Fred L. Engle, d.b.a. Resources Service Co., Inc. (Appellants); Alfred L. Saltzday, Bureau of Land Management (Respondents) (On Judicial Remand), 50 IBLA 306 (Oct. 14, 1980)

Where the Bureau of Land Management requests within 30 days the execution of special stipulations prepared by the Forest Service for acquired lands embraced in a noncompetitive oil and gas lease offer, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days.

J. Thomas Lewis, 50 IBLA 350 (Oct. 14, 1980)

It is proper for the Bureau of Land Management to reject and over-the-counter offer for an oil and gas lease of land formerly included in a lease which expired by operation of law at the end of its primary term, because under 43 CFR 3112.1-1 land in an expired lease is subject to the filing of new lease offers only in accordance with simultaneous filing procedures.

Martha M. Pindeiss, 50 IBLA 359 (Oct. 16, 1980)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The fact that the noncompetitive offeror followed all of the applicable rules and regulations in making the offer does not vitiate this conclusion.

Pauline C. Lebsack, 50 IBLA 361 (Oct. 16, 1980)

Where lands are withheld from leasing or have not been made subject to the operation of mineral leasing laws, applications must be rejected and cannot be held pending possible future availability of the lands. 43 CFR 2091.1.

James P. Leasked et al., 50 IBLA 416 (Oct. 24, 1980)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

A noncompetitive oil and gas offer to lease must be rejected where either before or after the filing of the offer and prior to the time of the issuance of the lease the land is determined to be within the known geologic structure of a producing oil or gas field.

James Ruslon, Sr., 51 IBLA 19 (Oct. 28, 1980)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. The refusal to lease should be supported by facts to demonstrate that the leasing would not be in the public interest. Mere conclusory findings, unsupported by facts, do not warrant rejection.

Bureau of Land Management decisions rejecting oil and gas lease offers will be set aside and the cases remanded for further consideration where the only basis for the decisions was possible future harm to desert tortoises which are currently under consideration to determine if they should be placed on the endangered species list, and the record demonstrates the decline of the species is due to other reasons, and there has been no determination whether other measures, including protective stipulations in oil and gas leases, could be taken to protect the tortoises while permitting oil and gas exploration and development.

Tucker and Snyder Exploration Co., Inc., et al., 51 IBLA 35 (Oct. 30, 1980)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

Ervin Wheeler, Toni Shugart, Kathy Coffey, 51 IBLA 66 (Oct. 31, 1980)

Juanita M. Mayer, 60 IBLA 391 (Dec. 23, 1981)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, during the pendency thereof, the land is determined to be within the known geologic structure of a producing oil or gas field. The fact that the noncompetitive offeror followed all of the applicable rules and regulations in making his offer does not vitiate this conclusion.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Dennis R. Clouse, 51 IBLA 221 (Dec. 10, 1980)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where an officer of a business enterprise files oil and gas lease drawing entry cards for a parcel on behalf of both his company and himself, the business gains a greater probability of success than other entrants, owing to the officer's fiduciary duty to hold the lease for the company's exclusive use and benefit, thereby warranting rejection of the lease offers of both the company and the officer per 43 CFR 3112.5-2.

Petroleum Shares, Inc., 51 IBLA 246 (Dec. 15, 1980)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such waiver to the client, and without any contractural consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and the successful drawee is required to make a showing as to sole party in interest under 43 CFR 3102.7.

Where an oil and gas leasing service has an interest in the offers of its clients, and where it files offers for multiple clients on one particular parcel, the service has increased the probability of its success in the drawing, and all of its clients' offers for that parcel must be rejected under 43 CFR 3112.5-2.

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by a State Office of BLM, of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM State Office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

The Department has authority to cancel leases administratively where the lease was granted pursuant to an underlying offer which violated the Departmental regulation requiring an offeror to disclose, at the time of filing, the existence of all parties holding interests in the offer.

The fact that an entitlement to share in the proceeds from the sale of a lease is contingent upon the lease being sold does not mean that this entitlement is not an "interest," as an "interest" includes any claim to a share in profits which may be derived from the lease. Where an agreement creating such an entitlement exists when an offer is filed, its existence must be disclosed on pain of rejection of the offer.

BLM properly refuses to recognize the asserted interest of a party in a lease offer where no application for BLM's approval of a transfer of any interest in this offer and lease (if issued) has ever been

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

filed, and BLM properly determines to issue the lease, if appropriate, to the offeror and not to the asserted interest holder.

An amended regulation restricting transfer of oil and gas interests governs where an offeror has not sought approval of a transfer of a pending offer to lease and lease (if issued) prior to June 16, 1980, the effective date of the amendment. Accordingly, under this regulation, BLM cannot consider any application for approval of such a transfer until after issuance of the lease.

D. B. Meador, Jr., et al., 51 IBLA 378 (Dec. 31, 1980)

The Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), expressly precludes leasing in national parks and national monuments. Therefore, the Department of the Interior has no authority to issue an oil and gas lease for lands in the Death Valley National Monument and an offer to lease land within the monument must be rejected.

Fred R. Cervinsky, 52 IBLA 116 (Jan. 13, 1981)

When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the first year's advance rental, that rental must be received by the proper office within the prescribed 15 days. Where the offeror has failed to submit a signed check for the advance rental within the time allowed, he is properly disqualified to receive the lease.

William H. Bevis, 52 IBLA 125 (Jan. 13, 1981)

A final Departmental appellate decision construing a regulation will be applied with prospective effect only where it materially alters the interpretation given the regulation by earlier administrative decisions and where it would be unfair or prejudicial to apply such decision retroactively.

William L. Hugger, Jr., 52 IBLA 174 (Jan. 26, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b), and the offeror is required to disclose this interest at the time of filing under 43 CFR 3102.7

The Department has authority to cancel leases administratively where the lease was granted pursuant to an underlying offer which violated the Departmental regulation requiring an offeror to disclose, at the time of filing, the existence of all parties holding interests in the offer.

Where no application for BLM's approval of a transfer of any interest in an offer and lease (if

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issued) has ever been filed, BLM should issue the lease, if appropriate, to the offeror only.

The regulations controlling transfer of oil and gas interests were amended on June 16, 1980, and the amended regulations govern where the interest holder has not sought approval of a transfer of his interest prior to this date. Under these amended regulations, BLM cannot consider any application for approval of a transfer of a lease interest until after the lease is issued.

Estate of Glenn F. Coy, Resource Service Co., Inc., 52 IBLA 182 (Jan. 26, 1981) 88 I.D. 236

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Sept. 30, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Irma Spear, 52 IBLA 360 (Feb. 19, 1981)

A protest against the validity of a simultaneous noncompetitive oil and gas lease offer drawing entry card (DEC) on the grounds that the DEC was signed by someone other than the offeror and that no power of attorney was filed is properly dismissed where the record indicates that the offeror's wife signed the card for him as his amanuensis, in the absence of a clear showing by the protestant that the wife was the offeror's "agent" (i.e., was invested with discretionary authority to act for the offeror) instead. This is because a copy of a power of attorney or agency statements are not required to be filed when the person affixing the offeror's signature on the DEC is not his agent or attorney-in-fact.

The mere fact that a DEC is signed by someone other than the offeror does not necessarily mean that the person affixing the signature has an interest in the offer which must be disclosed.

An oil and gas lease offeror is not required to disclose the existence of any interests in the offer flowing to his wife on account of community property laws of any state.

John W. Bierlein, 53 IBLA 48 (Feb. 27, 1981)

A drawing entry card which is not properly dated in the space provided on the card is not "fully executed," as required by 43 CFR 3112.2-1, and must be rejected.

Olga M. Puglia, 53 IBLA 55 (Feb. 27, 1981)

The fact that an offeror signed an uncompleted oil and gas lease offer form which was subsequently completed by a duly authorized agent does not establish ground for rejection of the offer.

Phillip A. Kalin, 53 IBLA 57 (Feb. 27, 1981)

OIL AND GAS LEASES--Continued

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The naming of an additional party in interest on the reverse side of the drawing entry card is prima facie evidence that the named person is in fact an interested party within the ambit of 43 CFR 3102.7. However, it is not within the province of the Department of the Interior to determine the unstated intentions of the offeror as to how and when the right of an interested party will vest.

William P. Price, 53 IBLA 174 (Mar. 16, 1981)

Where an officer of a business enterprise files oil and gas lease drawing entry cards for a parcel on behalf of both his company and himself, the business gains a greater probability of success than other entrants, owing to the officer's fiduciary duty to hold the lease for the company's exclusive use and benefit, thereby warranting rejection of the lease offers of both the company and the officer pursuant to 43 CFR 3112.5-2, except in special circumstances not herein present.

Petroleum Shares, Inc., 53 IBLA 254 (Mar. 19, 1981)

An oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent. Pursuant to 43 CFR 3130.2-1, rentals are not properly prorated for any lands in which the United States owns an undivided fractional interest, but shall be payable at the same rate as provided for the full acreage in such lands.

A noncompetitive oil and gas lease offer filed "over-the-counter," is properly rejected when the accompanying rental payment is deficient by more than 10 percent. However, in appropriate circumstances, if the balance of the rental is paid and there are no intervening rights of third parties, the offer may be reinstated with priority from the date the deficiency is corrected.

Thomas F. Kesting, 53 IBLA 349 (Mar. 30, 1981)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field.

William M. Turner, 54 IBLA 111 (Apr. 15, 1981)

P. H. Braun, 60 IBLA 246 (Dec. 4, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such

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an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Home Petroleum Corp. et al., 54 IBLA 194 (Apr. 23, 1981) 88 I.D. 479

Wilbur G. Desens et al., 54 IBLA 271 (Apr. 28, 1981)

Robert E. Belknap et al., 55 IBLA 200 (June 16, 1981)

Resource Service Co., Inc., Grace K. Greco, 55 IBLA 343 (June 26, 1981)

Woods Petroleum Corp. et al., 55 IBLA 348 (June 26, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

The Department is not estopped from rejecting an oil and gas lease offer, or canceling a lease issued pursuant thereto, because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions

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are subject to reversal on review at the Secretarial level.

Inexco Oil Co. et al., 54 IBLA 260 (Apr. 28, 1981)

Strict compliance with 43 CFR 3112.2-1 which provides that simultaneous oil and gas drawing entry cards be signed and fully executed by an applicant or his agent is required.

A simultaneous oil and gas lease offer is properly rejected where the State prefix to the parcel number on an oil and gas drawing entry card is omitted.

Marilyn K. Weiss, 54 IBLA 324 (Apr. 30, 1981)

Where an oil and gas lease offeror fails to respond within a prescribed period of time to an order to submit specific information necessary to determine whether his offer is valid, it is appropriate to reject the offer.

Ken Wiley, 54 IBLA 367 (May 18, 1981)

Where an applicant fails to file five copies of a noncompetitive over-the-counter lease offer as required by the regulations in 43 CFR 3111.1-1(a) the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, the offer must be rejected. However, when the additional required copy of the lease offer is filed with the notice of appeal, the offer may be reinstated and allowed to earn priority from the time of the filing of the additional copy with the BLM.

Curtis Wheeler, 55 IBLA 65 (May 29, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered.

Vincent M. D'Amico, Walt C. Stoppel, 55 IBLA 116 (June 3, 1981)

Simon A. Rife, 56 IBLA 378 (Aug. 3, 1981)

Ben M. Powell III, 59 IBLA 146 (Oct. 26, 1981)

Dr. Jose Trabal, 60 IBLA 97 (Nov. 19, 1981)

Cheryl E. Cooksey, 62 IBLA 307 (Mar. 18, 1982)

Martha E. Ehrecht, 62 IBLA 387 (Mar. 24, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such offeror or applicant participating under the agreement be filed with the proper Bureau of Land

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Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Alvyn G. Horotny, 55 IBLA 196 (June 16, 1981)

Robert R. Asdahl, 62 IBLA 246 (Mar. 15, 1982)

Janet Thompson, 65 IBLA 383 (July 20, 1982)

Land included within an outstanding oil and gas lease is not available for leasing and an oil and gas offer filed for such land must be rejected. Even where the record is unclear whether the conflicting outstanding lease in question has been extended by drilling or whether it has expired at the end of its term, the land is still not available for the filing of new over-the-counter offers until it first has been posted by BLM as open to the filing of simultaneous offers.

Curtis D. Wheeler, 55 IBLA 278 (June 25, 1981)

Where the rental payment accompanying a noncompetitive oil and gas lease offer is deficient by $3, less than 10 percent, and Bureau of Land Management requests submission of the deficient rental along with execution of special stipulations, within 30 days, BLM may properly reject the lease offer when the additional rental is not submitted within the 30 days, although signed stipulations were timely submitted.

Dean W. Bowell, 55 IBLA 301 (June 26, 1981)

When an applicant for assignment of an oil and gas lease fails to submit a certification of new qualifications to hold an oil and gas lease, it is proper to reject the application for assignment. Such an application may be reinstated where the applicant has provided the required certification on appeal and no third party rights are involved.

Jane Ray Dietrich, 55 IBLA 380 (June 29, 1981)

Regulations should be so clear that there is no basis for an oil and gas applicant's noncompliance with them.

W. W. Priest, Michael Manduca, 55 IBLA 398 (June 30, 1981)

Filing fees submitted in the form of an instrument drawn by a bank on its own assets, and which is signed by an officer of the bank and is a direct obligation of the issuing bank are acceptable under 43 CFR 3112.2-2.

Eloise Miller, David Miller, 56 IBLA 7 (June 30, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such

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an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the secretarial level. Such reversal upon Departmental review does not constitute retrospective application of a new rule.

Richard E. McDonald, Resource Service Co., Inc., 56 IBLA 12 (June 30, 1981)

Strict compliance with 43 CFR 3112.2-1 (1979) which provided that simultaneous oil and gas drawing entry cards be signed and fully executed by an applicant or his agent is required. A simultaneous oil and gas lease offer on an Eastern States parcel is properly rejected where the "ES" prefix to the parcel number on the oil and gas drawing entry card is omitted even though the state name is spelled out.

C. H. Coster Gerard, 56 IBLA 17 (June 30, 1981)

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate is applicable to leases to be issued subsequent to that date for over-the-counter offers filed prior to the effective date of the regulation.

Thomas Connell, 56 IBLA 23 (June 30, 1981)

A simultaneous oil and gas lease offer is properly rejected if the drawing entry card is not received by the deadline specified in the notice announcing the filing period.

Derrick Fuller, 56 IBLA 33 (July 8, 1981)

Where an oil and gas lease offeror is directed to "return" rather than "file" a document within a prescribed period of time, where the offeror deposits the document in the mail before the end of the specified period, and where the document is received within a reasonable period of time later, BLM may not properly reject the offer.

Carol Dolezal, 56 IBLA 52 (July 8, 1981)

OIL AND GAS LEASES--Continued

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It is proper for the Bureau of Land Management to reject an oil and gas lease offer filed over the counter for land formerly included in a lease which expired at the end of its term or terminated automatically for nonpayment of rental because under 43 CFR 3112.1-1 such land is subject to the filing of new lease offers only in accordance with simultaneous filing procedures.

Land included in an outstanding oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing and an offer filed for such land must be rejected.

Curtis Wheeler, 56 IBLA 58 (July 10, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest (which, by its own terms, does not apply to the service agreement) with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level, and where there was no affirmative misconduct by BLM employees.

Alex Sachen, Resource Service Co., Inc., 56 IBLA 116 (July 16, 1981)

Nancy L. Stewart, Resource Service Co., Inc., 56 IBLA 122 (July 16, 1981)

Jack Zuckerman et al., 56 IBLA 193 (July 22, 1981)

Robert Semanko, Mary L. Hollebon, Resource Service Co., Inc., 58 IBLA 340 (Oct. 19, 1981)

Where a personal secretary who is not "in the business of providing assistance to participants in a Federal oil and gas leasing program" signs a drawing entry card as an "agent" of the offeror, he is not an agent within the meaning of 43 CFR 3102.2-6(a) and thus is not required to file an agency statement.

Kathleen I. Anderson, 56 IBLA 214 (July 22, 1981)

OIL AND GAS LEASES--Continued

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Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to an apparently valid previously filed offer, and rejects the previously filed offer as to lands encompassed in the lease issued to the junior offeror asserting that the junior offeror's assignee is a bona fide purchaser, the decision will be vacated as the statute governing oil and gas leasing of non-KGS lands dictates that the person first making application for a lease (the senior offeror) is qualified to hold it. Where the junior offeror and his successor in interest have not been joined to BLM's proceedings or named as parties on appeal, the matter will be remanded to BLM with instructions to allow them to show cause why the leases issued pursuant to the junior offer should not be canceled and to show that they acquired their interests as bona fide purchasers.

A. D. Hatchett, 56 IBLA 231 (July 22, 1981)

Where the Bureau of Land Management requires the submission of additional evidence of qualifications by a simultaneous oil and gas lease applicant and where the applicant asserts that both the original form properly executed and a copy of the executed form were returned timely, but BLM finds only the copy in its files, the copy is acceptable evidence and a decision rejecting the application will be reversed.

The FMC & PLIM Corp., 56 IBLA 240 (July 22, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Edward Marcinko, 56 IBLA 289 (July 28, 1981)

Robert D. Alexander, Paul D. Kennett, 59 IBLA 118 (Oct. 26, 1981)

Joan S. Maguire, 59 IBLA 130 (Oct. 26, 1981)

Jake Hughert, 59 IBLA 179 (Oct. 27, 1981)

William J. McGrath, 62 IBLA 110 (Mar. 2, 1982)

Jack M. Mosely, Charles S. Hertz, 62 IBLA 220 (Mar. 10, 1982)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to give the service an interest in the lease, and the service files a

OIL AND GAS LEASES--Continued

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"waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7 (1979).

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Floyd O. Lochner, 56 IBLA 271 (July 28, 1981)

An oil and gas lease drawing entry card is properly rejected under 43 CFR 3112.2-1(b) (1980) where it is not signed holographically (manually) by the applicant or by someone authorized to sign on her behalf. BLM is not barred from rejecting the offer either by its acceptance of applicant's filing fee or by its publishing of applicant's name as the first drawee.

Betty J. Thomas, 56 IBLA 323 (July 29, 1981)

Where an oil and gas lease offeror fails to respond within a prescribed period of time to an order to submit specific information necessary to determine whether offeror is qualified, the offer is properly rejected.

Judith Gail Bell, 57 IBLA 139 (Aug. 25, 1981)

An application drawn first in a simultaneous drawing which is filed by a partnership but which is not accompanied by statements required by the pertinent regulation or which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

It is not permitted to file a simultaneous noncompetitive lease application bearing both the names of an association and of an individual. Where an individual intends to submit an application on behalf of the partnership, he should list its name alone on the application and sign the card as its authorized agent.

A partnership's defective simultaneous noncompetitive oil and gas lease application is not curable by submission of required evidence of qualifications after the drawing.

Stephen A. Pitt, L & P Investments, 57 IBLA 365 (Sept. 8, 1981)

Where an oil and gas lease offer, unaccompanied by statements as required by D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978), was filed prior to Nov. 9, 1978, the Pack holding will not retroactively be applied to the offer.

Cleo Chapekis, 57 IBLA 398 (Sept. 14, 1981)

Patricia Ann DeSalvo, 58 IBLA 1 (Sept. 15, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to a valid previously filed offer, where it subsequently issues a second conflicting lease for the same lands to the senior offeror, and where the junior lease has not been assigned to a bona fide purchaser, BLM's decision canceling the lease issued to the senior offeror will be vacated, because the statute governing oil and gas leasing of non-KGS lands dictates that the qualified person first making application for a lease (the senior offeror) is entitled to receive any lease which is issued.

York Associates, Ltd., 58 IBLA 25 (Sept. 16, 1981)

A simultaneous noncompetitive oil and gas lease application which is not dated is properly rejected.

Jerry B. Smith, 58 IBLA 232 (Oct. 6, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are not answered by checking appropriate boxes in the application as the instructions require.

Clyde E. Kottman, 58 IBLA 268 (Oct. 8, 1981) 88 I.D. 915

Janet A. Rodgers, 58 IBLA 275 (Oct. 8, 1981)

Herbert Rothschild, 59 IBLA 140 (Oct. 26, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are not answered by checking appropriate boxes in the application as the instructions require.

A first-drawn application that is defective because of noncompliance with 43 CFR 3112.2 cannot be cured by submission of additional information after the drawing.

Herman Birnbaum, 58 IBLA 279 (Oct. 8, 1981)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. The refusal to lease should be supported by facts of record demonstrating that leasing would not be in the public interest, e.g., where leasing might adversely affect the Mexican desert bighorn sheep or its habitat, that animal being a State of New Mexico endangered species and the subject of a cooperative agreement between the State and BLM made pursuant to sec. 2 of the Act of Oct. 18, 1974, 16 U.S.C. § 670g (1976).

Placid Oil Co. et al., 58 IBLA 294 (Oct. 14, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

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Where Bureau of Land Management rejects a simultaneous oil and gas lease application because the applicant's corporate qualifications file did not accurately reflect the corporate structure at the time of the application's filing as required by 43 CFR 3102.2-5(a), and the applicant establishes that its file was current and accurate, but a question remains as to the applicant's compliance with 43 CFR 3102.2-5(b), the Bureau of Land Management decision will be vacated and the case remanded for further action.

Black Jack Oil Co., 59 IBLA 163 (Oct. 26, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby, when the individual sells a lease acquired during his participation in the program, the proceeds from the sale of that lease will be deposited into the Lease Sales Escrow Account; and 49 percent of any consideration received by the individual shall be assigned to the leasing service should the individual dispose of his interest in a lease in any manner other than by sale, the leasing service does not have an enforceable right to share in the proceeds of any sale or any interest therein. Such an agreement does not create for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b) (1979).

"Interest." Where there is an agreement giving an individual the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b) (1979).

Harry S. Hills et al., 59 IBLA 241 (Oct. 28, 1981)

A drawing entry card which is not dated in the space provided on the card must be rejected.

Joe Conway, 59 IBLA 314 (Nov. 4, 1981)

Lynn C. Haas, 62 IBLA 25 (Feb. 24, 1982)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, during the pendency thereof, the land is determined to be within the known geologic structure of a producing oil or gas field. Neither the fact that the noncompetitive offeror followed all of the applicable rules and regulations in making its offer nor the fact that the Bureau of Land Management delayed in getting a report from Geological Survey regarding the known geologic structure determination vitiates this conclusion.

George Reddy & Associates, 59 IBLA 359 (Nov. 9, 1981)

An applicant for a simultaneous oil and gas lease who is legally a minor at the time he executes and files the application is not qualified to hold a lease under the regulations, and the application is properly rejected.

Scott O. Adams, 60 IBLA 288 (Dec. 17, 1981)

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An entitlement to share in the proceeds from the sale of a lease or part thereof, contingent upon the lease being sold, is an "interest," as an "interest" includes any claim to a share in profits which may be derived from the lease. Where an agreement creating such an entitlement exists when an offer is filed, its existence must be disclosed on pain of rejection of the offer.

Rosita Trujillo, 60 IBLA 316 (Dec. 18, 1981)

Where an applicant for a noncompetitive oil and gas lease submits probative evidence opposing the determination by the Geological Survey that certain lands are within the known geologic structure, a hearing will be ordered so that a complete record may be developed.

Daniel A. Engelhardt, 61 IBLA 65 (Dec. 31, 1981)

Acquired lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, while the offer is pending, the land is determined to be within a known geologic structure.

R. L. Mulholland, 61 IBLA 175 (Jan. 26, 1982)

Elcoex, Inc., 68 IBLA 130 (Oct. 28, 1982)

A drawing entry card which is not signed or dated in the space provided on the card must be rejected.

An oil and gas lease application, Form 3112-1 (July 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Bonita L. Ferguson, 61 IBLA 178 (Jan. 26, 1982)

Regulations should be so clear that there is no basis for a simultaneous oil and gas applicant's noncompliance with them, and this Board will not enforce a prohibition against bank personal money orders under 43 CFR 3112.2-2 where the regulation does not specifically exclude such from the term bank money order.

Doris C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and appellant's failure to check these items on the form cannot be cured by a simple amended filing where the rights of the second-drawn applicant have intervened.

Terry K. Wood, 61 IBLA 213 (Jan. 28, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

The requirement that an oil and gas lease offeror disclose all parties in interest is not ambiguous, and the rejection of offers filed prior to this Board's decision in Lola I. Doe, 31 IBLA 394 (1977), for violation of the regulations requiring disclosure of such interests and prohibiting multiple filings did not constitute a retrospective application of a new Departmental interpretation of the regulations.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest and multiple filings, are left unanswered.

Peggy A. Shay, 61 IBLA 276 (Jan. 29, 1982)

Under 43 CFR 3112.1-1 (1979), lands covered by leases which expire by operation of law at the end of their primary term shall be subject to the filing of new lease offers in accordance with simultaneous leasing procedures. Thereafter, the lands become subject to over-the-counter offers only if no offers to lease all or any portion of the lands in the expired, canceled, relinquished, or terminated leases are received during the simultaneous filing period.

James W. Phillips, 61 IBLA 294 (Feb. 3, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings are left unanswered. An incomplete application must be rejected, regardless of whether the desired information is indicated on an attachment or in other documents in the file.

Ottlin D. Hass, 61 IBLA 338 (Feb. 10, 1982)

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

James M. Chudnow, Laurent A. Giesbert, 62 IBLA 19 (Feb. 24, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

William M. Burress, 62 IBLA 40 (Feb. 24, 1982)

Jack T. Thompson, 66 IBLA 273 (Aug. 17, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Spoolhardt (On Reconsideration), 62 IBLA 93 89 I.D. 82 (Feb. 26, 1982)

Where a protestant against the issuance of an oil and gas lease supports his allegations that the lease offer is not qualified with sufficient evidence to warrant further inquiry or investigation by BLM, the protest should not be summarily dismissed for failure of the protestant to make positive proof of his allegations. Instead, the protest should be adjudicated on its merits after all available information has been developed.

Patricia C. Alker, 62 IBLA 150 (Mar. 5, 1982)

When land has previously been included in a lease that has terminated, it is available for subsequent leasing only in accordance with the provisions of the simultaneous filing system under 43 CFR 3112.

Wilfred Flogis, 62 IBLA 162 (Mar. 8, 1982)

A simultaneous oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period, even though the application was assertedly signed during the filing period and inadvertently misdated, since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period, and since the applicant must bear the responsibility for any error in the dating of the application.

Leonard Thompson, 62 IBLA 236 (Mar. 11, 1982)

Raymond W. Joeckel, 68 IBLA 195 (Nov. 9, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered. The submission of an attached document containing the answers to questions (d) through (f) does not comply with 43 CFR 3112.2-1(a), requiring completion of the approved form.

Leroy G. Boudreaux, 62 IBLA 255 (Mar. 15, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where Bureau of Land Management rejects a noncompetitive oil and gas lease application because the applicant's corporate qualifications file did not accurately reflect the corporate structure at the time of the application's filing as required by 43 CFR 3102.2-5(a), and the applicant establishes that its file was current and accurate, the Bureau of Land Management decision will be vacated and the case remanded for further action.

Champion Resources, Inc., 63 IBLA 46 (Mar. 30, 1982)

An oil and gas lease application is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are not answered by checking appropriate boxes in the application as the instructions require.

Robert W. Byers, 63 IBLA 100 (Mar. 31, 1982)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

Bruce Anderson, 63 IBLA 111 (Apr. 2, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

Clifford E. Shaw, 63 IBLA 293 (Apr. 22, 1982)

Where a noncompetitive over-the-counter lease offer for unsurveyed acquired lands fails to provide a land description from the deed or other acquisition document, or by courses and distances, and fails to include a map indicating the desired lands, as required by 43 CFR 3101.2-3(b), the offer is properly rejected. However, when the additional required information is filed with the notice of appeal, the offer may be reinstated and given priority from the time of the filing of such information.

Bryan O. Blevins, 63 IBLA 304 (Apr. 26, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

James M. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Alfred R. Sorgini, 64 IBLA 83 (May 10, 1982)

John Gahr, 65 IBLA 268 (July 9, 1982)

Nellie E. Colley, 68 IBLA 16 (Oct. 19, 1982)

An oil and gas lease application filed by a corporation in a simultaneous filing is properly rejected where it is not accompanied either by corporate qualification papers, as required by 43 CFR 3102.2-5, or by any reference to a serial number indicating where such information can be found, as permitted by 43 CFR 3102.2-1(c). Such omissions cannot be cured after the drawing.

Cluff Oil, Inc., 64 IBLA 156 (May 25, 1982)

An offer to lease oil and gas deposits under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1976), is properly rejected where the land applied for is not shown to be acquired land of the United States.

Laurent Heginbal, 64 IBLA 170 (May 26, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing, respectively, with other parties in interest, assignments violative of 43 CFR 3112.4-3, and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Charles T. Neff, 64 IBLA 234 (May 27, 1982)

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Curtis Wheeler, 64 IBLA 239 (May 28, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b) (1979).

Michigan-Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease offer which must be disclosed under 43 CFR 3102.7 (1979).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to give the service an interest in the lease, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7 (1979).

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

Gordon W. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the mineral leasing laws. The refusal to lease should be supported by facts to demonstrate that the leasing would not be in the public interest. Mere conclusory findings, not supported by facts, do not warrant rejection.

Mary A. Pettigrew, 64 IBLA 336 (June 10, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b) (1979).

The requirement that an oil and gas lease offeror disclose all parties in interest is not ambiguous, and the rejection of offers filed prior to this Board's decision in Lola L. Doe, 31 IBLA 394 (1977), for violation of the regulations requiring disclosure of such interests and prohibiting multiple filings did not constitute a retrospective application of a new Departmental interpretation of the regulations.

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

A simultaneous oil and gas lease application which is not holographically (manually) signed, in accordance with 43 CFR 3112.2-1(b), must be rejected.

Fred E. Forster III, 65 IBLA 38 (June 22, 1982)

Where, under 43 CFR 3102.2-5, evidence of a corporation's qualifications to hold an oil and gas lease must be submitted simultaneously with the lease offer or reference be made to the BLM serial number where the material has earlier been filed, and where such information is not submitted with the offer, the offer is deficient, the filing ineffective, and no priority attaches. However, where the applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3102.2-5 is satisfied, an effective filing occurs, and priority attaches on the date the deficiency is cured.

Peter D. Van Der Jagt, 65 IBLA 58 (June 23, 1982)

An application drawn first in a simultaneous drawing which is filed in the name of a partnership but which is not accompanied by statements required by the pertinent regulations and which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

A partnership's defective simultaneous noncompetitive oil and gas lease application is not curable by submission of required evidence of qualifications after the drawing.

Pirandel Investment Research, 65 IBLA 111 (June 28, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement is filed with the proper BLM office not later than 15 days from the

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

close of the filing period for each drawing under 43 CFR Subpart 3112.

Robert E. Davis, 65 IBLA 135 (June 28, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Richard H. Rhyner, 65 IBLA 141 (June 29, 1982)

Where corporation A files on behalf of an individual a simultaneous oil and gas lease application referencing a qualifications file number on the application which file contains qualifications for two corporations, and at the time of the filing, the file includes an executed power of attorney from the individual to corporation B, but no authorization for corporation A to act on behalf of the individual, and a subsequently filed instrument purporting to authorize corporation A to act on behalf of the individual is not personally signed by the individual, there is a failure to comply with 43 CFR 3102.2-1(a), and 43 CFR 3102.2-6, and the application is properly rejected.

Arthur H. Kuether, 65 IBLA 184 (June 29, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. However, where the record is unclear whether the justification for refusing to lease specifically refers to certain lands in the offer, the case may be remanded to BLM for determination of whether a lease may issue for those lands.

Rachelk Production, Inc., 65 IBLA 271 (July 12, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

An oil and gas lease offer which includes advance rental commensurate to the number of acres requested is improperly rejected.

Leon Jeffcoat et al., 66 IBLA 80 (July 29, 1982)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Robert L. Lyon, 66 IBLA 141 (Aug. 10, 1982)

Under 43 CFR 3112.4-1(a), a prospective lessee (i.e., one whose simultaneous noncompetitive application has been selected and approved by BLM) must either affix a "personal handwritten signature" on the offer to lease form and stipulations, or the prospective lessee's agent must do so. A rubber-stamped facsimile signature is not a "personal handwritten signature," and, where the prospective lessee affixes such a facsimile signature, the application is properly rejected under 43 CFR 3112.6-1(d).

Mary L. Arata, 66 IBLA 160 (Aug. 11, 1982) 89 I.D. 407

An oil and gas lease application, Form 3112-1 (July 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

John F. Jacobs, 66 IBLA 219 (Aug. 16, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered. An incomplete application must be rejected.

Frank S. Stieglmayr, 66 IBLA 276 (Aug. 18, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

An over-the-counter oil and gas lease offer for acquired lands will be rejected when the lands requested in the offer were formerly included in a canceled or relinquished lease, a lease which automatically terminated for nonpayment of rental or a lease which expired by operation of law at the end of its primary term, because such lands may be leased only in accordance with the simultaneous filing procedures of 43 CFR Subpart 3112.

Lowell J. Simons, 66 IBLA 338 (Aug. 26, 1982)

It is proper for the Bureau of Land Management to reject an over-the-counter offer for an oil and gas lease of land formerly included in a lease which expired by operation of law, because under 43 CFR 3112.1-1 such land is subject to leasing only under the simultaneous filing system, 43 CFR Subpart 3112.

Todd S. Welch, 66 IBLA 350 (Aug. 26, 1982)

An oil and gas lease application, form 3112-1 (Sept. 1981), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and applicant's failure to check these items on the form cannot be cured by a simple addendum where the rights of the second-drawn applicant have intervened.

Carol V. Miller, 66 IBLA 394 (Aug. 31, 1982)

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Paiute Oil & Mining Corp., 67 IBLA 17 (Sept. 3, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

It is improper to reject a simultaneously filed oil and gas lease application because of the alleged failure of the signatory to indicate his relationship to the applicant where the applicant is a partnership and the signatory is a partner authorized to act in its behalf, and the application is correctly noted with a reference to the BLM serial number where the articles of partnership and the names of those authorized to act are on file. In those circumstances, the regulatory requirement that the application be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship, is satisfied.

Hercules (A Partnership) and Gemini (A Partnership), 67 IBLA 151 (Sept. 20, 1982)

Dry River Properties, 69 IBLA 151 (Dec. 13, 1982)

Leonard Minerals Co., 74 IBLA 371 (July 28, 1983)

A simultaneously filed oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period, since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period, and since the applicant must bear the responsibility for any error in the dating of the application.

The 15-working-day filing period for a simultaneously filed oil and gas lease application is rigid; strict adherence thereto establishes fairness and uniformity for all participants, and BLM's strict enforcement thereof is not arbitrary or capricious.

Walter Adomkus, 67 IBLA 177 (Sept. 21, 1982)

The Board will reverse a BLM decision denying a protest contending that the first-drawn applicant for a noncompetitive oil and gas lease has not complied with 43 CFR 3102.2-6 (1980), requiring the disclosure of any agreement with the lease filing service which assisted the applicant, where the record establishes that the first-drawn applicant did not comply.

Patricia C. Alker, 67 IBLA 214 (Sept. 23, 1982)

A simultaneous oil and gas lease application which is not signed in the space provided on the card must be rejected.

Wilfred Plouis, 67 IBLA 237 (Sept. 23, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where an employee who is not "in the business of providing assistance to participants in a Federal oil and gas leasing program" signs an application as an "attorney-in-fact" of the offeror, she is not an agent within the meaning of 43 CFR 3102.2-6(a), and thus is not required to submit statements required by 43 CFR 3102.2-6(a) or to reference a serial number on the application referring to such statements filed in the BLM office as required by 43 CFR 3102.2-1(c).

Evelyn Chambers, 67 IBLA 280 (Sept. 28, 1982)

Where a simultaneous oil and gas leasing filing service establishes an agent's qualifications file pursuant to 43 CFR 3102.2-1(c), and references that file on an application, but the file contains only an expired authorization for the named applicant, the application is properly rejected.

Alvin B. Gendelman, 67 IBLA 333 (Oct. 1, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. The refusal to lease should be supported by facts of record demonstrating that leasing would not be in the public interest, e.g., where leasing might adversely affect relict plant communities and the suitability of the West Potrillo Mountains as habitat for pronghorn antelope.

James M. Chudnov, John L. Messinger, 68 IBLA 128 (Oct. 28, 1982)

Where an application is drawn first in a simultaneous oil and gas lease drawing and the applicant is notified by the Bureau of Land Management that the rental due is $61, the application will be disqualified and rejected under 43 CFR 3112.4-1 and 3112.6-1, when the applicant submits a payment of $60 within the specified time, but fails to submit the $1 deficiency within the allowed time.

J. Gene Everette, 68 IBLA 225 (Nov. 15, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Duane W. Dohse, 68 IBLA 240 (Nov. 16, 1982)

A junior over-the-counter noncompetitive oil and gas lease offer is properly rejected where the lands have been leased to a senior offeror and the junior offeror incorrectly alleges that the senior offeror had not identified the proper county in describing the land.

Irvin Wall, 68 IBLA 243 (Nov. 16, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, a junior offer is properly rejected to the extent that it includes land described in a senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

Irvin Wall, 68 IBLA 308 (Nov. 19, 1982)

Irvin Wall, 68 IBLA 311 (Nov. 19, 1982)

Irvin Wall, 69 IBLA 175 (Dec. 14, 1982)

Irvin Wall, 76 IBLA 186 (Oct. 3, 1983)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

Herbert I. Ott, 68 IBLA 336 (Nov. 22, 1982)

An oil and gas lease application, Form 3112-1 (Sept. 1981), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are left unanswered, and therefore, must be rejected.

Inclusion of a defective application in a drawing does not bar rejection after the selection has been made.

A defective application for noncompetitive oil and gas lease submitted pursuant to the simultaneous filing procedure is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of the second and third qualified applicants have intervened.

A first-drawn application in a simultaneous filing procedure drawing is a noncompetitive offer to lease for oil and gas and does not create a property right in the offeror.

Fon F. Tzeng, 68 IBLA 381 (Nov. 23, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and applicant's failure to check these items on the form cannot be cured by a simple addendum where the rights of the second-drawn applicant have intervened.

Jack Goodwin, 68 IBLA 400 (Nov. 23, 1982)

Where a listing of corporate officers is required by regulation as part of the corporate qualifications file maintained by an offeror for an over-the-counter oil and gas lease, the list is deemed complete in the absence of any mention of a corporate treasurer if the corporate president serves in a dual capacity as treasurer and the president's identity is disclosed on the list.

Reference to the serial number identifying the corporate qualifications file of a corporate offeror for an oil and gas lease constitutes certification that

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

the qualifications statement complies with 43 CFR 3102.2-1(b) (1980).

Paul M. Temple, 69 IBLA 54 (Nov. 29, 1982)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the lands applied for are not withdrawn from operation of the Mineral Leasing Act. An oil and gas lease offer is properly rejected where the lands sought are within the Lake Mead National Recreation Area, and the National Park Service has declined, under 43 CFR 3566.3, to give consent to issuance of the lease.

Dr. Ann T. Gaeth, 69 IBLA 79 (Nov. 30, 1982)

Frances Kunkel, 69 IBLA 205 (Dec. 16, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. Rejection of an offer is proper where the record demonstrates leasing might adversely affect sensitive biological species in the Aljodones Dunes Outstanding Natural Area.

Eagle Exploration Co., 69 IBLA 96 (Nov. 30, 1982)

Where a simultaneous oil and gas lease applicant establishes that he had, in fact, personally signed his application and his offer, as required by 43 CFR 3112.2-1(b) and 43 CFR 3112.4-1, his offer was rejected improperly.

Paul Mitsialakis, 69 IBLA 121 (Dec. 3, 1982)

An oil and gas offer describing land which cannot be encompassed within a 6-mile square or within an area not exceeding six surveyed sections in length or width is defective and must be rejected.

Richard M. Bove, 69 IBLA 135 (Dec. 8, 1982)

It is proper to issue an oil and gas lease for less than 640 acres where the leased land is surrounded by lands not available for leasing.

A noncompetitive oil and gas lease offer is properly rejected in favor of a senior offer that would qualify regardless of whether it was adjudicated on the basis of the rules applicable at the time it was filed or at the time the lease was issued.

Irvin Wall, 69 IBLA 154 (Dec. 13, 1982)

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

available for leasing, and an offer filed for such land must be rejected.

Fairco Oil & Mining Corp., 69 IBLA 172 (Dec. 14, 1982)

An application drawn first in a simultaneous drawing which is filed in the name of a partnership but which is not accompanied by evidence of qualifications required by the pertinent regulations and which does not refer to the serial number of the record where the statements have previously been filed with and accepted by the Bureau of Land Management is defective and must be rejected.

KVK Partnership, 69 IBLA 199 (Dec. 15, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered, even if the necessary information is subsequently filed.

Robert E. Lee, 69 IBLA 255 (Dec. 21, 1982)

Where a listing of corporate officers is required by regulation as part of the corporate qualifications file maintained by the offeror for an over-the-counter oil and gas lease, the list is deemed complete in the absence of any mention of a corporate treasurer or secretary if these offices are held by other corporate officers serving in a dual capacity and the identity of these corporate officers is disclosed by the list.

References to the serial number identifying the corporate qualifications file of a corporate offeror for an oil and gas lease constitutes certification that the qualifications statement complies with 43 CFR 3102.2-1(b) (1980).

An over-the-counter offer to lease oil and gas is not subject to rejection by the fact that the signatures of three offerors appear on the face of the offer accompanied by only a single entry showing the date of execution of the offer.

Paul M. Temple, 69 IBLA 275 (Dec. 21, 1982)

Under sec. 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1976), the Secretary of the Interior is without authority to waive compliance with a condition imposed by the agency having jurisdiction over the acquired lands as a prerequisite to giving its consent to issuance of a noncompetitive oil and gas lease. Moreover, the Department has no authority to require that the agency provide a rational justification for imposition of the condition.

Amoco Production Co., 69 IBLA 279 (Dec. 21, 1982)

An oil and gas lease application filed by a partnership in a simultaneous filing is properly rejected where it is not accompanied either by partnership qualification papers, as required by 43 CFR 3102.2-4, or by any reference to a serial number indicating where such information can be found, as permitted by 43 CFR 3102.2-1(c).

James W. Lacy, 69 IBLA 285 (Dec. 21, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Land included within an outstanding oil and gas lease, whether void, voidable, or valid, is not available for leasing, and an application filed for such land must be rejected. Even if the outstanding lease were canceled, the land would not be available for over-the-counter leasing, since land within a canceled lease may be leased again only in compliance with the drawing procedure established by 43 CFR 3112.

It is proper to issue an oil and gas lease for less than 640 acres where the leased land is surrounded by lands not available for leasing.

Irvin Wall, 69 IBLA 321 (Dec. 28, 1982)

A noncompetitive over-the-counter oil and gas lease offer need not be rejected merely because the applicant failed to initial an attachment to the application.

Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, a junior offer is properly rejected to the extent that it includes land described in the senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

Where a lease improperly issued to a senior offeror is canceled, the offer of the applicant having next priority is entitled to consideration.

Irvin Wall, 69 IBLA 371 (Jan. 3, 1983)

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

James W. W. Young, 69 IBLA 387 (Jan. 4, 1983)

Oil and gas lease application, Form 3112-1 (Sept. 1981), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Mark G. Anderson, 70 IBLA 18 (Jan. 6, 1983)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are left unanswered, and therefore, must be rejected.

A simultaneous oil and gas lease application which is not signed or dated, in accordance with 43 CFR 3112.2-1, must be rejected.

Marianne L. McManus, 70 IBLA 21 (Jan. 6, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

In a simultaneous filing situation, the failure of a first-drawn applicant to file an offer in accordance with 43 CFR 3112.4-1 necessitates rejection of the offer. Where the offer form has been signed by one who is designated as an attorney-in-fact for the offeror, and it is not accompanied by a power of attorney or a reference to a qualifications file where such authorization has previously been filed, it must be rejected.

Energy Exploration, Inc., 70 IBLA 25 (Jan. 6, 1983)

American Petrofina Co. of Texas, 73 IBLA 120 (May 23, 1983)

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent and the offeror is deemed to have constructive knowledge of the total acreage included in the offer, by which the rental is computed.

Gigantosaurus Resources, Inc., 70 IBLA 52 (Jan. 10, 1983)

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in an oil and gas lease which terminated. Such lands are available for subsequent leasing only in accordance with the provisions of the simultaneous filing system provided under 43 CFR 3112.

Lowell J. Simons, 70 IBLA 128 (Jan. 14, 1983)

An oil and gas lease offer is properly rejected under 43 CFR 3111.1-1(a) where the offeror signs one copy of the offer form but fails to sign the other four copies.

D. E. Yates, 70 IBLA 134 (Jan. 14, 1983)

Where an applicant fails to file five copies of a noncompetitive lease offer as required by the regulations in 43 CFR 3111.1-1(a), the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, is fatal to the oil and gas offer.

Robert G. Lynn, 70 IBLA 141 (Jan. 17, 1983)

Robert G. Lynn (On Reconsideration), 73 IBLA 288 (June 7, 1983)

The Mineral Leasing Act of 1920, as amended, establishes the maximum acreage a person may hold, own, or control at one time. If an offeror files a group of offers, any one of which causes him to exceed the acreage limitations, the entire group must be rejected under 43 CFR 3101.1-5(c)(3)(ii).

Exceeding the maximum acreage limit of 43 CFR 3101.1-5 when filing an offer to lease is not a minor defect which may be cured.

Jerry M. Pritchard, 70 IBLA 154 (Jan. 18, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, a junior offer is properly rejected to the extent that it includes land described in a senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

It is improper to issue an oil and gas lease for less than 640 acres where there is land available for leasing adjacent to the parcel described in the offer. Land included in an offer which has not become an issued lease is available for filing of another offer until a lease is signed by an authorized officer of BLM.

The Mineral Leasing Act of 1920, as amended, establishes the maximum acreage a person may hold, own, or control at one time. If an offeror files a group of offers, any one of which causes his to exceed the acreage limitations, the entire group must be rejected under 43 CFR 3101.1-5(c)(3)(ii).

Exceeding the maximum acreage limit of 43 CFR 3101.1-5 when filing an offer to lease is not a minor defect which may be cured.

Irvin Wall, 70 IBLA 183 (Jan. 20, 1983) 90 I.D. 3

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits, or to lease oil and gas deposits owned by the United States in patented lands, upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. The refusal to lease should be supported by facts of record demonstrating that leasing would not be in the public interest, e.g., where leasing would be incompatible with the management of the Sun River Winter Elk Range for wildlife conservation purposes.

Chester L. Prindle, 70 IBLA 254 (Jan. 25, 1983)

Consistent with Secretarial policy directives, where an oil and gas lease offer embraces lands in either a wilderness study area or an instant study area action on such an offer must be suspended, to the extent that the lands are within a wilderness study area or instant study area, until congressional action is taken on the President's recommendations as provided by sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

Nothing in the applicable statutes or regulations prohibits the issuance of oil and gas leases for less than a full protracted section of Federal land.

Ida Lee Anderson, 70 IBLA 259 (Jan. 26, 1983)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitve oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Angelina Holly Corp., 70 IBLA 294 (Jan. 27, 1983)

OIL AND GAS LEASES--Continued

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Generally--Continued

Where BLM rejects an oil and gas lease offer subject to compliance within 30 days, the 30-day period begins upon delivery of the decision to the offeror at his address of record.

Where BLM unconditionally rejects an oil and gas lease offer but provides a period of 30 days in which to cure a deficiency the decision is not interlocutory and the 30-day period for filing a notice of appeal begins upon receipt of the decision.

Carl Gerard, 70 IBLA 343 (Feb. 2, 1983)

Lands formerly included in a competitive oil and gas lease which expired at the end of its primary or extended term, and which were then classified as not within the boundaries of a known geologic structure, are subject to the filing of noncompetitive lease applications only in accordance with the simultaneous filing procedures in 43 CFR Subpart 3112. An over-the-counter offer for an oil and gas lease of such lands must be rejected.

Sam P. Jones, 71 IBLA 42 (Feb. 17, 1983)

Where an oil and gas lease offeror signs an offer form in ink, photocopies four exact reproductions of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a), and it is improper to reject that offer because the four photocopies were not personally signed.

Fayette Oil & Gas Corp., 71 IBLA 79 (Feb. 22, 1983)

A first-drawn drawing entry card in a simultaneous filing held prior to May 23, 1980, was a noncompetitive offer to lease oil and gas and did not create a property right in the offeror. No rights to a lease survive the withdrawal of such offer.

Stanley Ustad, 71 IBLA 116 (Mar. 2, 1983)

A simultaneous oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period, even though the application was assertedly signed during the filing period and inadvertently misdated, since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period, and since the appellant must bear the responsibility for any error in the dating of the application.

Richard L. Kahn, 71 IBLA 120 (Mar. 7, 1983)

Richard W. Redwick, 76 IBLA 57 (Sept. 19, 1983)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Minerals Management Service that land is within the known geologic structure of a producing oil or gas field has

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

the burden of showing that the determination is in error.

Bob F. Abernathy, 71 IBLA 149 (Mar. 9, 1983)

Bob G. Howell, 71 IBLA 253 (Mar. 21, 1983)

Action must be suspended on an oil and gas lease offer to the extent it includes lands in either a wilderness study area or an instant study area until Congressional action on the President's recommendations as provided by sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

Fortune Oil Co., 71 IBLA 153 (Mar. 9, 1983)
90 I.D. 84

Where BLM informs an offeror for an over-the-counter oil and gas lease that it is prepared to issue a lease provided certain stipulations are signed and returned within 30 days of receipt of BLM's decision, the decision is interlocutory and the 30-day period for filing a notice of appeal will not begin until the compliance period has been concluded.

Consistent with Secretarial policy directives, where an oil and gas lease offer embraces lands in a wilderness study area, action on such an offer must be suspended, to the extent that the lands are within a wilderness study area, until Congressional action is taken on the President's recommendations as provided by sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

John E. Anderson, 71 IBLA 172 (Mar. 10, 1983)

A junior over-the-counter noncompetitive oil and gas lease offer is properly rejected where the lands have been leased to a senior offeror and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

Irvin Wall, 71 IBLA 209 (Mar. 15, 1983)

Bob G. Howell, 75 IBLA 113 (Aug. 12, 1983)

John D. LaRue, 78 IBLA 239 (Jan. 10, 1984)

A simultaneous oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period.

George W. Lewis, Jr., 71 IBLA 231 (Mar. 18, 1983)

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Harry S. Hills, 71 IBLA 302 (Mar. 22, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where an oil and gas lease offeror signs an offer form in ink, photocopies four exact reproductions of the front page of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a), and it is improper to reject that offer because the four photocopies were not signed in ink by the offeror.

Where a noncompetitive oil and gas lease offeror submits one original lease offer form and four photocopies which are exact reproductions of the front of the lease form, but fails to reproduce the reverse side of the lease form, he has not met the requirements of 43 CFR 3111.1-1(a), which specifies that five copies of the official form, or valid reproduction thereof, must be filed. However, failure to submit copies of the reverse side of the form is a curable defect under 43 CFR 3111.1-1(e)(4), and BLM must give the offeror an opportunity to comply with 43 CFR 3111.1-1(e).

Richard F. Carroll, 71 IBLA 307 (Mar. 22, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. BLM must reject a simultaneous, noncompetitive application where, before issuance of the lease, the parcel won in the drawing is included in a special tar sand area leaseable only through competitive bidding pursuant to the Combined Hydrocarbon Leasing Act of 1981.

F. C. Hinkler, 71 IBLA 328 (Mar. 23, 1983)

A noncompetitive over-the-counter oil and gas lease offer need not be rejected merely because the applicant failed to initial an attachment to the application.

Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, a junior offer is properly rejected to the extent that it includes land described in a senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

Irvin Wall, 71 IBLA 349 (Mar. 28, 1983)

Where an order is published which restores certain withdrawn land to availability under the mineral leasing laws at a specific date and time in the future, a regular "over-the-counter" noncompetitive oil and gas lease offer which is delivered in advance to BLM with instructions that it be treated as filed effective as of the designated time and date must be considered a premature filing, and is properly rejected.

The Secretary of the Interior may, in his discretion, refuse to lease lands for oil and gas upon a proper determination that leasing would not be in the public interest.

Bachelk Production, Inc., 71 IBLA 374 (Mar. 29, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

The filing of an appeal from rejection of a lease offer or application preserves the viability of the offer or application during the pendancy of the appeal. Thus, where it is shown that the lease improperly issued to another party, the lease is properly canceled and may be awarded to the appellant.

Goldie Skodrag, 72 IBLA 120 (Apr. 14, 1983)

Where a lease agreement is mailed to a first-qualified applicant at his last address of record by certified mail, delivery to that address is adequate regardless of whether it was actually received by the applicant or not. A tender of lease agreement by the applicant more than 30 days subsequent to the date of delivery is properly rejected.

Hampton P. Stewart, 72 IBLA 358 (May 2, 1983)

An oil and gas lease application, Form 3112-1 (June 1980) is not completed within the meaning of 43 CFR 3112.2-1(a) where questions (d) through (f) concerning other parties in interest, assignments, and multiple filings, are left unanswered, even if the required responses are subsequently provided.

Michele M. Dawurek, 73 IBLA 36 (May 9, 1983)

It is improper to reject a simultaneously filed oil and gas lease application because of the alleged failure of the signatory to indicate his relationship to the applicant where the applicant is a corporation and the signatory is an officer authorized to act in its behalf, and the application is correctly noted with a reference to the BLM serial number where the articles of incorporation and the names of those authorized to act are on file. In those circumstances, the regulatory requirement that the application be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship, is satisfied.

Hickory Creek Oil Co., 73 IBLA 173 (May 26, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to it. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981. The fact that appellant filed its offer before the enactment of the Combined Hydrocarbon Leasing Act and BLM delayed in acting on the offer until after the effective date of the Combined Hydrocarbon Leasing Act does not entitle appellant to a lease.

CAF Co., 73 IBLA 203 (May 27, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

The regulatory requirement that a simultaneously filed oil and gas lease application be rendered in a manner which reveals the name of the applicant, the name of the signatory, and their relationship is not satisfied where the signature is illegible, no designation of authority appears on the application, and the signatory and his authority cannot be ascertained by reference to the qualifications file of the filing service listed on the application.

Kenneth S. Bradke, 73 IBLA 216 (May 27, 1983)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are left unanswered, and therefore, must be rejected.

A simultaneous oil and gas lease application which is not signed and dated in the space provided on the card must be rejected.

A defective application for a noncompetitive oil and gas lease submitted pursuant to the simultaneous filing procedure is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of the second and third qualified applicants have intervened.

Inclusion of a defective application in a drawing does not bar rejection after the selection has been made.

A first-drawn application in a simultaneous filing procedure drawing is a noncompetitive application to lease for oil and gas and does not create a property right in the applicant.

Warren M. Wissley, 73 IBLA 234 (May 31, 1983)

An oil and gas lease application, Form 3112-6 and 3112-6(a) (Automated Simultaneous Oil and Gas Lease Application, Parts A & B) is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions printed on the application where the applicant's name and address are not placed in the space provided therefor on Form 3112-6(a).

Nancy McMurtrie, 73 IBLA 247 (June 2, 1983)

Filing fees will be retained for simultaneous oil and gas lease applications which are rejected.

Shay Resources, Inc., 73 IBLA 291 (June 7, 1983)

An oil and gas lease offer is properly rejected where the lands sought are within the Lake Mead National Recreation Area, and the National Park Service has declined, under 43 CFR 3566.3, to give consent to issuance of the lease.

S. Dawson, 73 IBLA 301 (June 7, 1983)

Chevron U.S.A., Inc., 74 IBLA 92 (June 30, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where an oil and gas lease application is given first priority in the simultaneous filing procedure, and the application was filed in accordance with the regulation, 43 CFR 3102.5, it is proper for the Bureau of Land Management to issue the oil and gas lease to the applicant whose application was drawn with first priority. Bare assertions by the second-priority applicant of irregularities by the first-priority applicant do not rise to the level that would require an investigation to verify compliance.

Jonathan Kutner, 73 IBLA 372 (June 15, 1983)

A simultaneous oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period.

Barbara Payne, 73 IBLA 381 (June 15, 1983)

An oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

D. M. Yates, 74 IBLA 18 (June 24, 1983)

An offer submitted by an agent for the first-drawn applicant under the simultaneous filing program which is not rendered in such a manner as to reveal the name of the potential lessee, the name of the signatory, and their relationship, is properly rejected.

An offer by the first-drawn applicant of a simultaneous filing procedure drawing is not curable by submission of the required material after the period for such submission has expired, for the reason that the rights of the second- and third-drawn applicants have intervened.

United Ventures, 74 IBLA 31 (June 24, 1983)

When, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn offeror is notified to submit the first year's advance rental and executed lease agreements, those submissions must be received by the proper office within the prescribed 30 days. Automatic disqualification, stemming from untimely filings, will not be avoided by allegations that submissions were timely mailed but thereafter damaged by the postal service and returned to appellant.

Mary Jane Associates, 74 IBLA 43 (June 27, 1983)

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's advance rental by more than 10 percent.

J. V. & Associates, 74 IBLA 45 (June 28, 1983)

An oil and gas lease application filed by a partnership in a simultaneous filing is properly rejected where said application is not accompanied either by the qualification papers required by 43 CFR 3102.2-4 (1981) or by any reference to a serial number indicating where the requisite information can be found. Such omissions cannot be cured after the drawing.

LSMJ Exploration Group, 74 IBLA 185 (July 18, 1983)

LBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

A withdrawal of a simultaneous oil and gas lease application received over the signature of the applicant takes effect from the moment it is filed, and all rights under the application are at an end so instantly.

Where an applicant has withdrawn his first filed simultaneous oil and gas lease application because it contained a fatal flaw, and thereafter files a correct application, it is improper for the Bureau of Land Management to reject the second application as to parcels for which it received first priority for the reasons that the applicant made multiple filings.

John H. Trigg, 74 IBLA 246 (July 19, 1983)

A simultaneous oil and gas lease application which was filed in the name of a trust, but was not accompanied by the statements required by 43 CFR 3102.2-3 (1981) and which did not refer to a file reference number was properly rejected.

Robert T. P. Metcalf (Trust), 74 IBLA 252 (July 22, 1983)

Where, under 43 CFR 3102.2-5 (1981), evidence of a corporation's qualifications to hold an oil and gas lease must be submitted simultaneously with the lease offer or reference be made to the BLM serial number where the material has earlier been filed, and where such information is neither submitted with the offer nor referenced thereon by serial number, the offer is deficient, the filing ineffective, and no priority attaches. However, where the applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3102.2-5 (1981) is satisfied, an effective filing occurs, and priority attaches on the date the deficiency is cured.

Ideco Oil Co., 74 IBLA 260 (July 22, 1983)

An oil and gas lease offer is properly rejected where the lands sought are within the Lake Mead National Recreation Area, and regulation 43 CFR 3501.3 requires consent of the Regional Director, National Park Service, for a lease in this area, and such consent is refused.

Edward Seggerson, Jr. (On Reconsideration), 74 IBLA 267 (July 25, 1983)

Where a noncompetitive oil and gas lease offeror submits one official lease offer form and four photocopies which are exact reproductions of the front of the lease form, but fails to reproduce the reverse side of the lease form, he has not met the requirements of 43 CFR 3111.1-1(a), which specifies that five copies of the official form, or valid reproduction thereof, must be filed. However, failure to submit copies of the reverse side of the form is a curable defect under 43 CFR 3111.1-1(e)(4), and BLM must give the offeror an opportunity to comply with 43 CFR 3111.1-1(a).

Charles T. Zimmerman, 75 IBLA 6 (Aug. 2, 1983)

Where appellants aver, without offering proof to show the basis of their averment, that lands which were the subject of appellants' oil and gas lease offer were acquired by the United States, Bureau of Land Management correctly rejected the offer to lease lands

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

shown on Government records not to be in United States ownership.

James M. Chudnow, John L. Hessinger, 75 IBLA 69 (Aug. 10, 1983)

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations, regardless of their actual knowledge of what is contained in such regulations. Failure to receive a copy of a regulation does not provide a valid reason for reinstating with original priority an over-the-counter oil and gas lease offer which had been rejected for failure to comply with the regulation.

Ron W. Howard, 75 IBLA 133 (Aug. 15, 1983)

Where an offer to lease lands cannot be accepted because the lands are not available for leasing, the offer will be rejected and not held in suspense until the land may become available for leasing.

Paul C. Kohlman, 75 IBLA 171 (Aug. 19, 1983)

Consistent with Secretarial policy directives, where an oil and gas lease offer embraces lands in a wilderness study area BLM may not issue a lease, and action on such an offer must be suspended until congressional action on the President's recommendations as provided by sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

Lawrence E. Hart, 75 IBLA 186 (Aug. 22, 1983)

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent and the offeror is deemed to have constructive knowledge of the total acreage included in the offer, by which the rental is computed.

When regulations provide that payment is based on total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision the applicant bears the burden of proof that an ambiguity exists which renders the total acreage unknown. Mere allegation of an ambiguity is not sufficient.

Thomas Connell, 75 IBLA 209 (Aug. 22, 1983)

Where BLM rejects an oil and gas lease offer, the 30-day period begins upon delivery of the decision to the offeror at his address of record.

Lloyd E. Baldwin, 75 IBLA 251 (Aug. 25, 1983)

Filing fees of $75 will be retained for simultaneous oil and gas lease applications which are rejected. The balance, if any, shall be refunded. 43 CFR 3112.3(b).

George Dolezal, Jr., 75 IBLA 298 (Aug. 29, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Where an oil and gas lease offeror signs an offer form in ink, photocopies four exact reproductions of the front page of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a).

A decision of the Board of Land Appeals holding that the signature requirement of 43 CFR 3111.1-1(a) is met when the offeror signs one offer form in ink and photocopies four exact reproductions of the front page of the offer form, including the signature, is not an abrupt departure from other Board rulings nor a retroactive application of a new rule, but is merely the initial interpretation and application of an existing regulation to this specific factual circumstance.

Where the first-filed over-the-counter noncompetitive oil and gas lease offers each contain a curable defect listed in 43 CFR 3111.1-1(e), and where the offeror cures such defect, the offeror retains his priority as of the date the original offers were filed, even though a second qualified offeror filed an offer for some of the same lands included in the previously filed offers before the first offeror cured the defect in his offers.

Richard F. Carroll (On Reconsideration), 76 IBLA 151 (Sept. 27, 1983) 90 I.D. 432

Where an oil and gas lease offeror signs an offer form in ink, photocopies four exact reproductions of the front page of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a), and it is improper to reject that offer because the four photocopies were not signed in ink by the offeror.

James L. Castlos III, 76 IBLA 174 (Sept. 30, 1983)

A simultaneous oil and gas lease application is properly rejected if the applicant's identity cannot be established by examining the application form because the applicant signed the application with an illegible signature and placed the name of some other person in the space provided for the name of the applicant.

An applicant for an oil and gas lease must place his personal or business address on a simultaneous application. An applicant has not complied with this requirement if the name of some other person appears as addressee, even though correspondence addressed to that person is to be received in the care of the applicant.

Jack Ortman, 76 IBLA 200 (Oct. 6, 1983)

When, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn offeror is notified that he/she is to submit the first year's advance rental and executed lease agreements, those submissions must be received by the proper office within the prescribed 30 days. Automatic disqualification, stemming from untimely filings, will not be avoided by reliance on the assurance of the Postal Service that mailings entrusted to it would be delivered on the due date.

The 1980 amendment of 43 CFR 3112.4-1 did not create an ambiguity which excused an applicant from filing the necessary lease offer documents within 30 days from the date of receipt. The reasons for the 1980 amendments stated by the Secretary in the Federal

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Register at the time of proposal and final printing amplify the stated intent of the regulations to provide that the sanction for failure to file within the 30-day period is the rejection of an applicant's offer.

Eagle Basin Partnership, 76 IBLA 241 (Oct. 17, 1983)

It is not proper to reject an application in the simultaneous oil and gas leasing program because the address shown on the application coincidentally is the same as that of a filing service, where it is shown that the application was filed by members of the filing service for their own account.

Pond Road Properties, 76 IBLA 330 (Oct. 20, 1983)

An executed lease agreement and first year's rental payment must be filed in the proper BLM office within 30 days of receipt of the notice. Filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mail does not constitute filing.

Pioneer Fairmont #1, Ltd., 76 IBLA 337 (Oct. 20, 1983)

A simultaneous oil and gas lease application which is not signed or dated, in accordance with 43 CFR 3112.2-1, is not properly completed and must be rejected.

An automated simultaneous oil and gas lease application Part B, Form 3112-6a, which does not reflect in the space provided for "Social Security Number" the same number used on the corresponding Part A, Form 3112-6, is not properly completed and must be rejected.

A filing fee of $75 will be retained for each automated simultaneous oil and gas lease application form which is rejected. The balance of the filing fee amount submitted with each rejected form, if any, shall be refunded.

D. E. Olson, 76 IBLA 344 (Oct. 24, 1983)

In simultaneous oil and gas lease situations, the failure of a first-drawn applicant to file an offer in accordance with 43 CFR 3112.4-1 necessitates rejection of the offer. Where the offer has been signed by one who has been designated as an attorney-in-fact for the offeror, and it is not accompanied by a power of attorney or a reference to a qualifications file where such authorization has been filed, the offer must be rejected.

Thomas M. Bloch, 76 IBLA 364 (Oct. 25, 1983)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. However, where the record is unclear whether the justification for refusing to lease specifically refers to certain lands in the offer, the case may be remanded to BLM for determination of whether a lease may issue for those lands.

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

The Secretary on Dec. 30, 1982, directed that no mineral leasing or permitting take place on BLM wilderness study areas. Instruction Memorandum 83-237, Change 3 (June 24, 1983), provides, however, that BLM may continue to lease portions of wilderness study areas that are "immediately adjacent to producing oil and gas fields or areas that are prospectively valuable."

Ida Lee Anderson, 76 IBLA 395 (Oct. 27, 1983)

Where a check deposited improperly by the Bureau of Land Management was returned as uncollectible, it was not a debt due the United States under 43 CFR 3112.2-2(c) (1982), and its maker was improperly disqualified from future participation in the simultaneous oil and gas leasing program.

Charles Anderson, 76 IBLA 402 (Oct. 27, 1983)

An automated simultaneous oil and gas lease application filed by a partnership in the partnership name is not properly rejected under 43 CFR 3112.2-1(c) (1982), where the name of only one entity as defined in 43 CFR 3102.1 (1982), appears as applicant on Part B of the application.

Where a partnership consists of the names of two individuals and the designation "PTP" and the names and designation are typed on both Part A and Part B of the automated simultaneous oil and gas lease application as the name of the applicant, the fact that the automated part of Part A contains the surname and initials of only one of the individuals is a nonsubstantive error, and it does not require rejection of the application as not being properly completed under 43 CFR 3112.2-1(g) (1982).

Charles Fox & George H. Keith (Partnership), 77 IBLA 199 (Nov. 18, 1983)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

Vernie Lyseggen, 78 IBLA 1 (Dec. 12, 1983)

Harold J. Hersoth, 78 IBLA 150 (Dec. 29, 1983)

Under 30 U.S.C. § 226(b) (Supp. V 1981), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within such a structure, a noncompetitive lease offer for such lands must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination that the land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

R. C. Altrogge, 78 IBLA 24 (Dec. 12, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

A noncompetitive oil and gas lease offer is properly rejected pursuant to 43 CFR 3103.3-1 where the offer is deficient in the first year's rental by more than 10 percent.

James M. Chudnow, 78 IBLA 78 (Dec. 16, 1983)

An oil and gas lease offer is properly rejected under provision of 43 CFR 3111.1-1(a) where the offeror signs only two copies of five submitted lease offer forms.

Glen R. Cassaring, 78 IBLA 242 (Jan. 10, 1984)
91 I.D. 9

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to it. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a favorable petroleum geological province, which is leaseable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as modified by the Alaska National Interest Lands Conservation Act.

E. B. Joiner, 78 IBLA 323 (Jan. 24, 1984)

An oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

Pursuant to 43 CFR 3130.2-1, rentals are not properly prorated for any lands in which the United States owns an undivided fractional interest, but shall be payable at the same rate as provided for the full acreage in such lands.

A noncompetitive oil and gas lease offer filed "over-the-counter" is properly rejected when the accompanying rental payment is deficient by more than 10 percent. However, in appropriate circumstances, if the balance of the rental is paid prior to rejection by BLM and there are no intervening rights of third parties, the offer may be reinstated with priority from the date the deficiency is corrected.

Joe M. Johnson, 78 IBLA 382 (Jan. 31, 1984)

Under 43 CFR 3112.2-2(c) (1982), BLM properly disqualifies simultaneous oil and gas lease applications submitted with uncollectible filing fees and requires payment of the debt as a condition of further participation in the simultaneous leasing program.

Maryeann Killian, 79 IBLA 105 (Feb. 17, 1984)

MFL Partnership, Main Street Federal Energy Co., 82 IBLA 75 (July 17, 1984)

The filing of an appeal from rejection of a lease offer or application preserves the viability of the offer or application during the pendency of the appeal. Thus, if it can be shown that the lease improperly issued to another party, the lease is properly canceled and may be awarded to the appellant.

Where the lessee of an oil and gas lease fails to pay the annual rental, the lease is terminated. Such termination, however, does not moot an unadjudicated appeal challenging the issuance of the lease to the

OIL AND GAS LEASES--Continued

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Generally--Continued

lessee. Appellant is entitled to an adjudication of her appeal. Upon a determination that the terminated lease was improperly issued to the lessee in the first instance, appellant as the first-qualified applicant may be awarded the lease.

Where an issue in an appeal involving a simultaneous oil and gas lease application is the existence or nonexistence of an agreement between the lessee as priority applicant and her assignee which would have resulted in a violation of 43 CFR 3102.2-6(a) and (b), the lessee is the party with peculiar means and knowledge enabling her to show the nonexistence of such agreement. Failure or refusal to do so may give rise to an inference that the lessee's evidence is unfavorable.

Patricia C. Alker, 79 IBLA 123 (Feb. 22, 1984)

An oil and gas lease offer filed for lands embraced in a senior offer is properly rejected when a lease issues in response to the senior offer.

Glen R. Cassaring, 79 IBLA 138 (Feb. 22, 1984)

"Prevents automated processing." As used in 43 CFR 3112.3(a)(2), 49 FR 2113 (Jan. 18, 1984), an application form is prepared in a manner that "prevents automated processing" where a mistake or omission prevents the computer from fully completing the automated program. An application containing such a deficiency is properly held to be "unacceptable."

Where an application form is deemed unacceptable under the automated simultaneous oil and gas leasing system, all filing fees submitted with such form are returned, after assessment of a $75 processing fee, even if the deficiency which rendered the form unacceptable is not discovered until after selection of successful applications.

An application is properly rejected where the applicant has failed to disclose all parties in interest, has failed to identify any party who gave assistance in preparing the application, has interests in another filing for the same parcel, has failed to disclose all individuals in an association or partnership which has filed an application, or has utilized the address of a person or entity in the business of providing assistance for the filing of applications. An application is also properly rejected where the application is signed by a person other than the applicant and the signatory has failed to disclose the relationship between them. Where an application is properly rejected, the Department lacks authority to authorize the refund of any filing fees tendered with the application.

Where a deficiency on an application form filed in the automated simultaneous leasing program neither prevents automated processing nor involves a failure to provide information necessary to police the system to prevent fraud or abuse, such deficiency shall be deemed de minimis, and will not render the application either unacceptable or rejectable.

Rejection of an application to lease filed under the automated simultaneous system necessarily encompasses retention of filing fees submitted therewith. Where an application to lease is "rejected" because of a deficiency on the application form, an applicant must either appeal or seek a return of any filing fees within 30 days of rejection. Where an applicant fails to do either, he will be barred from subsequently seeking a return of filing fees on the grounds that the

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

deficiency should properly have been treated as rendering the application "unacceptable."

Shay Resources, Inc., 79 IBLA 153 (Feb. 24, 1984)
91 I.D. 122

Under 30 U.S.C. § 226(b) (Supp. V 1981), lands within the known geological structure of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within such a structure prior to issuance of a lease, a noncompetitive lease offer for such lands must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination that certain lands are within the known geological structure of a producing oil or gas field has the burden of showing that the determination is in error. Absent any argument of fact or evidence suggesting such error, the determination will be upheld.

Stephen H. Haslund, 79 IBLA 252 (Mar. 5, 1984)

The regulatory requirement that a simultaneously filed oil and gas lease application be rendered in a manner that reveals the name of the applicant, the name of the signatory, and their relationship is not satisfied where no indication of the signatory's authority appears on the application and there is no reference to a qualifications file where the relationship between the signatory and the applicant is disclosed.

U.S. Oil Co., Inc., 80 IBLA 10 (Mar. 27, 1984)

Tipperary Oil & Gas Corp., 81 IBLA 91 (May 24, 1984)

An offer submitted by a partner for the first-drawn applicant under the simultaneous filing program which is not rendered in such a manner as to reveal the name of the potential lessee, the name of the signatory, and their relationship, is properly rejected.

Corinth Partnership, 80 IBLA 31 (Mar. 28, 1984)

The regulatory requirement that a simultaneously filed oil and gas lease application be rendered in a manner that reveals the name of the applicant, the name of the signatory, and their relationship is not satisfied where no indication of the signatory's authority appears on the application and there is no reference to a statement of qualifications on file with BLM in which the relationship between the signatory and the applicant is disclosed.

BLM is not required under 43 CFR 3102.5 to gather substantive information required on but missing from a simultaneously filed oil and gas lease application.

Chickasaw Oil & Gas, Inc., 80 IBLA 60 (Mar. 29, 1984)

A known geologic structure is a trap, either structural or stratigraphic in nature, in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, and which includes all acreage that is presumptively productive.

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Land within a known geologic structure of a producing oil or gas field may only be leased after competitive bidding.

An applicant for a noncompetitive acquired lands oil and gas lease who challenges a determination by BLM that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Reed International, 80 IBLA 145 (Apr. 6, 1984)

When an oil and gas lease applicant files Forms 3112-6 and 3112-6a which contain mismatched social security numbers, the application is rendered "unacceptable," regardless of when the error was discovered. Such an application is unacceptable at the time of filing and the subsequent erroneous inclusion in the selection process does not render the application "rejectable."

An applicant cannot receive any priority based on an application deemed to be unacceptable, even though the application is included in the selection process and selected with priority.

Howell Roberts Spear, 80 IBLA 150 (Apr. 6, 1984)

Where, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn applicant fails to submit his first year's advance rental payment within 30 days after receipt of notice, as prescribed by 43 CFR 3112.4-1(a) (1982), his lease offer must be rejected.

S. H. Partners, 80 IBLA 153 (Apr. 9, 1984)

Where an applicant for a simultaneous oil and gas lease submits a folded automated application, such application is properly deemed unacceptable under 43 CFR 3112.3(a) (48 FR 33679 (July 22, 1983)), and the applicant is entitled to a refund of filing fees after assessment of a $75 processing fee.

Frances Kunkel, 80 IBLA 333 (May 8, 1984)

Where a subdivision which is available for oil and gas leasing in one township would normally be adjacent to land similarly available in another township, a holding that a lease offer for one such subdivision which does not include the other is violative of the "640-acre rule" will be vacated upon a showing that the two townships are offset and the subdivisions concerned are not actually adjacent.

Under 30 U.S.C. § 184(d) (1982), no person, association, or corporation shall take, hold, own, or control at one time oil and gas leases or interests therein on land exceeding 246,080 acres in any one State other than Alaska. Under 43 CFR 3101.1-5 (1981), acreage applications and offers for oil and gas leases were included in calculating the total holdings. If an offeror filed a group of applications, any one of which caused him to exceed the acreage limitations, the entire group were required to be rejected pursuant to 43 CFR 3101.1-5(c)(3)(ii) (1981).

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Exceeding the maximum acreage limit when filing an offer to lease was not a minor defect which was subject to cure.

Irvin Wall (On Reconsideration), 80 IBLA 339 (May 10, 1984)

Where an application form is unacceptable under the automated simultaneous oil and gas leasing system, all filing fees submitted with such form are returned, after assessment of a $75 processing fee per application form, even if the deficiency which rendered the form unacceptable is not discovered until after selection of successful applications.

Carey D. McDaniel, 80 IBLA 393 (May 14, 1984)

A mismatched Part A and Part B in the automated simultaneous oil and gas leasing system renders an application unacceptable under the regulations because the computer is prevented from fully completing the automated program.

Where an application form is deemed unacceptable under the automated simultaneous oil and gas leasing system, all filing fees submitted with such form are returned after assessment of a $75 processing fee, even if the deficiency which renders the form unacceptable is not discovered until after selection of successful applications.

Harold Eugene Turner, 81 IBLA 106 (May 30, 1984)

The filing of an appeal from rejection of a lease offer or application preserves the viability of the offer or application during the pendency of the appeal. Thus, where it is shown that the lease improperly issued to another party, the lease is properly canceled and may be awarded to the appellant.

Judy Fleming, 81 IBLA 290 (June 12, 1984)

Where, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn applicant fails to submit his executed lease agreement and first year's advance rental payment within 30 days after receipt of notice to do so, as prescribed by 43 CFR 3112.6-1(a), his lease application must be rejected.

Fred William Berger, 81 IBLA 344 (June 25, 1984)

BLM has no authority under the Mineral Leasing Act as amended by the Combined Hydrocarbon Leasing Act of 1981, 30 U.S.C. § 226(b) (1982), to issue a noncompetitive oil and gas lease for land within a designated tar sand area. A noncompetitive lease improvidently issued after the enactment of the amendment in violation of its requirements is properly canceled upon discovery of the error.

Dorothy Langley, 81 IBLA 349 (June 25, 1984)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

If an oil and gas lease is to be issued for a particular tract, it must be issued to the first-qualified applicant. An application filed pursuant to the simultaneous filing procedure and selected with first priority is a noncompetitive application to lease for oil and gas and does not create a property right in the applicant but is merely a hope or expectation. The Secretary of the Interior may, in his discretion, reject any application to lease for oil and gas. An application, however, may not be rejected on a basis other than that permitted by law.

The first-qualified applicant for an oil and gas lease acquires no vested right to have a lease issued to him but only a right to be preferred over other applicants if a lease is to be issued and his application may be rejected if it is determined that a previously terminated lease including the lands sought for leasing should be reinstated under sec. 401 of the Federal Oil and Gas Royalty Management Act, P.L. 97-451, 96 Stat. 2447, which amended sec. 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1982).

Nola Grace Piasecki, 82 IBLA 48 (July 11, 1984)

Where a simultaneously filed oil and gas lease application is executed in a manner which incorporates numerous errors and violates several regulations, and thus creates ambiguities which cannot be resolved without the subsequent submission of further information, the application should be rejected. The fact that certain of these errors or violations have been held to be trivial or nonsubstantive when considered individually in other cases cannot serve to mitigate the cumulative effect of all of them appearing in a single application.

Maurice H. Coburn (On Reconsideration), 82 IBLA 112 (July 24, 1984)

Where BLM's request for additional information may reasonably be interpreted as not subject to a specific time limit, its rejection of an offer for failure by the offeror to submit the requested materials within 30 days must be reversed.

Two Rich Partnership, 82 IBLA 148 (July 30, 1984)

Under 30 U.S.C. § 226(b) (1982), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within such a structure after a simultaneous oil and gas lease drawing but prior to issuance of a lease, a simultaneous oil and gas lease application for such lands must be rejected. The applicant has no vested rights to issuance of a lease.

Lloyd Chemical Sales, Inc., 82 IBLA 182 (Aug. 13, 1984)

Regulations should be so clear that there is no basis for an oil and gas lessee's noncompliance with them, or they should not be interpreted to deprive him of his lease.

James E. Chudnow, 82 IBLA 262 (Aug. 29, 1984)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

If the first-drawn applicant for a simultaneous oil and gas lease has filed an offer that does not comply with 43 CFR 3112.4-1 (1982), the offer must be rejected. If the offer has been signed by one who has been designated as an attorney-in-fact for the offeror, and it is not accompanied by a power of attorney or reference to a qualifications file where such authorization has been filed, the offer must be rejected.

Anadarko Production Co., 83 IBLA 148 (Oct. 9, 1984)

An oil and gas lease application must be rejected pursuant to 43 CFR 3112.2-1(d) (1982) where the applicant uses the address of another person or entity which is in the business of providing assistance to those participating in the simultaneous oil and gas leasing system. Where a person or entity assists oil and gas lease applicants by forming them into partnerships for this purpose, arranging for the filing of their applications by a filing service, receiving remuneration for such services, and by processing and collecting the applicants' mail through the use of a common address; this constitutes assistance to participants in the oil and gas leasing program pursuant to 43 CFR 3100.0-5(d) (1982).

Margaret G. Pascale, 83 IBLA 268 (Oct. 25, 1984)

An offer signed without further identification by a partner of a partnership that is the first-drawn applicant under the simultaneous oil and gas leasing program is not properly rejected under 43 CFR 3102.4 for failure to reveal the relationship between the potential lessee and the signatory.

Corinth Partnership (On Remand), 83 IBLA 277 (Oct. 25, 1984)

Lands within a known geologic structure of a producing oil or gas field may only be leased by competitive bidding pursuant to 43 CFR 3120. A noncompetitive oil and gas lease offer filed before the lands were determined to be within a known geologic structure but not accepted by the United States on the date of determination is properly rejected.

George A. Donnelly, Jr., 83 IBLA 352 (Nov. 14, 1984)

One who challenges a determination by the Bureau of Land Management that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Eagle Exploration Co., 83 IBLA 354 (Nov. 15, 1984)

Under 30 U.S.C. § 226(b) (1982), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within such a structure, a noncompetitive lease offer for such lands must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination that the land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Leonard Luning, 83 IBLA 376 (Nov. 16, 1984)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

Pursuant to 30 U.S.C. § 226(b) (1982), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where the lands are determined to be within a known geologic structure prior to issuance of a lease, a simultaneous oil and gas lease offer for such lands must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination that certain lands are within the known geologic structure of a producing oil or gas field has the burden of establishing that the determination is in error. The determination will not be disturbed in the absence of a showing of error by a preponderance of evidence.

Irma E. Spear, 84 IBLA 92 (Dec. 6, 1984)

Amendments

Where an over-the-counter noncompetitive oil and gas lease offer is filed by a corporation unaccompanied by a statement of its qualifications or a reference by serial number to the record in which it has been filed, and such defect is remedied prior to the filing of any junior offer, such offer may be considered with priority as of the date the curative information is filed.

Century Oil and Gas Corp., 58 IBLA 227 (Sept. 30, 1981)

A deficient over-the-counter oil and gas lease offer may be cured by the offeror's submission of corrective information prior to a final Departmental decision, but with priority of filing only as of the date the corrective information was filed.

John L. Hessinger, James R. Chudnov, 65 IBLA 20 (June 21, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered, even if the necessary information is subsequently filed.

Robert B. Lee, 69 IBLA 255 (Dec. 21, 1982)

An oil and gas lease application, Form 3112-1 (June 1980) is not completed within the meaning of 43 CFR 3112.2-1(a) where questions (d) through (f) concerning other parties in interest, assignments, and multiple filings, are left unanswered, even if the required responses are subsequently provided.

Michele M. Devurak, 73 IBLA 36 (May 9, 1983)

BLM must reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976), to the extent that the land has been patented with no mineral reservation to the United States and in its entirety where the land cannot be embraced within a 6-mile square area or an area not exceeding six surveyed sections in length and width and the first year's advance rental is deficient by more than 10 percent.

Prior to its rejection, a deficient over-the-counter oil and gas lease offer may be cured by the offeror's submission of corrective information to BLM in order to obtain priority as of the date of filing

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Amendments--Continued

that data, however, a proposed amendment changing the land description submitted after rejection of the lease offer constitutes a new offer requiring the filing of a new lease offer.

James M. Chudnow, John L. Messinger, 79 IBLA 1 (Feb. 2, 1984)

In Lower v. Watt, 684 F.2d 957 (D.C. Cir. 1982), and Coyer v. Watt, 720 F.2d 626 (10th Cir. 1983), the amendment and disclaimer of Fred L. Engle, d.b.a. Resource Service Co. was held to be effective to waive the exclusive agency provision that formed part of the company's contract with its clients. The waiver being effective, neither the company nor Engle possessed an interest in a client's offer at the time of a drawing of simultaneously filed oil and gas lease offers so as to invalidate the offer.

Michigan Wisconsin Pipeline Co. (On Reconsideration), Geosearch, Inc., John A. Kocherger, 80 IBLA 317 (May 7, 1984)

Attorneys-in-Fact or Agents

Under 43 CFR 3102.6-1(a)(2), if a lease offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding.

Elizabeth McClellan, 45 IBLA 342 (Feb. 7, 1980)

Where a drawing entry card offer to lease is prepared by an agent, that is, a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the latter signed his principal's name or his own name as his principal's agent, and regardless of whether the signature was applied manually or mechanically.

Hyman Minik, 46 IBLA 292 (Mar. 31, 1980)

Elizabeth Murano, 47 IBLA 115 (Apr. 28, 1980)

William L. Hugen, Jr., 52 IBLA 174 (Jan. 26, 1981)

Where on an oil and gas lease drawing entry card the offerors' signatures were stamped by the offerors themselves, no agency statements are required under 43 CFR 3102.6-1(a)(2).

Federal Resources Corp., 48 IBLA 138 (May 30, 1980)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether he signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

Debra F. Howard, 48 IBLA 187 (June 9, 1980)

Henry A. Alker, 49 IBLA 118 (July 28, 1980)

Carolyn B. Lesser, 53 IBLA 336 (Mar. 26, 1981)

D. B. Gallagher, 54 IBLA 72 (Apr. 13, 1981)

J. Eugene Meyer, 57 IBLA 124 (Aug. 25, 1981)

Arthur J. Rossbauer, 59 IBLA 173 (Oct. 26, 1981)

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to prove an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

Geosearch, Inc., 48 IBLA 190 (June 9, 1980)

Where a corporation's statement of corporate qualifications on file in BLM shows that an individual identified only by name, but not by title or position, has a limited power to act on behalf of the corporation with reference to Federal oil and gas leases, simultaneous offers filed by him were properly rejected for the reason that they were not accompanied by the separate statements required when such offers are filed by an agent or attorney in fact, and this omission may not be "cured" post hoc by the corporation's allegation that he is its general manager and considered an officer.

Viking Resources Corp., 48 IBLA 338 (July 3, 1980)

Under 43 CFR 3102.6-1(a)(2), if a lease offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, giving full details of the agreement or understanding if it is a verbal one, and a copy of any written agreement or understanding. The regulation requirement is not met where statements are filed by the offeror and an agent with whom it has not actually contracted, but with whom the offeror's primary agent contracted to perform leasing services. To show the necessary agency and contractual authority,

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

the complete chain of agency-contract authority and relationships must be shown when the offer is filed.

Cliff Mezey, 50 IBLA 157 (Sept. 30, 1980)

A protest against the validity of a simultaneous noncompetitive oil and gas lease offer drawing entry card (DEC) on the grounds that the DEC was signed by someone other than the offeror and that no power of attorney was filed is properly dismissed where the record indicates that the offeror's wife signed the card for him as his amanuensis, in the absence of a clear showing by the protestant that the wife was the offeror's "agent" (i.e., was invested with discretionary authority to act for the offeror) instead. This is because a copy of a power of attorney or agency statements are not required to be filed when the person affixing the offeror's signature on the DEC is not his agent or attorney-in-fact.

John W. Bierlein, 53 IBLA 48 (Feb. 27, 1981)

Where a drawing entry card filed before June 16, 1980, is signed by the offeror but completed by an agent or attorney-in-fact, the separate signed statements by the attorney-in-fact or agent required by the pertinent regulation, 43 CFR 3102.6-1(a)(2), need not be filed.

Frank K. Haynes, 53 IBLA 53 (Feb. 27, 1981)

An oil and gas lease offer signed by the offeror personally need not be accompanied by statements pursuant to 43 CFR 3102.6-1 (1979) although it is submitted through a filing service.

The fact that an offeror signed an uncompleted oil and gas lease offer form which was subsequently completed by a duly authorized agent does not establish ground for rejection of the offer.

An oil and gas lease offeror's agreement with a filing service which by its terms gives an offeror an option, exercisable only after the drawing of simultaneously filed lease offers is held, to employ the service to sell offeror's interest in the lease in return for a specified commission does not create an interest in the lease offer at the time the offer is filed which is required to be disclosed under 43 CFR 3102.7 (1979).

Phillip A. Kulin, 53 IBLA 57 (Feb. 27, 1981)

43 CFR 3102.6-1 sets forth the statements and evidence required when an attorney-in-fact or agent signs a simultaneous oil and gas lease drawing entry card on behalf of the applicant. Where an offer is signed and completed by a father acting as agent for his son, and where the father advises the son as to the selection of the parcel, the applicant cannot be considered "qualified" and the offer to lease drawn with first priority accepted, unless the statements required by 43 CFR 3102.6-1 have been filed with the drawing entry card.

W. Keith Howard, 53 IBLA 92 (Mar. 2, 1981) 88 I.D. 341

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered.

Vincent M. D'Amico, Walt C. Stengel, 55 IBLA 116 (June 3, 1981)

Simon A. Hife, 56 IBLA 378 (Aug. 3, 1981)

Don H. Powell III, 59 IBLA 146 (Oct. 26, 1981)

Dr. Josef Trakal, 60 IBLA 97 (Nov. 19, 1981)

Martha E. Ehbrecht, 62 IBLA 387 (Mar. 24, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such offeror or applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Alvyn G. Worotny, 55 IBLA 196 (June 16, 1981)

Robert R. Andahl, 62 IBLA 246 (Mar. 15, 1982)

Janet Thompson, 65 IBLA 383 (July 20, 1982)

Where prior to June 16, 1980, a drawing entry card offer was prepared by an agent and the offer was signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) applied, so that separate statements of interest by both the offeror and the agent must have been filed.

John Walter Starks, 55 IBLA 266 (June 25, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Edward Barcinko, 56 IBLA 289 (July 28, 1981)

Robert D. Alexander, Paul D. Kennett, 59 IBLA 118 (Oct. 26, 1981)

Jake Huebert, 59 IBLA 179 (Oct. 27, 1981)

William J. McGrath, 62 IBLA 110 (Mar. 2, 1982)

Jack M. Hoagly, Charles S. Hertz, 62 IBLA 220 (Mar. 10, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

Where a drawing entry card to lease a parcel of land for oil and gas was prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, the requirements of 43 CFR 3102.6-1 (1979) applied, so that separate statements of interest by both the offeror and the agent were required to be filed, regardless of whether the agent signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

Clyo Chamblin, 57 IBLA 398 (Sept. 14, 1981)

Patricia Ann DeSalvo, 58 IBLA 1 (Sept. 15, 1981)

Under 43 CFR 3102.2-1, a simultaneous oil and gas lease applicant may file for reference the statement of qualifications of his agent required by 43 CFR 3102.2-6 in any Bureau of Land Management office. Upon acceptance of the filing by BLM and assignment of a serial number, the applicant may properly reference the serial number on future oil and gas applications filed with any BLM office in lieu of resubmitting the statement.

Pursuant to 43 CFR 3112.2-1(b), a simultaneous oil and gas lease application must be manually signed in ink either by the applicant or someone authorized to sign on behalf of the applicant. Where applicant's agent has typed the applicant's name and manually signed as agent, the application conforms to the regulations.

R. Hugo C. Cotter, 58 IBLA 145 (Sept. 25, 1981)
88 I.D. 870

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are not answered by checking appropriate boxes in the application as the instructions require.

Clyde E. Kohlmann, 58 IBLA 268 (Oct. 8, 1981)
88 I.D. 915

Janet A. Hodgens, 58 IBLA 275 (Oct. 8, 1981)

Herbert Rothschild, 59 IBLA 140 (Oct. 26, 1981)

An agent's failure to ensure that an oil and gas lease application is properly dated provides no basis for accepting the offer because such action would prejudice the rights of others who properly executed their applications.

Grace Grabi, 58 IBLA 366 (Oct. 20, 1981)

"Interest." Where there is an agreement giving an individual the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b) (1979).

Mary E. Mills et al., 59 IBLA 241 (Oct. 28, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

A simultaneous oil and gas lease application is not signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) where the space for the agent's signature contains only three initials and the name of the corporation, and the application is properly rejected.

Charles Goodrich, 60 IBLA 25 (Nov. 16, 1981)

Paulette E. Krashoar, 69 IBLA 169 (Dec. 13, 1982)

Under the regulations in effect prior to June 16, 1980, where a drawing entry card bears a facsimile of the offeror's signature which was affixed by a printing service acting as an amanuensis, and where no agency statement was filed, the validity of the offer may turn on whether the printer was acting as an amanuensis for the offeror or for his agent, since an agency statement is required only where the agent (or his instrumentality) affixes the facsimile of the offeror's signature on the drawing entry card. Where the record is unclear as to this fact, the matter will be referred to the Hearings Division for a hearing.

Norman Chodosh, 60 IBLA 260 (Dec. 14, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed on the application are left unanswered. An incomplete application must be rejected, regardless of whether the desired information was indicated on an attachment or in other documents on file.

A simultaneous oil and gas lease application filed on behalf of a joint venture must be rejected if it is signed only by an individual member with no proper reference to the name of the joint venture or other members thereof.

James E. Webb, 60 IBLA 323 (Dec. 18, 1981)

An oil and gas lease application, Form 3112-1 (July 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Bonita L. Ferguson, 61 IBLA 178 (Jan. 26, 1982)

John F. Jacobs, 66 IBLA 219 (Aug. 16, 1982)

The fact that an agent, rather than the applicant, failed to ensure that an oil and gas lease application was properly dated provides no basis for accepting the offer because such acceptance would have prejudiced the rights of others who properly executed their applications.

Herbert W. Winston, 61 IBLA 199 (Jan. 26, 1982)

David B. Perry, 67 IBLA 171 (Sept. 21, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and appellant's failure to check these items on the form cannot be cured by a simple amended filing where the rights of the second-drawn applicant have intervened.

Terry K. Wood, 61 IBLA 213 (Jan. 28, 1982)

In completing a simultaneously filed application card for an oil and gas lease, the regulations do not require the person signing the card to sign his principal's name holographically in ink as well as his own; neither is it required that marks employed to indicate answers to the questions on the card be entirely confined within the check-block boxes; nor is it required that such marks be entered manually instead of mechanically.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the agent signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

LSMJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

An oil and gas lease application is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are not answered by checking appropriate boxes in the application as the instructions require.

A simultaneous oil and gas lease application is not signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) where the space for the agent's signature contains only the name of the corporation and a notation that it is the applicant's agent.

Even assuming arguendo that apparent omissions on an oil and gas lease application are not sufficient to put the purchaser of an interest in the application on notice that it was defective, a defective original application is nevertheless subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Byers, 63 IBLA 100 (Mar. 31, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Alfred R. Sobsiba, 64 IBLA 83 (May 10, 1982)

John Gahr, 65 IBLA 268 (July 9, 1982)

An oil and gas lease offeror's agreement with a filing service which by its terms give an offeror an option, exercisable only after the drawing of simultaneously filed lease offers is held, to employ the service to sell offeror's interest in the lease in return for a specified commission does not create an interest in the lease offer at the time the offer is filed which is required to be disclosed under 43 CFR 3102.7 (1979).

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing, respectively, with other parties in interest, assignments violative of 43 CFR 3112.4-3, and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Charles T. Neff, 64 IBLA 234 (May 27, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement is filed with the proper BLM office not later than 15 days from the close of the filing period for each drawing under 43 CFR Subpart 3112.

Robert E. Davis, 65 IBLA 135 (June 28, 1982)

Where an oil and gas lease application is filed through a leasing service in the BLM simultaneous filing program bearing a serial number as an ostensible reference to a leasing service's qualifications, and there is no compliance with the requirements set forth in 43 CFR 3102.2-6(b), the application is properly rejected.

Marjorie E. Woodward, 65 IBLA 138 (June 28, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Richard E. Rhyner, 65 IBLA 141 (June 29, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

Where corporation A files on behalf of an individual a simultaneous oil and gas lease application referencing a qualifications file number on the application which file contains qualifications for two corporations, and at the time of the filing, the file includes an executed power of attorney from the individual to corporation B, but no authorization for corporation A to act on behalf of the individual, and a subsequently filed instrument purporting to authorize corporation A to act on behalf of the individual is not personally signed by the individual, there is a failure to comply with 43 CFR 3102.2-1(a), and 43 CFR 3102.2-6, and the application is properly rejected.

Arthur H. Kuether, 65 IBLA 184 (June 29, 1982)

An application for oil and gas lease filed in the simultaneous leasing program signed on behalf of the applicant by an agent using only her surname was adequate compliance under the regulations in effect in Nov. 1981.

The 15-day period set out in 43 CFR 3102.2-6(b) for submission of the uniform agreement and list of names and addresses of simultaneous oil and gas lease applicants utilizing a leasing service for assistance in filing commences at the close of the simultaneous filing period, not at the time of actual filing of the applications, as all applications received during the simultaneous filing period are considered as received at the last minute of the filing period.

Fred M. Garrett (Appellant), Robert E. Deffenbaugh (Respondent), 66 IBLA 42 (July 26, 1982)

Where a simultaneously filed oil and gas lease application was rejected because BLM asserts that the applicant's filing service failed to provide a list of names and addresses of participating applicants for whom it served as agent, as required by 43 CFR 3102.2-6(a) (1981), the legal presumption of regularity which supports the official acts of Government officers will be treated as rebutted upon presentation of sufficient evidence to show that the list probably was received by BLM.

Elizabeth D. Anne, 66 IBLA 126 (Aug. 10, 1982)

Under the provisions of 43 CFR 3102.6-1(a)(2) (1979), where multiple agents were utilized in filing a simultaneous oil and gas lease drawing entry card, the disclosure requirements applied only to the agent who signed the card.

Cliff Mezey (On Reconsideration), 66 IBLA 178 (Aug. 12, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered. An incomplete application must be rejected.

Franz S. Stiglmayr, 66 IBLA 276 (Aug. 18, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

Where prior to June 16, 1980, a drawing entry card offer was prepared by an agent and the offer was signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) applied, so that separate statements of interest by both the offeror and the agent must have been filed.

Harold E. Wilson, 67 IBLA 21 (Sept. 3, 1982)

The Board will affirm a BLM decision denying a protest contending that the first-drawn applicant for a noncompetitive oil and gas lease has not complied with 43 CFR 3102.2-6 (1980), requiring the disclosure of any agreement with the lease filing service which assisted the applicant, where the record, as supplemented on appeal, indicates that the first-drawn applicant did comply.

Marilyn S. Watson, 67 IBLA 67 (Sept. 10, 1982)

BLM properly rejects a simultaneous oil and gas lease application where the applicant submitted a copy of a written agreement with a corporation, which had rendered assistance to him in connection with filing the application, at the time of filing his lease offer, rather than at the time of filing his lease application, in violation of 43 CFR 3102.2-6(a) (1980).

Raymond E. Steitz, 67 IBLA 173 (Sept. 21, 1982)

The Board will reverse a BLM decision denying a protest contending that the first-drawn applicant for a noncompetitive oil and gas lease has not complied with 43 CFR 3102.2-6 (1980), requiring the disclosure of any agreement with the lease filing service which assisted the applicant, where the record establishes that the first-drawn applicant did not comply.

Patricia C. Alker, 67 IBLA 214 (Sept. 23, 1982)

Where an employee who is not "in the business of providing assistance to participants in a Federal oil and gas leasing program" signs an application as an "attorney-in-fact" of the offeror, she is not an agent within the meaning of 43 CFR 3102.2-6(a), and thus is not required to submit statements required by 43 CFR 3102.2-6(a) or to reference a serial number on the application referring to such statements filed in the BLM office as required by 43 CFR 3102.2-1(c).

Evelyn Chambers, 67 IBLA 280 (Sept. 28, 1982)

Under 43 CFR 3102.2-1(c), the necessary information required by 43 CFR 3102.2-6 for agents acting on behalf of simultaneous oil and gas lease applicants may be filed in any Bureau of Land Management office. Upon acceptance of the filing by the Bureau of Land Management and assignment of a serial number, the serial number may be referenced on future oil and gas lease applications filed with any Bureau of Land Management office in lieu of resubmitting the information.

Where a simultaneous oil and gas leasing filing service establishes an agent's qualifications file pursuant to 43 CFR 3102.2-1(c), and references that file on an application, but the file contains only an expired authorization for the named applicant, the application is properly rejected.

Alvin B. Gendelman, 67 IBLA 333 (Oct. 1, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

A simultaneous oil and gas lease application is properly signed by a corporate agent in accordance with 43 CFR 3111.2-1(b) where the space for the agent's signature contains the handwritten names of the corporation and the person signing on behalf of the corporation.

The 15-day period set out in 43 CFR 3102.2-6(b) for submission of the uniform agreement and list of names and addresses of simultaneous oil and gas lease applicants utilizing a leasing service for assistance in filing commences at the close of the simultaneous filing period, not at the time of actual filing of the applications, as all applications received during the simultaneous filing period are considered as received at the last minute of the filing period.

Monty Cranston, 67 IBLA 364 (Oct. 7, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Duane W. Dohse, 68 IBLA 240 (Nov. 16, 1982)

BLM may properly reject a first-drawn application in a simultaneous oil and gas lease drawing where the applicant has not complied with 43 CFR 3102.2-6, requiring disclosure of any agreement with the lease filing service which assisted the applicant.

William K. Monk, 68 IBLA 339 (Nov. 22, 1982)

Albert Whitehurst, 70 IBLA 168 (Jan. 19, 1983)

An oil and gas lease application signed by anyone other than the applicant must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Even if an agent's signature is not clearly legible, the regulatory requirement is satisfied if the application form refers to a qualifications file which clearly identifies the agent signing the card.

Liberty Petroleum Corp., 68 IBLA 387 (Nov. 23, 1982)

BLM may properly reject a first-drawn application in a simultaneous oil and gas lease drawing where the applicant has not complied with 43 CFR 3102.2-6, requiring disclosure of any agreement with the lease filing service which assisted the applicant, and the applicant asserts, without corroborating evidence, that the required documents were filed timely.

Mrs. G. C. Fajardo, 69 IBLA 70 (Nov. 30, 1982)

An agency agreement which was filed for reference pursuant to 43 CFR 3102.2-1(c) (1981), had to be limited in duration to less than 2 years.

Westates Group No. 8, 69 IBLA 186 (Dec. 15, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

A simultaneous oil and gas lease applicant complies with 43 CFR 3112.2-1(b), where the space for the agent's signature contains the initials of the filing service and the holographically signed last name of the authorized agent of the filing service.

Linda R. Blunkin, 69 IBLA 214 (Dec. 16, 1982)

Oil and gas lease application, Form 3112-1 (Sept. 1981), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Mark G. Anderson, 70 IBLA 18 (Jan. 6, 1983)

In a simultaneous filing situation, the failure of a first-drawn applicant to file an offer in accordance with 43 CFR 3112.4-1 necessitates rejection of the offer. Where the offer form has been signed by one who is designated as an attorney-in-fact for the offeror, and it is not accompanied by a power of attorney or a reference to a qualifications file where such authorization has previously been filed, it must be rejected.

Enserch Exploration, Inc., 70 IBLA 25 (Jan. 6, 1983)

American Petrofina Co. of Texas, 73 IBLA 120 (May 23, 1983)

Under 43 CFR 3102.2-1, a simultaneous oil and gas lease applicant may file for reference the statement of qualifications of his agent required by 43 CFR 3102.2-6 in any BLM office. Upon acceptance of the filing by BLM and assignment of a serial number, the applicant may properly reference the serial number on future oil and gas applications filed with any BLM office in lieu of resubmitting the statement.

Anglo Resources, Inc., 70 IBLA 106 (Jan. 12, 1983)

Even assuming, arguendo, that apparent omissions on an oil and gas lease offer are not sufficient to put the purchaser of an interest in the offer on notice that it was defective, a defective oil and gas lease offer is subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers.

D. H. Yates, 70 IBLA 134 (Jan. 14, 1983)

Where a simultaneous oil and gas lease application was rejected because BLM asserts that the applicant's filing service failed to provide a list of names and addresses of participating applicants for whom it served as agent, as required by 43 CFR 3102.2-6(b) (1981), the legal presumption of regularity which supports the official acts of Government officers will

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

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not be treated as rebutted upon presentation of insufficient evidence to show that the list probably was received by BLM.

Neil Hirsch, 70 IBLA 307 (Jan. 28, 1983)

The regulation at 43 CFR 3102.2-6 (1981) requires that an oil and gas lease applicant assisted by a filing service agent provide a copy of the agreement authorizing the agent to perform services on behalf of the applicant. Where the filing service agent is a corporation, proof of the authority of the employee executing the application to act for the filing service is not required.

Tommy L. Alford, 71 IBLA 29 (Feb. 16, 1983)

A protest of an oil and gas lease offer executed by an attorney-in-fact is properly rejected where the copy of the agreement between the offeror and the attorney-in-fact authorizing the latter to act for the offeror has been filed as required by 43 CFR 3102.2-6 (1981) and referenced on the lease offer as permitted by 43 CFR 3102.2-1(c) (1981).

Leon F. Scully, Jr., 72 IBLA 96 (Apr. 13, 1983)

Leon F. Scully, Jr., 75 IBLA 377 (Aug. 31, 1983)

Under 43 CFR 3112.2-1(b), an automated simultaneous oil and gas lease application, Form 3112-6a (June 1981), must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Where an application is executed by a filing service on behalf of an applicant, the signatory must reveal on the face of the application his or her identity and the fact that the signatory is acting for the filing service on behalf of the applicant.

Charles R. Tickel, 73 IBLA 360 (June 15, 1983)
90 I.D. 258

An offer submitted by an agent for the first-drawn applicant under the simultaneous filing program which is not rendered in such a manner as to reveal the name of the potential lessee, the name of the signatory, and their relationship, is properly rejected.

United Ventures, 74 IBLA 31 (June 24, 1983)

A first-drawn application in a simultaneous oil and gas lease drawing must be rejected where the applicant has not complied with 43 CFR 3102.2-6 (1981), requiring disclosure of any agreement with the lease filing service which assisted the applicant.

Pandora Petroleum Co., 74 IBLA 173 (July 13, 1983)

BLM may properly reject a first-drawn application in a simultaneous oil and gas lease drawing where the applicant has not complied with 43 CFR 3102.2-6 (1981), requiring timely disclosure of any agreement with the lease filing service which assisted the applicant, and the applicant asserts, without corroborating evidence, that the required documents were filed timely.

LSMJ Exploration Group, 74 IBLA 185 (July 18, 1983)

LBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

Under 43 CFR 3102.2-6(b) (1981), a copy of a uniform agreement was required to be filed with the simultaneous oil and gas lease application.

Robert T. P. Metcalf (Trust), 74 IBLA 252 (July 22, 1983)

Under regulations in effect prior to Feb. 26, 1982, information concerning agency in cases where application for oil and gas leases was made by one other than the applicant was permitted to be placed on file with a single Bureau of Land Management Office which would then issue a serial number allowing incorporation by reference of the information on other applications made to other BLM state offices.

Bernard R. Holliday, 74 IBLA 288 (July 26, 1983)

Under 43 CFR 3112.2-1(b), a simultaneous oil and gas lease application must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Where the signature on the application is illegible and there is no reference to the signatory's relationship to the applicant, the requirements of the regulation have not been satisfied and BLM properly rejects the application.

Martin, Williams & Judson, 74 IBLA 342 (July 28, 1983)

Departmental regulation 43 CFR 3102.2-6(b) (1981) required that an oil and gas lease applicant assisted by a filing service agent provide a copy of the agreement authorizing the agent to perform services on behalf of the applicant. Where the filing service agent was a corporation, it was not required to submit proof of the authority of the employee executing the application to act for the filing service.

Stanley L. Slater, 74 IBLA 357 (July 28, 1983)

Under provision of 43 CFR 3112.2-1(b) a simultaneous oil and gas lease application must reveal the name of the applicant, the name of the signatory, and their relationship. Where the agent's signature on the application is illegible and neither the application nor a qualifications statement filed with the agency for reference reveals the signing agent's relationship to the applicant, the regulation requires the application to be rejected.

Maurice W. Coburn, 75 IBLA 293 (Aug. 29, 1983)

Rejection of an oil and gas lease offer will be set aside where the offeror files his offer, rental, and, where appropriate, power of attorney or serial number reference thereto, within the 30-day period provided by regulation 43 CFR 3112.6-1(b)(2), even though the offer, rental, and appropriate power of attorney materials were not received together by BLM.

Amoco Production Co., 75 IBLA 344 (Aug. 31, 1983)

Under provision of 43 CFR 3102.4 a simultaneous oil and gas lease application must reveal the name of the applicant, the name of the signatory to the application, and their relationship. Where the agent's

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

relationship to the applicant is not revealed, the regulation requires the application to be rejected. The defective application may not be cured by amendment on appeal.

Pioneer Fairmont #1 Ltd., 76 IBLA 250 (Oct. 17, 1983)

BLM may properly reject a noncompetitive oil and gas lease offer where an attorney-in-fact signed the offer and submitted the first year's rental and the power of attorney did not prohibit the attorney-in-fact from filing offers on behalf of other participants, as required by 43 CFR 3112.4-1(b).

Kirk Bhone, 76 IBLA 332 (Oct. 20, 1983)

In simultaneous oil and gas lease situations, the failure of a first-drawn applicant to file an offer in accordance with 43 CFR 3112.4-1 necessitates rejection of the offer. Where the offer has been signed by one who has been designated as an attorney-in-fact for the offeror, and it is not accompanied by a power of attorney or a reference to a qualifications file where such authorization has been filed, the offer must be rejected.

Thomas M. Bloch, 76 IBLA 364 (Oct. 25, 1983)

A simultaneous oil and gas lease application is properly signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) (1981) where the application is manually signed by the agent's employee identifying her position with the corporation and the name of the applicant. The employee is not also required to manually sign the applicant's name to conform to the terms of the agency agreement.

Departmental regulation 43 CFR 3102.2-6(b) (1981) required that an oil and gas lease applicant assisted by a filing service agent provide a copy of the agreement authorizing the agent to perform services on behalf of the applicant. Where the filing service agent was a corporation, it was not required to submit proof of the authority of the employee executing the application to act for the filing service.

Eugene O. Colley, 78 IBLA 64 (Dec. 13, 1983)

Under 43 CFR 3102.2-1 (1981), a simultaneous oil and gas lease applicant could have filed for reference the statement of qualifications of his agent required by 43 CFR 3102.2-6 (1981) in any Bureau of Land Management state office. Upon acceptance of the filing by BLM and assignment of a serial number, the applicant could have properly referenced the serial number on future oil and gas applications filed with any BLM office in lieu of resubmitting the statement.

The Board will set aside a BLM decision denying a protest contending that the first-drawn applicant for a noncompetitive oil and gas lease has not complied with 43 CFR 3102.2-6 (1981), requiring the disclosure of any agreement or arrangement with the lease filing service which assisted the applicant and order a hearing, where on appeal the protestant creates considerable doubt that the applicant provided all relevant information.

Where an issue in an appeal involving a simultaneous oil and gas lease application is the existence or nonexistence of materials defining the relationship between the priority applicant and its filing service, the applicant, as the party with peculiar means of knowledge enabling it to prove the nonexistence of such

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

materials, has the burden of doing so. Failure to do so may give rise to an inference that the applicant's evidence is unfavorable.

An agency agreement which was filed for reference pursuant to 43 CFR 3102.2-1(c)(1981), had to be limited in duration to less than 2 years.

Hal Carlson, Jr., 78 IBLA 333 (Jan. 24, 1984)

Pursuant to 43 CFR 3112.4-1(b) (1982) the power of attorney authorizing an attorney-in-fact to sign lease offers submitted under the simultaneous filing procedures must preclude the attorney-in-fact from filing offers on behalf of any other offeror.

Amy Polak, P. R. Polak, 79 IBLA 391 (Mar. 27, 1984)

An offer submitted by a partner for the first-drawn applicant under the simultaneous filing program which is not rendered in such a manner as to reveal the name of the potential lessee, the name of the signatory, and their relationship, is properly rejected.

Corinth Partnership, 80 IBLA 31 (Mar. 28, 1984)

A simultaneous oil and gas lease application must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Where there is no indication on the application of the signatory's relationship to the applicant, or any reference to a qualifications file that indicates the relationship, the requirements of 43 CFR 3112.2-1(b) have not been satisfied and the application is properly rejected.

Martin, Williams & Judson, 80 IBLA 143 (Apr. 6, 1984)

A simultaneous oil and gas lease application submitted by an agent for an applicant which is not rendered in a manner to reveal the name of the potential lessee, the name of the signatory, and their relationship, is properly rejected.

Where BLM makes an inquiry because of an apparent discrepancy between a simultaneous oil and gas lease application and the corresponding lease offer, and applicant provides information that establishes the existence of a regulatory violation, the application is properly rejected. Such information does not cure a deficiency; it proves a violation.

Jonas P. Beachy, 80 IBLA 209 (Apr. 26, 1984)

If the first-drawn applicant for a simultaneous oil and gas lease has filed an offer that does not comply with 43 CFR 3112.4-1 (1982), the offer must be rejected. If the offer has been signed by one who has been designated as an attorney-in-fact for the offeror, and it is not accompanied by a power of attorney or reference to a qualifications file where such authorization has been filed, the offer must be rejected.

Anadarko Production Co., 83 IBLA 148 (Oct. 9, 1984)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Attorneys-in-Fact or Agents--Continued

An offer signed without further identification by a partner of a partnership that is the first-drawn applicant under the simultaneous oil and gas leasing program is not properly rejected under 43 CFR 3102.4 for failure to reveal the relationship between the potential lessee and the signatory.

Corinth Partnership (On Remand), 83 IBLA 277 (Oct. 25, 1984)

Under 43 CFR 3112.2-1(b) and 43 CFR 3102.4 (1982), a simultaneous oil and gas lease application must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship, where the signatory is an agent or attorney-in-fact for the applicant.

T.S.T. Partnership et al., 84 IBLA 10 (Nov. 26, 1984)

Pursuant to 43 CFR 3112.6-1(b) the power of attorney authorizing an attorney-in-fact to sign lease offers submitted under the simultaneous filing procedures must prohibit the attorney-in-fact from filing offers on behalf of any other offeror, and where the power of attorney fails to include such a prohibition, the offer is properly rejected.

SATELLITE 8305128, 84 IBLA 74 (Dec. 5, 1984)

Description

"Smallest legal subdivision." Where an oil and gas lease offer is made, the smallest legal subdivision which may be encompassed by the offer is a quarter-quarter section (40 acres), unless the offer is for a lot in a fractional section.

A noncompetitive oil and gas lease offer filed for land included in an approved protraction diagram must include an entire section described according to the section, township, and range shown on the approved protraction survey. Offers may include less than an entire section only where a portion of the section is available, and then the offer must describe all the available land by subdivisional parts.

Gary E. Strong, 57 IBLA 306 (Aug. 31, 1981)

The description of an entire section of surveyed public land modified by the words "[a]ll available (incl. Lots 14 through 33)" is an offer to lease all of that section, subject to availability for leasing.

James M. Chudnov, Laurent A. Gisclon, 62 IBLA 19 (Feb. 24, 1982)

An over-the-counter noncompetitive oil and gas lease offer for acquired lands is properly rejected where no such lands exist as described. The filing upon appeal of an unsigned, undated public domain offer form bearing a corrected land description constitutes neither an offer nor an amendment, and thus it cannot be accepted by BLM for either purpose.

Fayette I. Bristol, 62 IBLA 317 (Mar. 22, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Description--Continued

Where an oil and gas lease offer includes land described as all of a particular section excluding fee land (Sec. ___: ALL (Excl. fee)), the parcel description does not meet the requirements of 43 CFR 3101.1-4(a). The offer is defective as to that parcel and subject to rejection to that extent.

Milan S. Popplak, 63 IBLA 16 (Mar. 26, 1982)

An oil and gas lease offer which on its face describes the land as being in R. 34 W., but on a supplemental attachment describes land in R. 24 W., is unacceptably ambiguous. BLM personnel are without authority to alter, modify, or correct errors in land descriptions or to so construe ambiguities in lease offers as to qualify an unacceptable offer.

Bob G. Howell, 63 IBLA 156 (Apr. 6, 1982)

"Smallest legal subdivision." In general, it is proper to reject an oil and gas lease offer to the extent that it includes a parcel of land smaller than the smallest legal subdivision, i.e., a quarter-quarter section, except where the offer is for a lot in a fractional section. However, an offer which describes land in parcels smaller than a quarter-quarter section may be accepted if it includes all of the land available for leasing within a quarter-quarter section.

Elliott A. Riggs, 65 IBLA 22 (June 21, 1982)

Where an oil and gas lease offer includes all of certain sections excluding certain patented parcels which are unavailable for leasing, the parcel description by patent number are sufficiently precise and unambiguous to meet the requirements of 43 CFR 3101.1-4(a).

Leon Jeffcoat et al., 66 IBLA 80 (July 29, 1982)

Where BLM issues an oil and gas lease pursuant to an oil and gas lease offer which includes a land description which meets the requirements of 43 CFR 3101.1-4(a), the offer is not defective and BLM may properly reject a subsequent offer for the leased lands.

Irvin Wall, 66 IBLA 130 (Aug. 10, 1982)

An oil and gas lease offer for surveyed land or land within a protracted survey must describe the land by legal subdivision, section, township, and range, even though irregular parcels of land within that subdivision may not be available for leasing. The addition of phrases such as "all available" or "less patents" to such a description does not make the description improper. However, where the excepted land is not specifically identified in the offer, the offeror is required to submit the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to the patented acreage, and rejection of the offer is required where the offeror fails to submit sufficient rental within the limits of curable deficiency.

James M. Chudnov, John L. Messinger, 67 IBLA 76 (Sept. 10, 1982)

James M. Chudnov, John L. Messinger, 68 IBLA 228 (Nov. 15, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Description--Continued

James M. Chudnov, John L. Hessinger, 69 IBLA 157 (Dec. 13, 1982)

Under Departmental regulation 43 CFR 3101.1-4(d), an oil and gas lease offer for land within a protracted survey must include only entire sections of land except where only a portion of a protracted section is available for lease, in which event the offeror must describe all of the land available within that section. An oil and gas lease offer may not be construed as an offer for all available lands within a protracted section where the offer describes the section as expressly excluding land within a specifically numbered mineral survey which remains available for leasing, and such an offer must be rejected.

Departmental regulation 43 CFR 3101.1-4(d) does not permit the splitting of protracted sections between two offers, even if they are filed at the same time.

Hrubetz Oil Co., 67 IBLA 109 (Sept. 15, 1982)

An oil and gas lease issued under the Mineral Leasing Act of 1920 does not include the oil and gas deposits underlying a railroad right-of-way, which crosses the leased tract, even though the lease does not expressly except such deposits from its coverage.

Champlin Petroleum Co., 68 IBLA 142 (Oct. 29, 1982) 89 I.D. 561

An oil and gas lease offer for irregular parcels of acquired land within a surveyed township must be described by metes and bounds under 43 CFR 3101.2-3(a). Where offerors list lands in an offer by legal subdivision but indicate that they only desire "BSFW and FWS" acquired lands within those subdivisions including both regular and irregular parcels, the Bureau of Land Management may evaluate the offer on the basis of the total land properly described by legal subdivision. However, the offeror is required to submit the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to undesired acreage, and rejection of the offer is required where the offeror fails to submit sufficient rental within the limits of curable deficiency.

James M. Chudnov, John L. Hessinger, 68 IBLA 181 (Nov. 8, 1982)

The failure to designate a meridian is not a fatal defect in the land description in an over-the-counter noncompetitive oil and gas lease offer where the state in which the land is located is governed by only one meridian.

Irvin Wall, 68 IBLA 308 (Nov. 19, 1982)

Irvin Wall, 70 IBLA 183 (Jan. 20, 1983) 90 I.D. 3

Oil and gas lease offers for surveyed lands must describe the lands by legal subdivision, section, township, and range. Indication of the county where the described land lies is an added convenience found on the offer form, and erroneous indication of the county does not render a land description fatally defective.

Irvin Wall, 68 IBLA 311 (Nov. 19, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Description--Continued

When an oil and gas lease offer for lands within a section includes numbered fractional lot descriptions not found in the official survey plat and the specific description for that particular section is followed by an "all" in parenthesis, the description does not meet the requirements of 43 CFR 3101.1-4(a) where the acreage computation would be incorrect if the entire section was included. The offer is ambiguous and defective as to those fractional lots and subject to rejection to that extent.

James M. Chudnov, Theo Y. Coukoulis, Georgette M. Coukoulis, 68 IBLA 377 (Nov. 22, 1982)

It is proper to file an oil and gas lease offer for less than 640 acres of land where none of the land adjacent to the parcels described in the application is available for leasing.

Dayton F. Hale, 69 IBLA 167 (Dec. 13, 1982)

An offer for an acquired lands oil and gas lease covering lands which have not been surveyed under the rectangular system of public land surveys must be rejected where the offer does not describe the lands by metes and bounds, giving courses and distances and a tie to a public land survey corner. Where BLM must go outside of the offer form itself to determine exactly what land the offer embraced, the offer is defective and rejected as insufficent.

James M. Chudnov et al., 70 IBLA 71 (Jan. 11, 1983)

Where only a portion of a protracted section is available for oil and gas leasing, an over-the-counter oil and gas lease offer must describe all available lands by subdivisional parts. If this is not feasible, as in the case of an irregular section, the entire section must be described, and the offer must contain a statement that all available lands in the section are desired. An offer describing a protracted section by subdivisional parts is properly rejected where the section, containing 639 acres, is irregular.

Ida Lee Anderson, 70 IBLA 383 (Feb. 8, 1983)

A noncompetitive over-the-counter oil and gas lease offer for unsurveyed acquired lands which is not accompanied by a map upon which the desired lands are clearly marked in accordance with 43 CFR 3101.2-3(b)(2) is properly rejected. However, when the map is filed with the notice of appeal, the offer may be reinstated and allowed to earn priority as of that date.

Wilburn H. Seals, 71 IBLA 315 (Mar. 22, 1983)

Under 43 CFR 3101.1-4(d)(2), where only a portion of a protracted section is available for oil and gas leasing, an over-the-counter oil and gas lease offer must describe all available lands by subdivisional parts. If this is not feasible, as in the case of an irregular section, the entire section must be described, and the offer must contain a statement that all available lands in the section are desired. However, a section containing 639 acres, whose available lands may be described by subdivisional parts, is not

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Description--Continued

an irregular section within the meaning of the regulation.

Ida Lee Anderson (On Reconsideration), 73 IBLA 223 (May 31, 1983)

An over-the-counter oil and gas lease offer which describes acquired land by tract acquisition number must be accompanied by a map showing the location of the requested lands or the offer will be rejected.

Ron W. Howard, 75 IBLA 133 (Aug. 15, 1983)

Where an over-the-counter oil and gas lease offer is filed for lands in a protracted survey and the offeror subsequently files a relinquishment describing certain lands in the offer as being no longer available because of being withdrawn from mineral leasing, but erroneously includes lands in his relinquishment such that the remaining lands in his offer do not describe all the available lands in a section, the offer is properly rejected.

Donald Epperson, 76 IBLA 4 (Sept. 6, 1983)

An oil and gas lease offer for acquired lands is properly rejected where it contains an incomplete land description, specifically, the failure to specify the section as required by 43 CFR 3101.2-3(a).

William B. Rawlins, 76 IBLA 165 (Sept. 27, 1983)

An oil and gas lease offer for surveyed land or land within a protracted survey must describe the land by legal subdivision, section, township, and range, even though irregular parcels of land within that subdivision may not be available for leasing. The addition of phrases such as "all available" or "less patents" to such a description does not make the description improper. Where the offeror submits the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to the patented acreage the use of the descriptive phrase "all except patents" is acceptable and the offer is properly filed with sufficient rental.

James M. Chudnow, John L. Messinger, 77 IBLA 77 (Nov. 8, 1983)

A noncompetitive oil and gas lease offer for acquired lands may properly describe the requested land by acquisition tract number assigned by the acquiring agency, in accordance with 43 CFR 3101.2-3(b)(3), where the land has not been surveyed.

Bruce Anderson, 77 IBLA 376 (Dec. 7, 1983)

BLM must reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976), to the extent that the land has been patented with no mineral reservation to the United States and in its entirety where the land cannot be embraced within a

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Description--Continued

6-mile square area or an area not exceeding six surveyed sections in length and width and the first year's advance rental is deficient by more than 10 percent.

James M. Chudnow, John L. Messinger, 79 IBLA 1 (Feb. 2, 1984)

An oil and gas lease offer for surveyed public lands is properly rejected where it describes the requested land by metes and bounds rather than by legal subdivision or aliquot parts thereof, section, township, and range.

Helen G. Haggard, 79 IBLA 320 (Mar. 21, 1984)

Where an oil and gas lease offer for unsurveyed, acquired lands in the Monongahela National Forest is protested on the basis that the metes and bounds description of the lands sought fails to close, and the protest is dismissed because even though the description does not close, the offer is accompanied by a map clearly showing the desired lands, such dismissal is improper. Notwithstanding the inclusion of the map, a description that fails to close is a defective description which does not entitle the offeror to the award of a lease thereto.

Amoco Production Co., 81 IBLA 323 (June 19, 1984)

A description in an over-the-counter offer for the SE 1/4 SE 1/4 sec. 9, T. 3 N., R. 32 W., fifth principal meridian, less and except a 5-acre parcel that the applicant describes by a metes and bounds description tied to the nearest existing survey corner is sufficient to satisfy the regulation governing land descriptions of surveyed public domain.

Tim R. Smith, 81 IBLA 337 (June 21, 1984)

A noncompetitive acquired lands oil and gas lease offer for lands not surveyed under the rectangular system for public land surveys is properly rejected where the offeror fails to include a map, where land is included in the description which is not owned by the United States, or where the land description is inadequate.

James M. Chudnow, 82 IBLA 95 (July 19, 1984)

Drawings

A drawing entry card which is not dated in the space provided on the card is not fully executed as required by 43 CFR 3112.2-1, and is properly rejected.

John L. Messinger, 45 IBLA 62 (Jan. 17, 1980)

An undated simultaneous oil and gas drawing entry card is properly rejected for noncompliance with 43 CFR 3112.2-1(a) which requires that the card be "fully executed."

Margaret M. Wysocki, 45 IBLA 79 (Jan. 17, 1980)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Where an offeror who suffers from an arthritic condition which restricts his ability to write allows his secretary to sign his name for him on a drawing entry card, and where the secretary exercises no authority to do anything with the card other than as specifically directed by him, the secretary is an amanuensis and not an agent, so that the agency statements prescribed by 43 CFR 3102.6-1(a) are not required.

W. H. Brown, 45 IBLA 81 (Jan. 17, 1980)

It is proper to reject a drawing entry card where the offeror affixes his name to the front of the card in disregard of the instructions instead of inserting it in the appropriate spaces on the card in the order specified thereon (last name, first name, middle initial).

L. E. Diefenderfer, 45 IBLA 108 (Jan. 17, 1980)

Where on appeal from rejection of a simultaneous oil and gas lease offer, it is alleged that the offer designated "Milner Productions" was actually submitted on behalf of a sole proprietorship, and the drawing entry card does not show the last name, first name, and middle initial of an individual offeror, the lease offeror will be deemed unqualified under 30 U.S.C. § 181 (1976), and the offer not fully executed under 43 CFR 3112.2-1(a).

Tom Milner, 45 IBLA 119 (Jan. 23, 1980)

An entry card in a simultaneous oil and gas lease drawing is not to be rejected where the required information is clearly and legibly printed on the face of the card and the only potential defect is the misspelling of a word, where the misspelling does not hinder the processing of the offer.

David F. Owen, 45 IBLA 206 (Jan. 30, 1980)

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is dated more than 10 days prior to the beginning of the filing period.

George L. Labusen, 45 IBLA 310 (Feb. 6, 1980)

Where a majority of the Board of Land Appeals has ruled that an agreement between a filing service company and its clientele create no interest in the company and its president which would violate the regulations requiring disclosure of other interests in the lease offers and which preclude multiple filings in simultaneous filing-drawing procedures and that the president's filing an offer in his own name competing with the clientele of the company does not violate the regulations, a case involving similar factual and legal issues will follow the Board's majority position.

It is a proper exercise of discretionary authority for a Bureau of Land Management office to suspend action on an oil and gas lease offer pending resolution of similar cases on appeal to the Board of Land Appeals and a court proceeding. However, where the court case is remanded to the Department of the Interior for further consideration and the Board has resolved cases with substantive issues similar to those in the case under consideration, it will set aside the Bureau's decision, and dismiss the protest and remand the case for action in accord with those rulings. Where there

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

are no disputed factual issues controlling resolution of the case, the protestant's request for a hearing will be denied as well as his request for further suspension of the case.

Jack Zuckerman, 45 IBLA 337 (Feb. 7, 1980)

"Signed and fully executed." The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) includes the use of a rubber stamp to affix a signature to a drawing entry card, provided that it is the applicant's intention that the stamp be his signature.

Under 43 CFR 3102.6-1(a)(2), if a lease offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding.

Elizabeth McClellan, 45 IBLA 342 (Feb. 7, 1980)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, and the right of the next drawee to receive first consideration attaches eo instanto.

Zenith S. Merritt, 46 IBLA 24 (Feb. 20, 1980)

43 CFR 3112.2-1(a) requires that the simultaneous oil and gas lease drawing entry card be "signed and fully executed." Strict compliance with the regulation is required to enable the Bureau of Land Management State Offices to administer the oil and gas leasing program efficiently and accurately. However, this does not mandate rejection of a card showing an initial in the blank space for a first name, provided the offeror can be identified from the information given and the card is signed in the same manner.

Kathleen A. Rubenstein, 46 IBLA 30 (Feb. 20, 1980)

Where officers of a corporation file applications for leases for parcels of land in a simultaneous drawing and are the successful offerors and where the corporation has not filed applications in competition with these corporate officers for the same parcels in the same drawing, these offers need not be rejected as prohibited multiple filings under 43 CFR 3112.5-2, when the corporate officers make an adequate showing that their oil and gas leasing activities were both authorized by the corporation and unaffected by the corporate relationship.

D. H. Dowdle, Tom Boston, Paul Creson, 46 IBLA 83 (Feb. 28, 1980)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

An oil and gas lease offer is properly rejected, where an official of the bank on which the offeror's check to cover the filing fee was drawn, corroborates that the check was uncollectible.

Charles A. Mattison, 46 IBLA 130 (Mar. 19, 1980)

Where a drawing entry card sets out the names of two applicants but one applicant fails to sign the card, the card is not in compliance with 43 CFR 3112.2-1(a) which requires that the card be "fully executed," and the lease offer is properly rejected.

Rose B. Carrington, Richard W. Carrington, 46 IBLA 149 (Mar. 19, 1980)

Where a drawing entry card offer to lease is prepared by an agent, that is, a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the latter signed his principal's name or his own name as his principal's agent, and regardless of whether the signature was applied manually or mechanically.

Hyman Windt, 46 IBLA 292 (Mar. 31, 1980)

Elizabeth Mukasa, 47 IBLA 115 (Apr. 28, 1980)

It is proper to reject a drawing entry card lease offer, given first priority at a drawing, where the offeror's name is affixed by a rubber stamp with initials first, rather than last name first, outside the appropriate boxes.

D. R. Canting, 46 IBLA 382 (Apr. 10, 1980)

S. A. Canting, R. C. Diefenderfer, 47 IBLA 7 (Apr. 10, 1980)

An oil and gas lease offer is properly rejected where the offeror's check to cover the filing fee is dishonored by the bank because of insufficient funds in the account on which the check is drawn.

Mary E. Cummings, 47 IBLA 10 (Apr. 10, 1980)

A simultaneous oil and gas drawing entry card must be fully executed by an applicant, and where the applicant omits from his address the state and zip code, the lease offer is properly rejected.

Rick C. Wright, 47 IBLA 45 (Apr. 11, 1980)

Where the offeror designated on a drawing entry card (DEC) is "Energy Investment Co.," allegedly a sole proprietorship, but the DEC is signed by an individual, who states that he intended to file as an individual, the lease offer is properly rejected because under 30 U.S.C. § 181 (1976), a sole proprietorship is not a qualified offeror and the offer, as an individual's offer, has not been properly executed pursuant to the instructions on the DEC.

E. J. Hawken, 47 IBLA 109 (Apr. 28, 1980)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

It is improper to reject a drawing entry card lease offer, given first priority at a drawing where the offeror, a corporation, inserts its corporate name in the appropriate spaces on the drawing entry card in the order of last name first, and first name last in accordance with the instruction on the card. Any reversals of corporate names henceforth may invalidate the offers so involved.

Mar-Win Development Co., 47 IBLA 140 (Apr. 30, 1980)

When six offerors sign a drawing entry card (DEC) in two signature boxes, four in one box and two in the other, and the same date of signing is entered in each of the two appropriate boxes on the DEC for the date, adjacent to the two signature boxes, so that it is evident that the date applies equally to all six signatures on the card, the failure to enter four other dates on the offer is not grounds for rejection of the DEC.

Carlyle Kaspersen, Jr., et al., 47 IBLA 246 (May 13, 1980)

A protest against the issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should have been disqualified, or that the lease should have been cancelled.

Geosearch, Inc., 48 IBLA 20 (May 27, 1980)

Geosearch, Inc., 50 IBLA 347 (Oct. 14, 1980)

A protest against the issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should have been disqualified, that assignees were not bona fide purchasers or that the leases should be cancelled.

Geosearch, Inc., 48 IBLA 51 (May 29, 1980)

Protests against the issuance of oil and gas leases are properly dismissed where the protestant fails to show with competent evidence that there have been violations of the leasing regulations, that the successful drawees should have been disqualified, or that the leases should have been cancelled.

Geosearch, Inc., 48 IBLA 76 (May 29, 1980)

Geosearch, Inc., 48 IBLA 333 (July 3, 1980)

Geosearch, Inc., 49 IBLA 19 (July 15, 1980)

Where on appeal from rejection of a first-drawn simultaneous oil and gas lease offer, it is alleged that (1) the offer signed by Katherine H. Dunlap was actually submitted on behalf of Charles L. Dunlap whose name appears on the front of the drawing entry card, (2) the front does not show the last name, first name, and middle initial of Katherine Dunlap as offeror, and (3) Charles Dunlap did not submit the information required under 43 CFR 3102.7, the offer will be deemed

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

not fully executed and must be rejected under 43 CFR 3112.2-1(a).

Charles L. Dunlap, 48 IBLA 136 (May 30, 1980)

Where on an oil and gas lease drawing entry card the offerors' signatures were stamped by the offerors themselves, no agency statements are required under 43 CFR 3102.6-1(a)(2).

Federal Resources Corp., 48 IBLA 138 (May 30, 1980)

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to prove an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

Geosearch, Inc., 48 IBLA 190 (June 9, 1980)

Where a corporation's statement of corporate qualifications on file in BLM shows that an individual identified only by name, but not by title or position, has a limited power to act on behalf of the corporation with reference to Federal oil and gas leases, simultaneous offers filed by him were properly rejected for the reason that they were not accompanied by the separate statements required when such offers are filed by an agent or attorney in fact, and this omission may not be "cured" post hoc by the corporation's allegation that he is its general manager and considered an officer.

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant. A first-drawn drawing entry card oil and gas lease offer signed by an agent but which is not accompanied by the statements required by regulation must be rejected because the offeror is not the first-qualified applicant.

Viking Resources Corp., 48 IBLA 338 (July 3, 1980)

An entry card in a simultaneous oil and gas lease drawing need not be rejected under 43 CFR 3112.2-1(a) where the offeror's name and address are affixed with a rubber stamp outside the preprinted boxes but are otherwise legible and in the designated manner on the face of the card.

Bessie B. Landis, Kristie R. Cobb, 48 IBLA 354 (July 11, 1980)

Where a leasing service company's client wins a Federal oil and gas lease at a drawing in which the leasing service and its officer participate, the mere participation of the company and the officer in the same filing, without anything more to create an interest in them in the client's lease, does not constitute a violation of the regulations which should be charged against the client.

A reference in a letter to the Bureau of Land Management from the winning drawee in a simultaneous oil and gas lease filing to "majority owners" of the lease, by itself is not sufficient to show there were undisclosed parties in interest at the time the offer was filed, but it would ordinarily warrant further

OIL AND GAS LEASES--Continued

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investigation. Where a hearing is ordered on other issues to determine if there was a violation of the regulations in the filing, evidence should also be presented on this issue to explain the meaning of the reference and to show whether someone other than the offeror had an interest in the offer at the time it was filed.

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting against multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of Eden Capital Corp. and its clientele where there are ambiguities in the complex contract which provides for a preliminary division of lease obligations and proceeds and establishment of a lease escrow fund to protect funds promised to the client if the client exercises an option by which Eden will buy all leases in a particular lease program subscribed to by the client, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients of Eden have given to the terms.

Harry S. Hills, Kenneth E. Roth, 48 IBLA 356 (July 11, 1980)

A drawing entry card oil and gas lease offer is properly rejected where the card bears a date more than 10 days prior to the beginning of the filing period.

William J. Barrett, 49 IBLA 30 (July 21, 1980)

In deciding a case where the name of the offeror trustee is affixed to the oil and gas drawing entry card in the wrong order, instead of being inserted in the appropriate spaces of the card in the order last name, first name, middle initial, the Board will conform to the Court of Appeals' decision in Brick v. Andrus, Civil No. 79-1766 (D.C. Cir. June 6, 1980), and reverse the rejection of the lease offer for this reason.

Leland A. Hodges, Trustee, 49 IBLA 50 (July 21, 1980)

It is not proper to reject a drawing entry card lease offer, given first priority at a drawing, where the only deficiency is that the offeror did not insert his name in the order set forth on the card, i.e., last name, first name, middle initial; but rather inserted his name in this order: first name, middle initial, last name.

Robert B. Furman, 49 IBLA 64 (July 21, 1980)

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether he signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

Henry A. Alber, 49 IBLA 118 (July 28, 1980)

OIL AND GAS LEASES--Continued

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Carolyn M. Lepsor, 53 IBLA 336 (Mar. 26, 1981)

R. E. Gallagher, 54 IBLA 72 (Apr. 13, 1981)

J. Eugene Meyer, 57 IBLA 124 (Aug. 25, 1981)

Arthur J. Messbauer, 59 IBLA 173 (Oct. 26, 1981)

43 CFR 3112.2-1(a) requires that the simultaneous oil and gas lease drawing entry card be "signed and fully executed." Strict compliance with the regulation is required to enable the Bureau of Land Management State Offices to administer the oil and gas leasing program efficiently and accurately. However, this does not mandate rejection of a card where the first drawn applicant has placed the abbreviation for Junior, "Jr." above the space provided for his middle initial, separated it with a comma, and lined through that phrase on the card, provided no ambiguity exists as to the identity of the applicant.

The exclusion from the drawing of oil and gas drawing entry cards for trivial and inconsequential alterations which do not affect the appearance or feel of the cards in any significant way and which obviously were not intended to adversely affect the integrity of the drawing is arbitrary and capricious.

David F. Owen, 49 IBLA 131 (July 28, 1980)

When an offeror prints her name on the front of a drawing entry card oil and gas lease offer as "Reagan, Wavis K.," and signs her name on the back of the card as "Kay Reagan," the card may not be rejected because she violated no regulation by signing the offer in that manner, and she properly followed instructions on the face of the card by inserting her full name, last name first, then first name and initial.

Clarisse G. Porcell, 49 IBLA 275 (Aug. 18, 1980)

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of a leasing service and its clientele where there are ambiguities in the complex contract between them, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients have given to the terms.

Valerie Heller, Elizabeth R. Drozda, 49 IBLA 303 (Aug. 20, 1980)

Action on a protest against issuance of a lease to the first-drawn offeror, a client of Resource Service Company, a leasing service, and issuance of the lease, shall be suspended pending appropriate action by BLM to determine whether there has been a violation of the regulations requiring disclosure of interests in a lease, when an offer is filed, and prohibiting against the multiple filings of lease offers in a simultaneous filing, arising from the RSC's client referral program whereby client A, for whom RSC files offers, can share in the proceeds of RSC's commission on a sale of client B's oil and gas lease negotiated by RSC if client B was referred to RSC by client A.

Lloyd Chemical Sales, Inc., 49 IBLA 392 (Sept. 5, 1980)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Under 43 CFR 3102.6-1(a)(2), if a lease offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, giving full details of the agreement or understanding if it is a verbal one, and a copy of any written agreement or understanding. The regulation requirement is not met where statements are filed by the offeror and an agent with whom it has not actually contracted, but with whom the offeror's primary agent contracted to perform leasing services. To show the necessary agency and contractual authority, the complete chain of agency-contract authority and relationships must be shown when the offer is filed.

Cliff Meyer, 50 IBLA 157 (Sept. 30, 1980)

"Interest in an oil and gas lease or offer." Where a party to a pooling agreement is authorized to advance funds for filing of drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor with interest and receive a consultation fee from the pooled proceeds of any leases issued, all parties to the agreement have an interest in each lease offer within the meaning of 43 CFR 3102.7, requiring the disclosure of interested parties.

Where a party to a pooling agreement is authorized to advance funds for filing drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor and receive a consultation fee from the pooled proceeds of the sale or assignment of any lease issued, the filing in a lease drawing for a particular parcel by more than one party to the agreement constitutes a multiple filing in violation of 43 CFR 3112.5-2.

An entry card in a simultaneous oil and gas lease drawing need not be rejected under 43 CFR 3112.2-1(a) where the offeror's name and address are affixed with a rubber stamp outside the preprinted boxes but are otherwise legible on the face of the card.

Wayne E. DeBord et al., 50 IBLA 216 (Sept. 30, 1980)
87 I.D. 465

Where oil and gas lease applicants contend that BLM wrongly excluded three of their simultaneous offers from a drawing for not paying the filing fees when in fact the fees had accompanied the offers and been deposited by BLM, but fail to provide sufficient evidence of such payments after having been afforded reasonable opportunity to do so, the duties of the BLM officials will be presumed to have been properly discharged.

Cassius C. Peterson et al., 50 IBLA 231 (Sept. 30, 1980)

Where a BLM office is not satisfied that an oil and gas lease offer drawn with first priority is in full compliance with the regulations, it should require the offeror to provide such information in support of his offer as will resolve the question, and should the offeror fail to respond fully within a reasonably prescribed time it is appropriate to reject that offer

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

and consider the offer which has been drawn with next priority.

Lorenz K. Ayers (Appellant), W. O. Pettit, Jr. (Appellee), 50 IBLA 240 (Sept. 30, 1980)

Where it appears that there may have been a violation of the disclosure and/or interest regulations (43 CFR 3102.7 and 3112.5-2) asserted by a protest, the adjudication of the appeal stemming from the dismissal of the protest is properly suspended pending appropriate action by BLM to determine whether there has been a violation of those regulations.

Geosearch, Inc., 50 IBLA 409 (Oct. 24, 1980)

Where BLM does not officially reject or return the simultaneous noncompetitive oil and gas lease offers drawn with second and third priority after the issuance of the leases to the first drawees, the second and third drawees retain an interest which must be considered if the leases are cancelled because the first drawees' offers are defective, provided that the leases have not been assigned to bona fide purchasers.

Action on a protest against issuance of a lease to the first-drawn offeror, a client of Resource Service Company, a leasing service, and issuance of the lease, properly is suspended pending appropriate action by BLM to determine whether there has been a violation of the disclosure and interest regulations. BLM will investigate a filing service's relationship with the offeror where it appears that the disclosure and interest regulations may have been violated by a referral program offered by the filing service.

Geosearch, Inc., 51 IBLA 59 (Oct. 31, 1980)

BLM properly applied amended regulations, the effective date for which is June 16, 1980, to a drawing of simultaneous noncompetitive lease offers held in July 1980.

Under 43 CFR 3112.2-2(b) (1980), a single remittance is acceptable for a group of filings of drawing entry cards. However, if the remittance was insufficient to cover the $10 filing fee per card, BLM properly determined that the entire group was unacceptable and returned the filings to the offerors.

An applicant is required to submit a filing fee for every ostensible application whether or not it is completed as required under the regulations. Thus, a failure to remit enough money to cover all of the fees due for a group of filings is not excused because one of the filings may not have been properly completed.

Federal Energy Corp., 51 IBLA 144 (Nov. 24, 1980)

Where an officer of a business enterprise files oil and gas lease drawing entry cards for a parcel on behalf of both his company and himself, the business gains a greater probability of success than other entrants, owing to the officer's fiduciary duty to hold the lease for the company's exclusive use and benefit, thereby warranting rejection of the lease offers of both the company and the officer per 43 CFR 3112.5-2.

Petroleum Shares, Inc., 51 IBLA 246 (Dec. 15, 1980)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the first year's advance rental, that rental must be received by the proper office within the prescribed 15 days. Where the offeror has failed to submit a signed check for the advance rental within the time allowed, he is properly disqualified to receive the lease.

William M. Bevis, 52 IBLA 125 (Jan. 13, 1981)

Where a drawing entry card offer to lease is prepared by an agent, that is, a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the latter signed his principal's name or his own name as his principal's agent, and regardless of whether the signature was applied manually or mechanically.

Killian L. Hugus, Jr., 52 IBLA 174 (Jan. 26, 1981)

A cashier's check is an acceptable form of remittance for payment of the filing fee accompanying a simultaneous oil and gas lease offer under 43 CFR 3112.2-2. A cashier's check is a draft drawn by a bank upon itself, issued by an authorized officer of the bank, and directed to another person. Where a check submitted as a filing fee appears on its face to be a valid cashier's check, a Bureau of Land Management decision refusing such a check will be reversed and the case remanded to BLM.

Oxy Petroleum, Inc., 52 IBLA 239 (Feb. 6, 1981)

Frank M. Gower, Jr., 53 IBLA 146 (Mar. 9, 1981)

A protest against the validity of a simultaneous noncompetitive oil and gas lease offer drawing entry card (DEC) on the grounds that the DEC was signed by someone other than the offeror and that no power of attorney was filed is properly dismissed where the record indicates that the offeror's wife signed the card for him as his amanuensis, in the absence of a clear showing by the protestant that the wife was the offeror's "agent" (i.e., was invested with discretionary authority to act for the offeror) instead. This is because a copy of a power of attorney or agency statements are not required to be filed when the person affixing the offeror's signature on the DEC is not his agent or attorney-in-fact.

The mere fact that a DEC is signed by someone other than the offeror does not necessarily mean that the person affixing the signature has an interest in the offer which must be disclosed.

An oil and gas lease offeror is not required to disclose the existence of any interests in the offer flowing to his wife on account of community property laws of any state.

John W. Bierlein, 53 IBLA 48 (Feb. 27, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Where a drawing entry card filed before June 16, 1980, is signed by the offeror but completed by an agent or attorney-in-fact, the separate signed statements by the attorney-in-fact or agent required by the pertinent regulation, 43 CFR 3102.6-1(a)(2), need not be filed.

Frank K. Mayuga, 53 IBLA 53 (Feb. 27, 1981)

A drawing entry card which is not properly dated in the space provided on the card is not "fully executed," as required by 43 CFR 3112.2-1, and must be rejected.

Olga M. Puglia, 53 IBLA 55 (Feb. 27, 1981)

The fact that an offeror signed an uncompleted oil and gas lease offer form which was subsequently completed by a duly authorized agent does not establish ground for rejection of the offer.

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

Phillip A. Eulin, 53 IBLA 57 (Feb. 27, 1981)

43 CFR 3102.6-1 sets forth the statements and evidence required when an attorney-in-fact or agent signs a simultaneous oil and gas lease drawing entry card on behalf of the applicant. Where an offer is signed and completed by a father acting as agent for his son, and where the father advises the son as to the selection of the parcel, the applicant cannot be considered "qualified" and the offer to lease drawn with first priority accepted, unless the statements required by 43 CFR 3102.6-1 have been filed with the drawing entry card.

W. Keith Howard, 53 IBLA 92 (Mar. 2, 1981) 88 I.D. 341

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, no excuse may be considered, no discretion exercised, no grace period invoked, and the right of the next drawee to receive first consideration attaches ipso instanto.

Robert E. Bergman and Evan V. Bergman, 53 IBLA 122 (Mar. 5, 1981)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The drawing of an offer for a noncompetitive oil and gas lease creates no vested rights in the offeror; it only establishes the priority of filing. The offeror is not justified in relying on the expected issuance of a lease.

Richard J. DiBarco, 53 IBLA 130 (Mar. 5, 1981)

Kenneth L. Hanlin, 70 IBLA 115 (Jan. 13, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Where an officer of a business enterprise files oil and gas lease drawing entry cards for a parcel on behalf of both his company and himself, the business gains a greater probability of success than other entrants, owing to the officer's fiduciary duty to hold the lease for the company's exclusive use and benefit, thereby warranting rejection of the lease offers of both the company and the officer pursuant to 43 CFR 3112.5-2, except in special circumstances not herein present.

Petroleum Shares, Inc., 53 IBLA 254 (Mar. 19, 1981)

Under 43 CFR 3112.2-2(b) (1980), a single remittance is acceptable for a group of filings of drawing entry cards. However, if the remittance was insufficient to meet the $10 filing fee per card, BLM properly determined that the entire group was unacceptable and returned the filings to the offerors.

Orderly administration of the oil and gas leasing program demands that filing fees be paid to BLM in a manner consonant with administrative convenience and in accordance with the regulations. This necessarily requires that BLM cannot, without prior written instruction, transfer money paid for one purpose to another use, e.g., money paid for one month's simultaneous drawing to another month's simultaneous drawing.

Stewart Capital Corp., 53 IBLA 369 (Mar. 30, 1981)

"Interest in an oil and gas lease or offer." Where a party to a pooling agreement is authorized to advance funds for filing of drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor with interest and receive a consultation fee from the pooled proceeds of any leases issued, all parties to the agreement have an interest in each lease offer within the meaning of 43 CFR 3102.7, requiring the disclosure of interested parties.

Where a party to a pooling agreement is authorized to advance funds for filing drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor and receive a consultation fee from the pooled proceeds of the sale or assignment of any lease issued, the filing in a lease drawing for a particular parcel by more than one party to the agreement constitutes a multiple filing in violation of 43 CFR 3112.5-2.

Vickie J. Landis, 54 IBLA 25 (Apr. 6, 1981)

A party which purchases a first-drawn simultaneous noncompetitive DEC lease offer is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the DEC was defective or that a protest against the offer was ongoing; and where, at the time it consummated the agreement by payment of consideration for the offer, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the DEC, provided that the purchaser had no actual knowledge of any defect in the DEC.

An undated DEC lease offer is defective and must be rejected.

Hope Petroleum Corp. et al., 54 IBLA 194 (Apr. 23, 1981) 88 I.D. 479

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A party which purchases a first-drawn simultaneous noncompetitive DEC lease offer is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the DEC was defective or that a protest against the offer was ongoing, or in prospect; and where, at the time it consummated the agreement by payment of consideration, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the offer, provided that the purchaser had no actual knowledge of any defect in the offer or the resultant lease.

Inexco Oil Co., et al., 54 IBLA 260 (Apr. 28, 1981)

A party which purchases a first-drawn simultaneous noncompetitive DEC lease offer is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the offer was defective or that a protest against the offer was ongoing or in prospect; and where, at the time the purchaser consummated the agreement by payment of consideration for the offer, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the offer, provided that the purchaser had no actual knowledge of any defect in the offer.

Wilbur G. Dessens et al., 54 IBLA 271 (Apr. 28, 1981)

Strict compliance with 43 CFR 3112.2-1 which provides that simultaneous oil and gas drawing entry cards be signed and fully executed by an applicant or his agent is required.

A simultaneous oil and gas lease offer is properly rejected where the State prefix to the parcel number on an oil and gas drawing entry card is omitted.

Marilyn K. Weiss, 54 IBLA 324 (Apr. 30, 1981)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit the advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, notwithstanding the fact that at the time of the notice the Secretary had suspended the Bureau of Land Management's authority to issue noncompetitive oil and gas leases until further notice. However, if the first-drawn applicant files a notice of appeal within that time period, the time period is suspended and following affirmation of Bureau of Land Management's decision, the first-drawn applicant is properly given the entire time period from receipt of the Board's decision within which to submit the rental.

Robert A. Shryock, Jas. O. Browne, Jr., 55 IBLA 74 (June 1, 1981)

A Traveler's Express money order is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2 (1980), which specifically requires that where remittance is by money order it must be by either post office or bank money order.

Michaela M. Fitzpatrick, George M. Fitzpatrick, 55 IBLA 108 (June 1, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A party who purchased a first-drawn simultaneous noncompetitive DEC lease offer under authority of a regulation then in effect, is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the offer was defective or that a protest against the offer was ongoing or in prospect; and where, at the time the purchaser consummated the agreement by payment of consideration for the offer, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the offer, provided that the purchaser had no actual knowledge of any defect in the offer.

Robert E. Belknap et al., 55 IBLA 200 (June 16, 1981)

A simultaneous oil and gas lease offer is properly rejected where the drawing entry card is dated more than 10 days prior to the beginning of the filing period.

Failure to complete properly information required on a simultaneous oil and gas lease drawing entry card renders the card defective and requires rejection of the offer based upon the mandatory requirements in 43 CFR 3112.2-1(a) (1979) that the card be "signed and fully executed." This requirement is strictly applied and, therefore, a date on the card 2 years prior to the filing, even though resulting from inadvertent error, renders the card defective.

H. L. McCarroll, 55 IBLA 215 (June 18, 1981)

Where prior to June 16, 1980, a drawing entry card offer was prepared by an agent and the offer was signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) applied, so that separate statements of interest by both the offeror and the agent must have been filed.

John Walter Starks, 55 IBLA 266 (June 25, 1981)

A party which purchased a first-drawn simultaneous noncompetitive DEC lease is a bona fide purchaser of this interest where, throughout the time during which it agreed to purchase the offer, paid consideration, and formally requested approval of the assignment, BLM's case records indicated that BLM had resolved a question about the validity of the offer in favor of the offeror and had proceeded to issue the lease to him, and where there had been no formal protest against the lease, provided that the purchaser had no actual knowledge of any defect in the offer.

Woods Petroleum Corp., et al., 55 IBLA 348 (June 26, 1981)

A regulation should be sufficiently clear that there is no reasonable basis for an oil and gas lease applicant's noncompliance with the regulation before it is interpreted to deprive an applicant of a preference right to a lease. A regulation specifying a bank money order as an acceptable form of remittance requires the acceptance of a personal money order issued by a bank.

Charles J. Brdzevski, 55 IBLA 373 (June 29, 1981)
88 I.D. 625

George W. Metz, 56 IBLA 97 (July 15, 1981)

Robert L. Andersen et al., 56 IBLA 182 (July 20, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A cashier's check is an acceptable form of remittance for payment of the filing fee accompanying a simultaneous oil and gas lease offer under 43 CFR 3112.2-2. A cashier's check is a draft drawn by the issuing bank upon itself, signed by an authorized employee of the bank, and payable to another person. Where a check submitted as a filing fee appears to meet these criteria on its face, it will be considered the equivalent of a cashier's check.

A regulation specifying a bank money order as an acceptable form of remittance requires the acceptance of a personal money order issued by a bank.

John L. Messinger, Morris C. Delaporte, Jr., 56 IBLA 1 (June 30, 1981)

Filing fees submitted in the form of an instrument drawn by a bank on its own assets, and which is signed by an officer of the bank and is a direct obligation of the issuing bank are acceptable under 43 CFR 3112.2-2.

Eloise Miller, David Miller, 56 IBLA 7 (June 30, 1981)

Strict compliance with 43 CFR 3112.2-1 (1979) which provided that simultaneous oil and gas drawing entry cards be signed and fully executed by an applicant or his agent is required. A simultaneous oil and gas lease offer on an Eastern States parcel is properly rejected where the "ES" prefix to the parcel number on the oil and gas drawing entry card is omitted even though the state name is spelled out.

C. H. Coster Gerard, 56 IBLA 17 (June 30, 1981)

A simultaneous oil and gas lease offer is properly rejected if the drawing entry card is not received by the deadline specified in the notice announcing the filing period.

Derrick Fuller, 56 IBLA 33 (July 8, 1981)

Under 43 CFR 3112.2-2(b) (1980), a single remittance is acceptable for a group of filings of drawing entry cards. However, if the remittance was insufficient to cover the $10 filing fee per card, BLM properly determined that the entire group was unacceptable and returned the filings to the offerors.

Allen W. Taylor, 56 IBLA 143 (July 20, 1981)

A party which purchased an oil and gas lease is a bona fide purchaser of this interest where, throughout the time it agreed to purchase the lease, paid fair value, and formally requested approval of the assignment, BLM's records indicated that BLM had resolved a question about the validity of the underlying offer in favor of the offeror and had proceeded to issue the lease to him, and where there had been no formal protest against the lease, provided that the purchaser of the lease had no actual knowledge of any defect in the underlying offer.

Jack Buckeress et al., 56 IBLA 193 (July 22, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Where a personal secretary who is not "in the business of providing assistance to participants in a Federal oil and gas leasing program" signs a drawing entry card as an "agent" of the offeror, he is not an agent within the meaning of 43 CFR 3102.2-6(a) and thus is not required to file an agency statement.

Kathleen I. Anderson, 56 IBLA 214 (July 22, 1981)

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser, is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2.

David Burr et al., 56 IBLA 225 (July 22, 1981)

"Interest in an oil and gas lease or offer." Where an oil and gas lease offeror in a written agreement gives another person a security interest in any lease issued pursuant to an offer filed under the agreement to secure only payment of lease rentals advanced by that person, that person does not have an interest in the lease offer within the meaning of 43 CFR 3102.7 (1979), requiring the disclosure of interested parties.

Warren B. Haas, 57 IBLA 247 (Aug. 28, 1981)

An application drawn first in a simultaneous drawing which is filed by a partnership but which is not accompanied by statements required by the pertinent regulation or which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

It is not permitted to file a simultaneous noncompetitive lease application bearing both the names of an association and of an individual. Where an individual intends to submit an application on behalf of the partnership, he should list its name alone on the application and sign the card as its authorized agent.

A partnership's defective simultaneous noncompetitive oil and gas lease application is not curable by submission of required evidence of qualifications after the drawing.

Stephen B. Pitt, L & P Investments, 57 IBLA 365 (Sept. 8, 1981)

Where a drawing entry card to lease a parcel of land for oil and gas was prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, the requirements of 43 CFR 3102.6-1 (1979) applied, so that separate statements of interest by both the offeror and the agent were required to be filed, regardless of whether the agent signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

Cleo Chapekis, 57 IBLA 398 (Sept. 14, 1981)

Patricia Ann DeSalvo, 58 IBLA 1 (Sept. 15, 1981)

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OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Failure to complete properly information required on a simultaneous oil and gas lease application renders the application defective and requires rejection of the application based upon the mandatory requirements in 43 CFR 3112.2-1. These requirements are strictly applied and, therefore, an affirmative answer to the question on the application concerning the applicant's interest in any other application with respect to the same parcel, even though resulting from inadvertent error, renders the application defective.

Nancy Y. Otani, 58 IBLA 38 (Sept. 17, 1981)

Where, following a drawing of simultaneously filed oil and gas lease offers, a priority applicant fails to submit advance rental within 15 days after receipt of a notice that payment was due, as prescribed by 43 CFR 3112.4-1 (1979), disqualification of the offer is automatic.

Arthur Ancowitz, 58 IBLA 112 (Sept. 24, 1981)

A simultaneous noncompetitive oil and gas lease application which is not dated is properly rejected.

Jerry R. Smith, 58 IBLA 232 (Oct. 6, 1981)

A simultaneous oil and gas lease offer is properly rejected where the application is dated prior to the filing period.

An agent's failure to ensure that an oil and gas lease application is properly dated provides no basis for accepting the offer because such action would prejudice the rights of others who properly executed their applications.

Grace Grant, 58 IBLA 366 (Oct. 20, 1981)

Where an offeror submits two drawing entry cards on a parcel, both cards are properly disqualified. It is irrelevant that there may have been actually only one card in the drawing due to BLM's rejection of the other before the drawing, as it is the submission of more than one card per parcel which is prohibited under 43 CFR 3112.2-1(a)(2).

F. J. Kretschmer, 59 IBLA 115 (Oct. 26, 1981)

Where the procedures followed by the Montana State Office in reselecting the priority applications for the July 1980 simultaneous drawing comport with 43 CFR 3112.3-2, the results of the reselection will not be overturned by the Board of Land Appeals.

Margaret G. Pascale, 59 IBLA 124 (Oct. 26, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Joan S. Maguire, 59 IBLA 130 (Oct. 26, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest and multiple filings, are left unanswered.

William C. Reuling, 59 IBLA 226 (Oct. 28, 1981)

Where, following a drawing of simultaneously filed oil and gas lease offers, a priority applicant fails to submit advance rental within 30 days after receipt of a notice that payment was due, disqualification of the offer is automatic.

Keith B. Livermore, 59 IBLA 232 (Oct. 28, 1981)

Paul H. Landis, 61 IBLA 244 (Jan. 28, 1982)

"Interest." Where there is an agreement giving an individual the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b) (1979).

Harry S. Mills et al., 59 IBLA 241 (Oct. 28, 1981)

A drawing entry card which is not dated in the space provided on the card must be rejected.

Joe Conway, 59 IBLA 314 (Nov. 4, 1981)

Lynn C. Haas, 62 IBLA 25 (Feb. 24, 1982)

"Interest in an oil and gas lease or offer." Where a party to a pooling agreement is authorized to advance funds for filing of drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor with interest and receive a consultation fee from the pooled proceeds of any leases issued, all parties to the agreement have an interest in each lease offer within the meaning of 43 CFR 3102.7 (1979), requiring the disclosure of interested parties.

The Board of Land Appeals will not order a fact-finding hearing to determine whether a pool agreement violates regulations requiring disclosure of other parties in interest in a simultaneous oil and gas lease filing where there are no ambiguities in the agreement and it is clear that there are other parties in interest to the lease offer other than appellant.

Ilean M. Landis, 59 IBLA 353 (Nov. 9, 1981)

Where on appeal from rejection of a simultaneous oil and gas lease offer, it is alleged that the offer designated "J.F.C. Oil & Gas" was actually submitted on behalf of a sole proprietorship, and the drawing entry card does not show the last name, first name, and middle initial of an individual offeror, the lease offeror will be deemed unqualified under 30 U.S.C. § 181 (1976), and the offer not fully executed under 43 CFR 3112.2-1(a) (1979).

J.F.C. Oil and Gas, 60 IBLA 191 (Nov. 27, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed on the application are left unanswered. An incomplete application must be rejected, regardless of whether the desired information was indicated on an attachment or in other documents on file.

A simultaneous oil and gas lease application filed on behalf of a joint venture must be rejected if it is signed only by an individual member with no proper reference to the name of the joint venture or other members thereof.

James E. Webb, 60 IBLA 323 (Dec. 18, 1981)

Where an oil and gas lease applicant files an application with alleged statement of qualifications of a partnership but receives no serial number for the statement of qualifications under the regulation at 43 CFR 3102.2-1(c) and later files an application with no statement of qualifications as required by the regulation at 43 CFR 3102.2-4, the second application must be rejected as incomplete.

Zappia Exploration Group, 60 IBLA 336 (Dec. 22, 1981)

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened. The Department is authorized to accept only the offer of the first-qualified applicant, one who has fully complied with all the regulations.

Joff Co., 61 IBLA 74 (Dec. 31, 1981)

John F. Jacobs, 66 IBLA 219 (Aug. 16, 1982)

A drawing entry card which is not signed or dated in the space provided on the card must be rejected.

Bonita L. Ferguson, 61 IBLA 178 (Jan. 26, 1982)

A simultaneous oil and gas lease application is properly rejected where the application is dated prior to the filing period.

The fact that an agent, rather than the applicant, failed to ensure that an oil and gas lease application was properly dated provides no basis for accepting the offer because such acceptance would have prejudiced the rights of others who properly executed their applications.

Herbert W. Winston, 61 IBLA 199 (Jan. 26, 1982)

David B. Perry, 67 IBLA 171 (Sept. 21, 1982)

Where the offerors designated on an offer to lease for oil and gas are "McClain Hall and Arthur B. Frank, d/b/a Frank's Surface Radiation Evaluations" and the offer form is signed by the named individuals who state that they intend to file as individuals, the lease offer is proper since it is possible to determine the full names of the offerors and the words "d/b/a Frank's

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Surface Radiation Evaluations" should have been treated as surplusage.

McClain Hall, Arthur B. Frank, 61 IBLA 202 (Jan. 26, 1982)

An American Express money order is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2, which specifically requires that where remittance is by money order it must be by either post office or bank money order.

Maria C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit, within 15 days after notice, payment of the advance rental identifying the lease account to which it is to be applied as prescribed by 43 CFR 3112.4-1 (1979), disqualification is automatic, and the right of the next drawee to receive first consideration attaches.

Elmer J. Parker, 61 IBLA 248 (Jan. 28, 1982)

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be cured by the submission of further information.

Richard M. Sprcic, 62 IBLA 159 (Mar. 8, 1982)

In completing a simultaneously filed application card for an oil and gas lease, the regulations do not require the person signing the card to sign his principal's name holographically in ink as well as his own; neither is it required that marks employed to indicate answers to the questions on the card be entirely confined within the check-block boxes; nor is it required that such marks be entered manually instead of mechanically.

Henry A. Alker, 62 IBLA 211 (Mar. 10, 1982)

An oil and gas lease offer filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied either by evidence of corporate qualifications required by the regulations currently in effect or by any reference to a serial number where such information might be found, as required by 43 CFR 3102.2-5. Such omission cannot be cured after the drawing.

Sagedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A simultaneous oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period, even though the application was assertedly signed during the filing period and inadvertently misdated, since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period, and since the applicant must bear the responsibility for any error in the dating of the application.

Leonard Thompson, 62 IBLA 236 (Mar. 11, 1982)

Raymond M. Joeckel, 68 IBLA 195 (Nov. 9, 1982)

The language in 43 CFR 3112.6-1(c)(4), which prohibits separate filings by a trustee on behalf of two or more beneficiaries on the same parcel, is a per se prohibition and means that a trustee for two or more discrete trusts may file application on behalf of only one trust for any one parcel.

Where separate trusts are created for siblings, and the trust agreements provide for a contingent distribution of the assets from the estate of one or more trusts of decedents to the sibling survivors, each of the beneficiaries of the separate trusts has an "interest" in any oil and gas lease offer as that term is defined in 43 CFR 3100.0-5(b), and the simultaneous filing of lease applications by more than one such trust for the same parcel is therefore violative of 43 CFR 3112.6-1(c), which prohibits the filing of multiple offers.

Bruce A. Blakemore (Estate Trust) and James E. Blakemore (Trust), 62 IBLA 336 (Mar. 24, 1982)

Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the agent signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

LSBJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

Where individuals who are officers and/or directors of a corporation file noncompetitive oil and gas lease applications for the same parcels in the same drawings, and where the corporation has filed no applications, cancellation by BLM of leases awarded to such individuals pursuant to those drawings is improper when the individuals establish that there was no breach of their fiduciary duty to the corporation creating a corporate interest in the individual applications.

Where individual officers and/or directors of a corporation file noncompetitive oil and gas lease applications for the same parcels in the same drawings, but the corporation has not filed any applications, rejection of the applications by BLM is improper when the individuals establish that there was corporate authorization for such individual filings; that any prior assignments to the corporation of Federal oil and gas leases previously acquired through the simultaneous system were motivated by personal financial and business considerations, rather than by corporate obligation; and that no arrangement, agreement, scheme, or

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

plan giving the corporation an interest in any of the applications ever existed.

Lawrence C. Harris et al., 63 IBLA 132 (Apr. 5, 1982) 89 I.D. 185

An applicant for a simultaneously filed oil and gas lease is bound to conform to changes in application procedures duly promulgated by publication in the Federal Register and referred to in appropriate notices prior to the filing; and the fact that numerous applications were required to be returned to the applicant and to others because they were on the wrong form does not render the drawing invalid as to the remaining applicants.

Ronald C. Agel, 64 IBLA 1 (May 3, 1982)

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened.

Impel Energy Corp., 64 IBLA 92 (May 12, 1982)

An assignee of an oil and gas lease offeror drawn with second or third priority has standing to protest the issuance of a lease to first-priority offeror, as well as standing to appeal from a rejection of such protest.

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

Where a potential oil and gas lease applicant that has filed a statement of corporate qualifications in accordance with 43 CFR 3102.2-1(c), but has received no serial number, later files an application unaccompanied by a statement of qualifications as required by 43 CFR 3102.2-5, the application must be rejected as incomplete.

Cluff Oil, Inc., 64 IBLA 156 (May 25, 1982)

A simultaneous oil and gas lease application is properly rejected where the application is dated prior to the filing period.

Charles I. Neff, 64 IBLA 234 (May 27, 1982)

H. H. Roberts, 69 IBLA 76 (Nov. 30, 1982)

John A. Blackburst, 70 IBLA 219 (Jan. 24, 1983)

Josephine Slopper, 74 IBLA 234 (July 19, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A party purchasing an oil and gas lease from the first-drawn winner of a drawing of simultaneous offers to lease is a bona fide purchaser where prior to and during the time it agreed to purchase the lease, paid consideration, and requested approval of the assignment, BLM's files were silent as to any irregularities in the lease or offer and the purchaser had no knowledge of any defect in the lease or offer.

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

A simultaneous oil and gas lease application which is not holographically (manually) signed, in accordance with 43 CFR 3112.2-1(b), must be rejected.

Fred E. Forster III, 65 IBLA 38 (June 22, 1982)

An application drawn first in a simultaneous drawing which is filed in the name of a partnership but which is not accompanied by statements required by the pertinent regulations and which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

A partnership's defective simultaneous noncompetitive oil and gas lease application is not curable by submission of required evidence of qualifications after the drawing.

Piriadel Investment Research, 65 IBLA 111 (June 24, 1982)

Where a corporation files an application for a lease for a certain parcel of land and is the successful offeror in the drawing and the secretary of the corporation also filed an application for the same parcel of land in the same drawing as an individual, the offer of the corporation must be rejected because an officer of the corporation stands in a fiduciary relationship to the corporation and his offer thereby increases the corporation's chances to be the successful applicant.

Richland Resources, 66 IBLA 68 (July 29, 1982)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms were not received by BLM within 30 days from the receipt of notice.

Warren R. Haas, 66 IBLA 107 (Aug. 4, 1982)

Where a simultaneously filed oil and gas lease application was rejected because BLM asserts that the applicant's filing service failed to provide a list of names and addresses of participating applicants for whom it served as agent, as required by 43 CFR 3102.2-6(a) (1981), the legal presumption of regularity which supports the official acts of Government officers will be treated as rebutted upon presentation of sufficient evidence to show that the list probably was received by BLM.

Elizabeth D. Anne, 66 IBLA 126 (Aug. 10, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered.

Pursuant to 43 CFR 3112.2-1(b), an application not signed by the applicant must bear the holographic signature of the agent. In the case of a corporate agent, this requires the signature of the person signing on behalf of the corporation.

Dennis E. Joy, 66 IBLA 260 (Aug. 17, 1982)

An oil and gas lease application, form 3112-1 (Sept. 1981), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and applicant's failure to check these items on the form cannot be cured by a simple addendum where the rights of the second-drawn applicant have intervened.

Carol V. Miller, 66 IBLA 394 (Aug. 31, 1982)

Where prior to June 16, 1980, a drawing entry card offer was prepared by an agent and the offer was signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 (1979) applied, so that separate statements of interest by both the offeror and the agent must have been filed.

Harold E. Wilson, 67 IBLA 21 (Sept. 3, 1982)

It is improper to reject a simultaneously filed oil and gas lease application because of the alleged failure of the signatory to indicate his relationship to the applicant where the applicant is a partnership and the signatory is a partner authorized to act in its behalf, and the application is correctly noted with a reference to the BLM serial number where the articles of partnership and the names of those authorized to act are on file. In those circumstances, the regulatory requirement that the application be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship, is satisfied.

Hercules (A Partnership) and Gemini (A Partnership), 67 IBLA 151 (Sept. 20, 1982)

Dry River Properties, 69 IBLA 151 (Dec. 13, 1982)

Leonard Minerals Co., 74 IBLA 371 (July 28, 1983)

A simultaneously filed oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period, since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period, and since the applicant must bear the responsibility for any error in the dating of the application.

Walter Adomkus, 67 IBLA 177 (Sept. 21, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A simultaneous oil and gas lease application which is not signed in the space provided on the card must be rejected.

Wilfred Plomis, 67 IBLA 237 (Sept. 23, 1982)

Where an employee who is not "in the business of providing assistance to participants in a Federal oil and gas leasing program" signs an application as an "attorney-in-fact" of the offeror, she is not an agent within the meaning of 43 CFR 3102.2-6(a), and thus is not required to submit statements required by 43 CFR 3102.2-6(a) or to reference a serial number on the application referring to such statements filed in the BLM office as required by 43 CFR 3102.2-1(c).

Evelyn Chambers, 67 IBLA 280 (Sept. 28, 1982)

Where, for purposes of reselection, it is necessary for an applicant whose original oil and gas lease application was erroneously omitted from a previous drawing to file a new application, such newly prepared application is not defective because it is not dated within the original filing period.

J. Linda Tomson, 68 IBLA 5 (Oct. 12, 1982)

An oil and gas lease application, Form 3112-1 (Sept. 1981), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered and applicant's failure to check these items on the form cannot be cured where the rights of the second-drawn applicant have intervened.

Leonard Stegman, 68 IBLA 364 (Nov. 22, 1982)

An oil and gas lease application, Form 3112-1 (Sept. 1981), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are left unanswered, and therefore, must be rejected.

Inclusion of a defective application in a drawing does not bar rejection after the selection has been made.

A defective application for noncompetitive oil and gas lease submitted pursuant to the simultaneous filing procedure is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of the second and third qualified applicants have intervened.

Fen F. Tzeng, 68 IBLA 381 (Nov. 23, 1982)

An oil and gas lease application signed by anyone other than the applicant must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Even if an agent's signature is not clearly legible, the regulatory requirement is satisfied if the application form refers to a qualifications file which clearly identifies the agent signing the card.

Liberty Petroleum Corp., 68 IBLA 387 (Nov. 23, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered; and applicant's failure to check these items on the form cannot be cured by a simple addendum where the rights of the second-drawn applicant have intervened.

Jack Goodwin, 68 IBLA 400 (Nov. 23, 1982)

Where an applicant for a noncompetitive oil and gas lease in the simultaneous filing program fails to submit the first year's advance rental within 30 days from receipt of notice to do so, as required by 43 CFR 3112.4-1(a), his application is properly rejected under 43 CFR 3112.6-1(d).

R. E. French, 69 IBLA 66 (Nov. 30, 1982)

An application drawn first in a simultaneous drawing which is filed in the name of a partnership but which is not accompanied by evidence of qualifications required by the pertinent regulations and which does not refer to the serial number of the record where the statements have previously been filed with and accepted by the Bureau of Land Management is defective and must be rejected.

KVK Partnership, 69 IBLA 199 (Dec. 15, 1982)

Where a potential oil and gas lease applicant that has filed a statement of partnership qualifications in accordance with 43 CFR 3102.2-1(c), but has received no serial number, later files an application unaccompanied by a statement of qualifications as required by 43 CFR 3102.2-4, the application must be rejected as incomplete.

James W. Lacy, 69 IBLA 285 (Dec. 21, 1982)

A Traveler's Express money order, purchased at a savings and loan institution, is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2 (1981), which specifically requires that where remittance is by money order it must be by either post office or bank money order.

Ellis B. Ferguson, 69 IBLA 352 (Dec. 30, 1982)

A noncompetitive oil and gas lease application filed in the name of a corporation in a simultaneous drawing is properly rejected where it is not accompanied by a complete list of corporate officers, pursuant to 43 CFR 3102.2-5(a)(3) (1981), and where the corporate qualifications file referenced in the application was incomplete. Such a deficiency cannot be cured after the drawing.

Oxy Petroleum, Inc., 69 IBLA 357 (Jan. 3, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

An applicant receiving priority in a drawing of simultaneously filed oil and gas lease applications who fails to submit payment of the proper amount of advance rental within 30 days after receipt of a notice that payment is due, as prescribed by 43 CFR 3112.4-1(a), is automatically disqualified to receive a lease.

Dorelys W. Delano, 69 IBLA 360 (Jan. 3, 1983)

Failure to make timely payment of first year's rental for oil and gas lease is not excused where lease rental notice sent to applicant was returned marked "unclaimed" by Postal Service.

Ann C. Rehrig, 69 IBLA 376 (Jan. 4, 1983)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are left unanswered, and therefore, must be rejected.

A simultaneous oil and gas lease application which is not signed or dated, in accordance with 43 CFR 3112.2-1, must be rejected.

Marianne L. McManus, 70 IBLA 21 (Jan. 6, 1983)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

Thomas E. Lewis, 70 IBLA 69 (Jan. 11, 1983)

Hampton P. Stewart, 72 IBLA 358 (May 2, 1983)

Where, following a drawing of simultaneously filed oil and gas lease applications, a priority applicant fails to submit advance rental and the executed lease forms within 30 days after receipt of a notice that payment was due, as prescribed by 43 CFR 3112.4-1, disqualification of the application is automatic.

Gerald E. Coleman, 70 IBLA 238 (Jan. 25, 1983)

Where a simultaneous oil and gas lease application was rejected because BLM asserts that the applicant's filing service failed to provide a list of names and addresses of participating applicants for whom it served as agent, as required by 43 CFR 3102.2-6(b) (1981), the legal presumption of regularity which supports the official acts of Government officers will not be treated as rebutted upon presentation of insufficient evidence to show that the list probably was received by BLM.

Neil Hirsch, 70 IBLA 307 (Jan. 28, 1983)

A simultaneous oil and gas lease drawing is considered fair only if each applicant has had an equal chance of winning. Where the Bureau of Land Management by its own error creates circumstances whereby the reselection procedures of 43 CFR 3112.3-2 cannot be followed, an alternate reselection that preserves the

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

rights of all applicants under the circumstances will be upheld.

Anne P. Abrams, 70 IBLA 358 (Feb. 3, 1983)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1 (1979), disqualification to receive a lease is automatic.

Beverly J. Macdowell, Dorothy Langley, 71 IBLA 23 (Feb. 15, 1983)

Where an applicant, who is also an adult beneficiary of a trust, files an application to lease a particular parcel in a simultaneous oil and gas lease drawing, and her mother, who is trustee for applicant's trust, also files an application for the same parcel as an individual, 43 CFR 3112.2-1(f) (prohibition against holding, owning, or controlling any interest in more than one application for a particular parcel) and 3112.6-1 (prohibition against multiple filings) have not been violated and a BLM decision rejecting the daughter's application must be reversed.

Rachel S. Grynberg, 71 IBLA 83 (Feb. 24, 1983)

A simultaneous oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period, even though the application was assertedly signed during the filing period and inadvertently misdated, since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period, and since the appellant must bear the responsibility for any error in the dating of the application.

Richard L. Kahn, 71 IBLA 120 (Mar. 7, 1983)

Richard W. Renwick, 76 IBLA 57 (Sept. 19, 1983)

Protests against issuance of oil and gas leases were properly dismissed where the protests were unsupported by facts to show the successful drawees should have been disqualified and where there was no competent evidence offered to indicate a violation of regulations as claimed.

Geosearch, Inc., Lloyd Chemical Sales, Inc. v. Resource Service Co., Inc., Bureau of Land Management, 71 IBLA 138 (Mar. 9, 1983)

Where a regulation specifies that a filing fee for an oil and gas lease application shall be paid in United States currency, post office or bank money order, bank cashier's check or bank certified check, with the intent to ensure guaranteed remittance, a remittance drawn by a credit union upon a bank is also acceptable where the applicant has provided evidence that payment is guaranteed by a bank.

Elmer T. Stonecipher, 71 IBLA 203 (Mar. 14, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

Juan Martin, 71 IBLA 211 (Mar. 15, 1983)

A simultaneous oil and gas lease application is properly rejected where it is dated prior to the commencement of the filing period since 43 CFR 3112.2-1(c) requires that the date must reflect that the application was signed within the filing period.

George W. Lewis, Jr., 71 IBLA 231 (Mar. 18, 1983)

Failure to forward timely payment of first year's rental for oil and gas lease is not excused where the case record contains a signed postal return receipt card indicating that lease rental notice was received at appellant's address, even where the signature on the card was not that of the lease applicant.

Gerard C. Barrows, 71 IBLA 262 (Mar. 22, 1983)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The offeror is not justified in relying on the expected issuance of a lease.

Harry S. Hills, 71 IBLA 302 (Mar. 22, 1983)

Where applicant, who is beneficiary of a trust administered by his mother, files an application to lease in a simultaneous oil and gas lease drawing in which his mother files an application in her individual capacity Departmental regulations prohibiting multiple filings and holding owning or controlling interests in more than one application are not violated.

Stephen M. Grynberg, 72 IBLA 69 (Apr. 12, 1983)

Where applicant, who is beneficiary of a trust administered by her mother, files an application to lease in a simultaneous oil and gas lease drawing in which her mother files an application in her individual capacity Departmental regulations prohibiting multiple filings and holding owning or controlling interests in more than one application are not violated.

Rachel S. Grynberg, 72 IBLA 72 (Apr. 12, 1983)

Failure to complete properly information required on a simultaneous oil and gas lease application renders the application defective and requires rejection of the application based upon the mandatory requirements in 43 CFR 3112.2-1. These requirements are strictly applied and, therefore, an affirmative answer to questions (d), (e), and (f) on the application dealing with the applicant's qualifications to hold a lease,

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

even though resulting from inadvertent error, renders the application defective.

Frank L. Greene, 72 IBLA 215 (Apr. 25, 1983)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The drawing of an application for a noncompetitive oil and gas lease creates no vested rights in the applicant; it only establishes the priority to be accorded conflicting applications.

Hepburn T. Armstrong, 72 IBLA 329 (Apr. 29, 1983)

A simultaneous application given priority which is defective because of noncompliance with a mandatory regulation, must be rejected and may not be cured by the submission of further information.

Virginia V. Devlin, 72 IBLA 361 (May 2, 1983)

Where a first-priority oil and gas lease applicant fails to submit, within 30 days of receipt of notice, the signed offer, and rental, and, where the offer is signed by an attorney-in-fact, a copy of his/her power of attorney or reference to the serial number under which such authorization is filed, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, and the rights of the next priority applicant attach immediately. However, a BLM decision issued prior to the expiration of the 30-day period, which rejects an offer for failure to provide the power of attorney or reference to a serial number, is premature and must be set aside where the applicant subsequently provides that information within the 30-day period.

Northwest Exploration Co., 73 IBLA 123 (May 23, 1983)

It is improper to reject a simultaneously filed oil and gas lease application because of the alleged failure of the signatory to indicate his relationship to the applicant where the applicant is a corporation and the signatory is an officer authorized to act in its behalf, and the application is correctly noted with a reference to the BLM serial number where the articles of incorporation and the names of those authorized to act are on file. In those circumstances, the regulatory requirement that the application be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship, is satisfied.

Hickory Creek Oil Co., 73 IBLA 173 (May 26, 1983)

The regulatory requirement that a simultaneously filed oil and gas lease application be rendered in a manner which reveals the name of the applicant, the name of the signatory, and their relationship is not satisfied where the signature is illegible, no designation of authority appears on the application, and the signatory and his authority cannot be ascertained by reference to the qualifications file of the filing service listed on the application.

Kenneth S. Bradke, 73 IBLA 216 (May 27, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are left unanswered, and therefore, must be rejected.

A simultaneous oil and gas lease application which is not signed and dated in the space provided on the card must be rejected.

A defective application for a noncompetitive oil and gas lease submitted pursuant to the simultaneous filing procedure is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of the second and third qualified applicants have intervened.

Inclusion of a defective application in a drawing does not bar rejection after the selection has been made.

A first-drawn application in a simultaneous filing procedure drawing is a noncompetitive application to lease for oil and gas and does not create a property right in the applicant.

Warren W. Wissler, 73 IBLA 234 (May 31, 1983)

Where an automated simultaneous oil and gas lease application Part B, Form 3112-6a (June 1981), does not reflect in the space designated "MARK SOCIAL SECURITY NUMBER" the same identification number selected or assigned in Part A, Form 3112-6 (June 1981), it is not properly completed and must be rejected.

Shay Resources, Inc., 73 IBLA 291 (June 7, 1983)

Rocky Mountain Exploration Co., 77 IBLA 15 (Oct. 31, 1983)

Where the first-drawn applicant for a noncompetitive oil and gas lease in the simultaneous filing program fails to submit the first year's advance rental within 30 days from receipt of notice to do so, as required by 43 CFR 3112.6-1(a), his application is properly rejected under 43 CFR 3112.6-1(d).

Carl A. Peterson, 73 IBLA 347 (June 10, 1983)

Under 43 CFR 3112.2-1(b), an automated simultaneous oil and gas lease application, Form 3112-6a (June 1981), must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Where an application is executed by a filing service on behalf of an applicant, the signatory must reveal on the face of the application his or her identity and the fact that the signatory is acting for the filing service on behalf of the applicant.

Charles B. Tickel, 73 IBLA 360 (June 15, 1983)
90 I.D. 258

Where an oil and gas lease applicant includes the name of the applicant and refers to a qualifications file which reveals the name of the signatory and the relationship between the signatory and the applicant, the applicant has complied with the requirements of 43 CFR 3112.2-1(b).

Liberty Petroleum Corp., 73 IBLA 368 (June 15, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Where an oil and gas lease application is given first priority in the simultaneous filing procedure, and the application was filed in accordance with the regulation, 43 CFR 3102.5, it is proper for the Bureau of Land Management to issue the oil and gas lease to the applicant whose application was drawn with first priority. Bare assertions by the second-priority applicant of irregularities by the first-priority applicant do not rise to the level that would require an investigation to verify compliance.

Jonathan Eginar, 73 IBLA 372 (June 15, 1983)

When, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn offeror is notified to submit the first year's advance rental and executed lease agreements, those submissions must be received by the proper office within the prescribed 30 days. Automatic disqualification, stemming from untimely filings, will not be avoided by allegations that submissions were timely mailed but thereafter damaged by the postal service and returned to appellant.

Mary Jane Associates, 74 IBLA 43 (June 27, 1983)

A noncompetitive oil and gas lease offer filed by a first-drawn applicant, pursuant to 43 CFR 3112.4-1, is acceptable where the offer form is signed by the applicant but includes the title of the individual as a "General Partner" of a particular partnership, designated on the application as a party in interest, since it is possible to determine that the signature matches the name of the offeror and the words referring to title should have been treated as surplusage.

Ann B. Davis et al., 74 IBLA 96 (June 30, 1983)

A simultaneous oil and gas lease application is properly signed, in terms of indicating the relationship of the signatory and the applicant, as required by 43 CFR 3112.2-1(b), where the applicant is a partnership and the signatory is a partner authorized to act in its behalf, and the application is noted with a reference to the BLM serial number where the articles of partnership and the names of those authorized to act are on file.

A simultaneous oil and gas lease application is properly filed by a partnership, in accordance with 43 CFR 3102.2-4 (1981), requiring the filing of statements of partnership qualifications, where the application is noted with a reference to the BLM serial number where the statements are on file, even though the application is dated prior to receipt by BLM, approval of, and assignment of a serial number for those statements.

A first-drawn application in a simultaneous oil and gas lease drawing must be rejected where the applicant has not complied with 43 CFR 3102.2-6 (1981), requiring disclosure of any agreement with the lease filing service which assisted the applicant.

Pandora Petroleum Co., 74 IBLA 173 (July 13, 1983)

The regulatory requirement that simultaneously filed oil and gas lease applications be rendered in a manner which reveals the name of the applicant, signatory and their relationship is not satisfied where no designation of authority either appears on the application or can be ascertained by reference to the

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

qualifications file of the filing service listed on the application.

LSNJ Exploration Group, 74 IBLA 185 (July 18, 1983)

LDS Associates, Inc., 74 IBLA 192 (July 18, 1983)

A simultaneous oil and gas lease application which was filed in the name of a trust, but was not accompanied by the statements required by 43 CFR 3102.2-3 (1981) and which did not refer to a file reference number was properly rejected.

Robert T. P. Metcalf (Trust), 74 IBLA 252 (July 22, 1983)

Under 43 CFR 3112.2-1(b), a simultaneous oil and gas lease application must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Where the signature on the application is illegible and there is no reference to the signatory's relationship to the applicant, the requirements of the regulation have not been satisfied and BLM properly rejects the application.

Martin, Williams & Judson, 74 IBLA 342 (July 28, 1983)

Under provision of 43 CFR 3112.2-1(b) a simultaneous oil and gas lease application must reveal the name of the applicant, the name of the signatory, and their relationship. Where the agent's signature on the application is illegible and neither the application nor a qualifications statement filed with the agency for reference reveals the signing agent's relationship to the applicant, the regulation requires the application to be rejected.

Maurice M. Cobuen, 75 IBLA 293 (Aug. 29, 1983)

Where an automated simultaneous oil and gas lease application Part B, form 3112-6a (June 1981), does not contain a complete Social Security number in the circles under the space designated "MARK SOCIAL SECURITY NUMBER," it is not properly completed and must be rejected.

George Dolezal, Jr., 75 IBLA 298 (Aug. 29, 1983)

Where one or more applications for an oil and gas lease are received for a parcel pursuant to the simultaneous oil and gas leasing procedures and no lease issues as a result of such filings, 43 CFR 3112.7 requires that the lands be subject to leasing only in accordance with Subpart 3112.

Phyllis H. Odell, 75 IBLA 313 (Aug. 30, 1983)

A decision dismissing the protest of the third-drawn oil and gas lease applicant against the prospective issuance of the lease to either the first- or second-drawn applicants will be affirmed where the statement of reasons for appeal merely repeats the wholly unsubtantiated allegations of the protestant that the others each had made agreements which invested third parties with undisclosed interests in their applications, in violation of regulations.

John W. Childress, 76 IBLA 42 (Sept. 14, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Where a portion of a noncompetitive lease offer is classified within a known geologic structure pending litigation of rejection of the offer for other reasons, that portion of the offer to lease affected by the classification must be rejected despite a judgment finding the offer to be otherwise proper. Land within a known geologic structure may be leased only after competitive bidding under provisions of 43 CFR Subpart 3120.

The drawing of an offer for a noncompetitive oil and gas lease creates no vested right in the offeror but establishes only the priority of filing of the offer. The offeror may not, therefore, rely upon the expected issuance of a lease.

Frederick W. Lowey, 76 IBLA 195 (Oct. 6, 1983)

A simultaneous oil and gas lease application is properly rejected if the applicant's identity cannot be established by examining the application form because the applicant signed the application with an illegible signature and placed the name of some other person in the space provided for the name of the applicant.

An applicant for an oil and gas lease must place his personal or business address on a simultaneous application. An applicant has not complied with this requirement if the name of some other person appears as addressee, even though correspondence addressed to that person is to be received in the care of the applicant.

Jack Ortman, 76 IBLA 200 (Oct. 6, 1983)

When, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn offeror is notified that he/she is to submit the first year's advance rental and executed lease agreements, those submissions must be received by the proper office within the prescribed 30 days. Automatic disqualification, stemming from untimely filings, will not be avoided by reliance on the assurance of the Postal Service that mailings entrusted to it would be delivered on the due date.

The 1980 amendment of 43 CFR 3112.4-1 did not create an ambiguity which excused an applicant from filing the necessary lease offer documents within 30 days from the date of receipt. The reasons for the 1980 amendments stated by the Secretary in the Federal Register at the time of proposal and final printing amplify the stated intent of the regulations to provide that the sanction for failure to file within the 30-day period is the rejection of an applicant's offer.

Eagle Basin Partnership, 76 IBLA 241 (Oct. 17, 1983)

Under provision of 43 CFR 3102.4 a simultaneous oil and gas lease application must reveal the name of the applicant, the name of the signatory to the application, and their relationship. Where the agent's relationship to the applicant is not revealed, the regulation requires the application to be rejected. The defective application may not be cured by amendment on appeal.

Pioneer Fairmont #1 Ltd., 76 IBLA 250 (Oct. 17, 1983)

Petroleum Group (The), 77 IBLA 232 (Nov. 29, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Where an oil and gas lease applicant does not properly darken the circles on the automated simultaneous application form which correspond to her identification number and therefore the computer reads a different identification number on Part B from that on Part A, the application is not properly completed and must be rejected.

Deborah B. Mongrief, 76 IBLA 287 (Oct. 18, 1983)

A simultaneous oil and gas lease offer is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

James A. Scanapico, 76 IBLA 290 (Oct. 18, 1983)

Under 43 CFR 3112.2-1(b), a simultaneous oil and gas lease application must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Where there is no reference on the application to the signatory's relationship to the applicant, nor any reference to a qualifications file where the necessary information might be found, the requirements of the regulation have not been satisfied.

Feick Associates, 76 IBLA 292 (Oct. 18, 1983)

Our Turn Nov Ass'n, 77 IBLA 24 (Oct. 31, 1983)

Pamela Ann Fimple, 79 IBLA 276 (Mar. 13, 1984)

A simultaneous oil and gas lease application which is not signed or dated, in accordance with 43 CFR 3112.2-1, is not properly completed and must be rejected.

An automated simultaneous oil and gas lease application Part B, Form 3112-6a, which does not reflect in the space provided for "Social Security Number" the same number used on the corresponding Part A, Form 3112-6, is not properly completed and must be rejected.

D. M. Olson, 76 IBLA 344 (Oct. 24, 1983)

Where an automated simultaneous oil and gas lease application Part B, form 3112-6a (June 1981), does not contain a correct identification number in the circles under the space designated "MARK SOCIAL SECURITY NUMBER," it is not properly completed and must be rejected.

Donald E. Hook, 76 IBLA 367 (Oct. 25, 1983)

Victor S. Dulotsky, 77 IBLA 12 (Oct. 31, 1983)

Automated Simultaneous Oil and Gas Lease Application, Form 3112-6a (June 1981), commonly referred to as Part B, was designed to facilitate automated processing adopted in order to expedite the issuance of leases and lessen the paperwork of the public. If Form 3112-6a is completed in a manner which allows automated machine processing, is correct with respect to the information read by the computer, and is correct and complete with respect to that information not machine read, the application does not contain a fatal error because the arabic numerals corresponding to those numbered circles blackened by the applicant under the heading "Mark Social Security Number" are not placed in the boxes above the corresponding numbered circles. The required

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

information is contained on the face of the application in readable form. No information is lacking, and no ambiguity has been created by the applicant.

Satellite Energy Corp., 77 IBLA 167 (Nov. 17, 1983) 90 I.D. 487

An automated simultaneous oil and gas lease application filed by a partnership in the partnership name is not properly rejected under 43 CFR 3112.2-1(c) (1982), where the name of only one entity as defined in 43 CFR 3102.1 (1982), appears as applicant on Part B of the application.

Where a partnership consists of the names of two individuals and the designation "PTR" and the names and designation are typed on both Part A and Part B of the automated simultaneous oil and gas lease application as the name of the applicant, the fact that the automated part of Part A contains the surname and initials of only one of the individuals is a nonsubstantive error, and it does not require rejection of the application as not being properly completed under 43 CFR 3112.2-1(g) (1982).

Charles Fox & George M. Keith (Partnership), 77 IBLA 199 (Nov. 18, 1983)

BLM must reject a first-drawn simultaneous oil and gas lease application where the applicant fails to submit the executed lease agreement and first year's rental within 30 days of notice to do so, pursuant to 43 CFR 3112.4-1(a), in spite of any negligence on the part of the Postal Service which delayed return of the lease agreement and rental payment.

Jay B. Angle, 77 IBLA 242 (Nov. 29, 1983)

Where an oil and gas lease applicant with first priority dies after application, but prior to lease issuance, the administratrix of his estate is entitled to the lease when she files a sufficient offer to lease.

Estate of James Philip Witmer, 77 IBLA 361 (Dec. 7, 1983)

Where a simultaneous oil and gas lease application is dated prior to the commencement of the filing period and it is established that such misdating was merely inadvertent and not done with an intent to obtain a lease by fraud and that the application was signed during the filing period, the misdating is a nonsubstantive error which does not require the rejection of the application.

Amberex Corp., 78 IBLA 152 (Dec. 29, 1983)

Walter W. Hush, Sr., 78 IBLA 363 (Jan. 30, 1984)

Failure of an applicant to date a simultaneous oil and gas lease application in accordance with 43 CFR 3112.2-1(c) (1982) does not require rejection of the application.

Billie L. Herick, 78 IBLA 358 (Jan. 27, 1984)

Harvey Howard Trott, 79 IBLA 146 (Feb. 23, 1984)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Where a simultaneous oil and gas lease application bears a date earlier than the commencement of the filing period, but was dated and signed during the filing period, and it is established that the misdating was merely inadvertent and not done with an intent to obtain a lease by fraud, the misdating is a nonsubstantive error which does not require the rejection of the application.

Richard W. Renwick (On Reconsideration), 78 IBLA 360 (Jan. 27, 1984)

43 CFR 3112.1-1 provides that all lands which are not within a known geological structure and are covered by a lease which expires by operation of law are subject to leasing only in accordance with 43 CFR Subpart 3112.

Joe W. Johnson, 78 IBLA 382 (Jan. 31, 1984)

An automated simultaneous oil and gas lease application Part B, Form 3112-6a, which does not reflect in the space designated "MARK SOCIAL SECURITY NUMBER" the same identification number used on the corresponding Part A, Form 3112-6, is not properly completed and must be deemed unacceptable.

Joan Chorney, 79 IBLA 271 (Mar. 12, 1984)

Stella O. Redpath, 80 IBLA 174 (Apr. 13, 1984)

Where an automated simultaneous oil and gas lease application Part B, Form 3112-6a, does not contain a correct identification number in the circles under the space designated "MARK SOCIAL SECURITY NUMBER," it is not properly completed and is therefore unacceptable.

Newman Partnership, 79 IBLA 281 (Mar. 20, 1984)

An applicant receiving priority in a drawing of simultaneously filed oil and gas lease applications who fails to submit the payment of the proper amount of advance rental within 30 days after receipt of a notice that payment is due, as prescribed by 43 CFR 3112.4-1(a), is automatically disqualified to receive a lease.

B. W. Jones, 79 IBLA 295 (Mar. 20, 1984)

Pursuant to 43 CFR 3112.4-1(b) (1982) the power of attorney authorizing an attorney-in-fact to sign lease offers submitted under the simultaneous filing procedures must preclude the attorney-in-fact from filing offers on behalf of any other offeror.

Amy Polak, P. E. Polak, 79 IBLA 391 (Mar. 27, 1984)

The regulatory requirement that a simultaneously filed oil and gas lease application be rendered in a manner that reveals the name of the applicant, the name of the signatory, and their relationship is not satisfied where no indication of the signatory's authority appears on the application and there is no reference to a qualifications file where the relationship between the signatory and the applicant is disclosed.

U.S. Oil Co., Inc., 80 IBLA 10 (Mar. 27, 1984)

Tipperary Oil & Gas Corp., 81 IBLA 91 (May 24, 1984)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

An offer submitted by a partner for the first-drawn applicant under the simultaneous filing program which is not rendered in such a manner as to reveal the name of the potential lessee, the name of the signatory, and their relationship, is properly rejected.

Corinth Partnership, 80 IBLA 31 (Mar. 28, 1984)

The regulatory requirement that a simultaneously filed oil and gas lease application be rendered in a manner that reveals the name of the applicant, the name of the signatory, and their relationship is not satisfied where no indication of the signatory's authority appears on the application and there is no reference to a statement of qualifications on file with BLM in which the relationship between the signatory and the applicant is disclosed.

BLM is not required under 43 CFR 3102.5 to gather substantive information required on but missing from a simultaneously filed oil and gas lease application.

Chickasaw Oil & Gas, Inc., 80 IBLA 60 (Mar. 29, 1984)

Where an automated simultaneous oil and gas lease application Part B (Form 3112-6a) bears a different identification number in the space designated "MARK SOCIAL SECURITY NUMBER" than the identification number entered on Part A (Form 3112-6), the lease application is not properly completed and must be deemed unacceptable.

Thomas Connell, 80 IBLA 135 (Apr. 6, 1984)

Marvin A. Urquhart, Jr., 81 IBLA 370 (June 28, 1984)

A simultaneous oil and gas lease application must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Where there is no indication on the application of the signatory's relationship to the applicant, or any reference to a qualifications file that indicates the relationship, the requirements of 43 CFR 3112.2-1(b) have not been satisfied and the application is properly rejected.

Martin, Williams & Judson, 80 IBLA 143 (Apr. 6, 1984)

Where an automated simultaneous oil and gas lease application Part A, Form 3112-6, is either not on file at the time of the drawing or on file and contains a defect (more than one circle darkened per column) which prevents the computer from fully completing the automated processing of the application, the application is properly deemed to be unacceptable.

James B. Taylor, 80 IBLA 157 (Apr. 10, 1984)

Under 43 CFR 3112.2-2 (1982), BLM properly disqualifies simultaneous oil and gas lease applications submitted with uncollectible filing fees and requires payment of the debt as a condition for further participation in the simultaneous leasing program even where an applicant substitutes a collectible remittance after the filing period but prior to the simultaneous oil and gas lease drawing.

Charles B. Brucks, Jr., 80 IBLA 190 (Apr. 20, 1984)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Where, following the drawing of a simultaneously filed oil and gas lease drawing entry card, a priority applicant fails to submit advance rental within 30 days from the date of receipt of notice that payment is due, disqualification of the offer is automatic.

Judith A. Lawton, 80 IBLA 198 (Apr. 24, 1984)

A simultaneous oil and gas lease application submitted by an agent for an applicant which is not rendered in a manner to reveal the name of the potential lessee, the name of the signatory, and their relationship, is properly rejected.

Where BLM makes an inquiry because of an apparent discrepancy between a simultaneous oil and gas lease application and the corresponding lease offer, and applicant provides information that establishes the existence of a regulatory violation, the application is properly rejected. Such information does not cure a deficiency; it proves a violation.

Jonas P. Beachy, 80 IBLA 209 (Apr. 26, 1984)

Where a simultaneous oil and gas lease application bears a date subsequent to the close of the filing period, but the evidence discloses that the application was dated, signed, and submitted to BLM during the filing period, and it is established that the misdating was merely inadvertent and not done with an intent to obtain a lease by fraud, the misdating is a nonsubstantive error which does not require the rejection of the application.

Billy M. Eddy, 80 IBLA 213 (Apr. 26, 1984)

A simultaneous oil and gas lease application was not properly completed in accordance with 43 CFR 3112.2-1(g) (1982), where the identification numbers on Parts A and B of the application do not match. Such an error renders the application unacceptable, regardless of whether it was discovered before or after the drawing. The applicant is entitled to a return of his filing fees, minus a $75 processing fee, and the Board will remand the case to the Bureau of Land Management for that purpose.

Tillman V. Jackson, 80 IBLA 225 (Apr. 30, 1984)

Under 43 CFR 3112.2-2 (1982), it is proper for BLM to disqualify simultaneous oil and gas lease applications submitted with uncollectible filing fees and require payment of the debt as a condition for further participation in the simultaneous leasing program, even where an applicant substitutes a collectible remittance after the filing period.

Satish K. Arora, 80 IBLA 271 (May 4, 1984)

In Lovey v. Watt, 684 F.2d 957 (D.C. Cir. 1982), and Covey v. Watt, 720 F.2d 626 (10th Cir. 1983), the amendment and disclaimer of Fred L. Engle, d.b.a. Resource Service Co. was held to be effective to waive the exclusive agency provision that formed part of the company's contract with its clients. The waiver being effective, neither the company nor Engle possessed an interest in a client's offer at the time of a drawing

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

of simultaneously filed oil and gas lease offers so as to invalidate the offer.

Michigan Wisconsin Pipeline Co. (On Reconsideration), Geosearch, Inc., John A. Fochesato, 80 IBLA 317 (May 7, 1984)

An automated simultaneous oil and gas lease application Part B, Form 3112-6a, which is unsigned is not properly completed and must be found to be unacceptable.

Carey D. McDaniel, 80 IBLA 393 (May 14, 1984)

Where an automated simultaneous oil and gas lease application Part B, Form 3112-6a, does not contain a correct identification number in the space designated "MARK SOCIAL SECURITY NUMBER," which is the same number used in the corresponding Part A, Form 3112-6, it is not properly completed and is therefore unacceptable.

David Earl Frye, 81 IBLA 49 (May 18, 1984)

Where an oil and gas lease offeror properly receives notice of his priority, and notice of the requirements that the rental payment must be paid and that the lease must be executed within 30 days, the failure to make the rental payment and execute the lease within the 30-day period will result in rejection of the application. The offeror's absence from his address of record when the notice was received at his address will not excuse noncompliance with 43 CFR 3112.6-1.

Eleanor Ervin, 81 IBLA 100 (May 29, 1984)

A mismatched Part A and Part B in the automated simultaneous oil and gas leasing system renders an application unacceptable under the regulations because the computer is prevented from fully completing the automated program.

Harold Eugene Turner, 81 IBLA 106 (May 30, 1984)

Where the identification number on an automated simultaneous oil and gas lease application form Part B differs from that on Part A, the application is unacceptable, and appellant is entitled to a refund of her filing fees paid in excess of $75 per application form as a result.

Mary Mae Spear, 81 IBLA 220 (June 6, 1984)

BLM may properly reject a simultaneous oil and gas lease application which is not signed within the appropriate filing period in accordance with 43 CFR 3112.2-1(c) (1982).

Thomas E. Gwyn, 82 IBLA 11 (July 5, 1984)

Where a simultaneously filed oil and gas lease application is executed in a manner which incorporates numerous errors and violates several regulations, and thus creates ambiguities which cannot be resolved without the subsequent submission of further information, the application should be rejected. The fact that certain of these errors or violations have been held

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

to be trivial or nonsubstantive when considered individually in other cases cannot serve to mitigate the cumulative effect of all of them appearing in a single application.

Maurice W. Coburn (On Reconsideration), 82 IBLA 112 (July 24, 1984)

BLM may not properly reject a simultaneous oil and gas lease application where the application is signed on behalf of the applicant and the signature includes the title of the applicant as "partner" of a particular partnership, designated as another party in interest, since it is possible to determine the identity of the applicant and the word referring to title should have been treated as surplusage.

Ann M. Davis et al., 82 IBLA 151 (July 30, 1984)

Failure of a first-drawn simultaneous oil and gas lease application to reveal the relationship between the person signing the application and the corporate applicant, contrary to provision of 43 CFR 3112.2-1(b), does not constitute a substantial defect so as to prevent lease issuance, where a reviewing United States District Court finds that the Bureau of Land Management employees concerned have actual knowledge of the relationship.

ANR Production Co., 82 IBLA 228 (Aug. 23, 1984)

Where the identification number on an automated simultaneous oil and gas lease application form Part B differs from that on Part A, the application is unacceptable.

Nancy Spencer, 82 IBLA 245 (Aug. 28, 1984)

Where Part A of an automated simultaneous oil and gas lease application is not submitted with Part B and is not on file at the time of receipt of Part B, i.e., by the end of the filing period for applications, BLM may properly declare the lease application to be unacceptable, even where it was erroneously included in the lease drawing.

M. W. Canagranda, 83 IBLA 25 (Sept. 21, 1984)

Where, after a drawing of simultaneously filed oil and gas lease applications, the authorized officer mails a notice to the successful drawee informing him of his priority and the requirement that the advance rental must be paid within the allotted time, which letter is received at his address of record, his subsequent failure to remit the rental timely will disqualify his application even though he asserts that the person who received and signed for the notice was not his designated agent for receipt of mail.

After a drawing of simultaneously filed oil and gas lease applications the requirement that the first year's rental be received in the proper office within the allotted time after notice to the applicant is mandatory, and consideration of excuses for failure to comply is not permitted.

Daniel Pia, 83 IBLA 47 (Sept. 24, 1984)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

A simultaneous oil and gas lease application was not properly completed in accordance with 43 CFR 3112.2-1(g) (1982) where more than one circle per column was darkened in the space provided for indicating an applicant's identification number. Such an error renders the application unacceptable, and the applicant is entitled to a return of his filing fees, minus a $75 processing fee.

Warren Robert Haas, 83 IBLA 95 (Oct. 1, 1984)

A simultaneous oil and gas lease application is not properly completed in accordance with 43 CFR 3112.2-1(g) (1982), where the identification numbers on Parts A and B of the application do not match. Such an error renders the application unacceptable. The applicant is entitled to a return of his filing fees, minus a $75 processing fee, and the Board will remand the case to the Bureau of Land Management for that purpose.

LaVerne Vincent Haxkin, 83 IBLA 233 (Oct. 19, 1984)

Lands classified as within a known geologic structure of a producing oil and gas field (KGS) at any time prior to lease issuance must be leased competitively. The simultaneous oil and gas lease offer for such lands must be rejected even though the KGS determination probably would not have been applied to the lands but for the delay in lease issuance caused by the Secretary's suspension of the simultaneous oil and gas leasing program. Furthermore, applicant's rights are not impaired in such a case because the drawing merely establishes the priority of filing an offer, it does not vest in the lease applicant the right to an oil and gas lease.

The Secretary has the power to prescribe proper and necessary rules and regulations to accomplish the purpose of the Mineral Leasing Act, and pursuant to this and other authority, the Secretary has the power to create, and operate, or to suspend the simultaneous oil and gas leasing program which was designed to implement the noncompetitive leasing provisions of the Act.

Joseph A. Talladira, 83 IBLA 256 (Oct. 23, 1984)

An offer signed without further identification by a partner of a partnership that is the first-drawn applicant under the simultaneous oil and gas leasing program is not properly rejected under 43 CFR 3102.4 for failure to reveal the relationship between the potential lessee and the signatory.

Corinth Partnership (On Remand), 83 IBLA 277 (Oct. 25, 1984)

Under 43 CFR 3112.2-1(b) and 43 CFR 3102.4 (1982), a simultaneous oil and gas lease application must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship, where the signatory is an agent or attorney-in-fact for the applicant.

T.E.T. Partnership et al., 84 IBLA 10 (Nov. 26, 1984)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Drawings--Continued

Pursuant to 43 CFR 3112.6-1(b) the power of attorney authorizing an attorney-in-fact to sign lease offers submitted under the simultaneous filing procedures must prohibit the attorney-in-fact from filing offers on behalf of any other offeror, and where the power of attorney fails to include such a prohibition, the offer is properly rejected.

SATELLITE 8305128, 84 IBLA 74 (Dec. 5, 1984)

An unsigned check tendered within the 30-day notice period provided by 43 CFR 3112.4-1(a) (1982) is not acceptable for rental payment. BLM must reject an oil and gas lease offer when a properly executed check submitted for rental payment to replace an unsigned check is received after the expiration of the 30-day period.

Stephen M. Thompson, 84 IBLA 146 (Dec. 12, 1984)

Filing

Where the owner of a leasing service has no interest in the offers prepared and submitted by him on behalf of his clientele, an offer on the same parcel filed by the owner in his own name does not constitute a prohibited multiple filing.

Ervin J. Powers, 45 IBLA 186 (Jan. 30, 1980)

Under 43 CFR 3102.6-1(a)(2), if a lease offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding.

Elizabeth McClellan, 45 IBLA 382 (Feb. 7, 1980)

An oil and gas lease offer is properly rejected, where an official of the bank on which the offeror's check to cover the filing fee was drawn, corroborates that the check was uncollectible.

Charles A. Mattison, 46 IBLA 130 (Mar. 19, 1980)

A sight draft is an acceptable form of remittance to satisfy 43 CFR 3112.2-1(a)(1) governing filing fees for simultaneous oil and gas lease offers.

William E. Jeffers, Jr., 46 IBLA 322 (Apr. 4, 1980)

An oil and gas lease offer is properly rejected where the offeror's check to cover the filing fee is dishonored by the bank because of insufficient funds in the account on which the check is drawn.

Mary E. Cummings, 47 IBLA 10 (Apr. 10, 1980)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Where a leasing service company's client wins a Federal oil and gas lease at a drawing in which the leasing service and its officer participate, the mere participation of the company and the officer in the same filing, without anything more to create an interest in them in the client's lease, does not constitute a violation of the regulations which should be charged against the client.

A reference in a letter to the Bureau of Land Management from the winning drawee in a simultaneous oil and gas lease filing to "majority owners" of the lease, by itself is not sufficient to show there were undisclosed parties in interest at the time the offer was filed, but it would ordinarily warrant further investigation. Where a hearing is ordered on other issues to determine if there was a violation of the regulations in the filing, evidence should also be presented on this issue to explain the meaning of the reference and to show whether someone other than the offeror had an interest in the offer at the time it was filed.

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting against multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of Eden Capital Corp. and its clientele where there are ambiguities in the complex contract which provides for a preliminary division of lease obligations and proceeds and establishment of a lease escrow fund to protect funds promised to the client if the client exercises an option by which Eden will buy all leases in a particular lease program subscribed to by the client, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients of Eden have given to the terms.

Harry S. Hills, Kenneth E. Roth, 48 IBLA 356 (July 11, 1980)

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of a leasing service and its clientele where there are ambiguities in the complex contract between them, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients have given to the terms.

Valerie Bolior, Elizabeth B. Brooks, 49 IBLA 303 (Aug. 20, 1980)

Under 43 CFR 3102.6-1(a)(2), if a lease offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, giving full details of the agreement or understanding if it is a verbal one, and a copy of any written agreement or understanding. The regulation requirement is not met where statements are filed by the offeror and an agent with whom it has not actually contracted, but with whom the offeror's primary agent contracted to perform leasing services. To show the necessary agency and contractual authority,

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

the complete chain of agency-contract authority and relationships must be shown when the offer is filed.

Cliff Hezey, 50 IBLA 157 (Sept. 30, 1980)

Where an oil and gas leasing service has an interest in the offers of its clients, and where it files offers for multiple clients on one particular parcel, the service has increased the probability of its success in the drawing, and all of its clients' offers for that parcel must be rejected under 43 CFR 3112.5-2.

Donald W. Corer, Fred L. Engle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondents) (On Judicial Remand), 50 IBLA 306 (Oct. 14, 1980)

D. R. Weedon, Jr., et al., 51 IBLA 378 (Dec. 31, 1980)

BLM properly applied amended regulations, the effective date for which is June 16, 1980, to a drawing of simultaneous noncompetitive lease offers held in July 1980.

Under 43 CFR 3112.2-2(b) (1980), a single remittance is acceptable for a group of filings of drawing entry cards. However, if the remittance was insufficient to cover the $10 filing fee per card, BLM properly determined that the entire group was unacceptable and returned the filings to the offerors.

An applicant is required to submit a filing fee for every ostensible application whether or not it is completed as required under the regulations. Thus, a failure to remit enough money to cover all of the fees due for a group of filings is not excused because one of the filings may not have been properly completed.

Federal Energy Corp., 51 IBLA 144 (Nov. 24, 1980)

A cashier's check is an acceptable form of remittance for payment of the filing fee accompanying a simultaneous oil and gas lease offer under 43 CFR 3112.2-2. A cashier's check is a draft drawn by a bank upon itself, issued by an authorized officer of the bank, and directed to another person. Where a check submitted as a filing fee appears on its face to be a valid cashier's check, a Bureau of Land Management decision refusing such a check will be reversed and the case remanded to BLM.

Oxy Petroleum, Inc., 52 IBLA 239 (Feb. 6, 1981)

Frank H. Gower, Jr., 53 IBLA 146 (Mar. 9, 1981)

An employee's uncorroborated affidavit stating that a separate statement concerning parties in interest was sent for each oil and gas lease offer is insufficient to rebut the legal presumption that administrative officials have properly discharged their duties and have not misplaced or lost the document in issue.

A copy of a document is not considered to be among the number filed if it is only received and date-stamped and returned to an applicant as evidence of receipt. Such acknowledgement of receipt by Bureau of Land Management personnel does not constitute a determination that the filing was complete or that all the documents recited in the cover letter were included. BLM is not required to retain that copy of the document,

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

contrary to an applicant's instructions, in order to make the filing complete.

Metro Energy, Inc., 52 IBLA 369 (Feb. 19, 1981)

Where an oil and gas lease offeror makes reference by serial number in its offer to its corporate qualifications which were previously filed in another Bureau of Land Management State Office and such qualifications were on file in that office on the date of the lease offer, the offer may not be rejected because at the time of consideration of the offer the qualifications had been removed from active status without the offeror's knowledge.

ABI-MEX Oil & Exploration, Inc., 53 IBLA 37 (Feb. 26, 1981)

Pursuant to 43 CFR 3112.1-1, all lands which are not within a known geologic structure of a producing oil and gas field and are covered by canceled or relinquished leases, leases which terminated for nonpayment of rental or leases which expired by operation of law at the end of their primary or extended terms, are subject to leasing only in accordance with the simultaneous filing system. The Bureau of Land Management has no discretion under the regulations to accept over-the-counter offers for such lands.

John W. Foderick, 53 IBLA 258 (Mar. 19, 1981)

Curtis Wheeler, 54 IBLA 227 (Apr. 27, 1981)

James C. Haggard, 55 IBLA 36 (May 28, 1981)

Under 43 CFR 3112.2-2(b) (1980), a single remittance is acceptable for a group of filings of drawing entry cards. However, if the remittance was insufficient to meet the $10 filing fee per card, BLM properly determined that the entire group was unacceptable and returned the filings to the offerors.

Orderly administration of the oil and gas leasing program demands that filing fees be paid to BLM in a manner consonant with administrative convenience and in accordance with the regulations. This necessarily requires that BLM cannot, without prior written instruction, transfer money paid for one purpose to another use, e.g., money paid for one month's simultaneous drawing to another month's simultaneous drawing.

Stewart Capital Corp., 53 IBLA 369 (Mar. 30, 1981)

Where an applicant fails to file five copies of a noncompetitive over-the-counter lease offer as required by the regulations in 43 CFR 3111.1-1(a) the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, the offer must be rejected. However, when the additional required copy of the lease offer is filed with the notice of appeal, the offer may be reinstated and allowed to earn priority from the time of the filing of the additional copy with the BLM.

Curtis Wheeler, 55 IBLA 65 (May 29, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

A Traveler's Express money order is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2 (1980), which specifically requires that where remittance is by money order it must be by either post office or bank money order.

Michaela M. Fitzpatrick, George M. Fitzpatrick, 55 IBLA 108 (June 1, 1981)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such offeror or applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Alvyn G. Novotny, 55 IBLA 196 (June 16, 1981)

Robert R. Asdahl, 62 IBLA 246 (Mar. 15, 1982)

Janet Thompson, 65 IBLA 383 (July 20, 1982)

A regulation should be sufficiently clear that there is no reasonable basis for an oil and gas lease applicant's noncompliance with the regulation before it is interpreted to deprive an applicant of a preference right to a lease. A regulation specifying a bank money order as an acceptable form of remittance requires the acceptance of a personal money order issued by a bank.

Charles J. Rydzewski, 55 IBLA 373 (June 29, 1981) 88 I.D. 625

George W. Metz, 56 IBLA 97 (July 15, 1981)

Robert L. Anderson et al., 56 IBLA 182 (July 20, 1981)

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

W. W. Priest, Michael Manduca, 55 IBLA 398 (June 30, 1981)

A cashier's check is an acceptable form of remittance for payment of the filing fee accompanying a simultaneous oil and gas lease offer under 43 CFR 3112.2-2. A cashier's check is a draft drawn by the issuing bank upon itself, signed by an authorized employee of the bank, and payable to another person. Where a check submitted as a filing fee appears to meet these criteria on its face, it will be considered the equivalent of a cashier's check.

A regulation specifying a bank money order as an acceptable form of remittance requires the acceptance of a personal money order issued by a bank.

John L. Dessinger, Norris C. Delamore, Jr., 56 IBLA 1 (June 30, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Filing fees submitted in the form of an instrument drawn by a bank on its own assets, and which is signed by an officer of the bank and is a direct obligation of the issuing bank are acceptable under 43 CFR 3112.2-2.

Eloise Miller, David Miller, 56 IBLA 7 (June 30, 1981)

A drawing entry card not received until after the close of the filing period is invalid even if the delay in delivery is the fault of the postal service.

Derrick Fuller, 56 IBLA 33 (July 8, 1981)

Under 43 CFR 3112.2-2(b) (1980), a single remittance is acceptable for a group of filings of drawing entry cards. However, if the remittance was insufficient to cover the $10 filing fee per card, BLM properly determined that the entire group was unacceptable and returned the filings to the offerors.

Allen W. Taylor, 56 IBLA 143 (July 20, 1981)

An oil and gas lease drawing entry card is properly rejected under 43 CFR 3112.2-1(b) (1980) where it is not signed holographically (manually) by the applicant or by someone authorized to sign on her behalf. BLM is not barred from rejecting the offer either by its acceptance of applicant's filing fee or by its publishing of applicant's name as the first drawee.

Betty J. Thomas, 56 IBLA 323 (July 29, 1981)

A simultaneous oil and gas lease offer is properly rejected where the application is dated prior to the filing period.

Grace Grant, 58 IBLA 366 (Oct. 20, 1981)

Where an offeror submits two drawing entry cards on a parcel, both cards are properly disqualified. It is irrelevant that there may have been actually only one card in the drawing due to BLM's rejection of the other before the drawing, as it is the submission of more than one card per parcel which is prohibited under 43 CFR 3112.2-1(a)(2).

F. J. Kretschmer, 59 IBLA 115 (Oct. 26, 1981)

Where Bureau of Land Management rejects a simultaneous oil and gas lease application because the applicant's corporate qualifications file did not accurately reflect the corporate structure at the time of the application's filing as required by 43 CFR 3102.2-5(a), and the applicant establishes that its file was current and accurate, but a question remains as to the applicant's compliance with 43 CFR 3102.2-5(b), the Bureau of Land Management decision will be vacated and the case remanded for further action.

Black Jack Oil Co., 59 IBLA 163 (Oct. 26, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Pursuant to 43 CFR 3112.1-1, all lands which are not within a known geologic structure of a producing oil and gas field and are covered by canceled or relinquished leases, leases which terminated for nonpayment of rental or leases which expired by operation of law at the end of their primary or extended terms, are subject to leasing only in accordance with the simultaneous filing system.

Edna L. Williams, 59 IBLA 196 (Oct. 27, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest and multiple filings, are left unanswered.

William C. Reuling, 59 IBLA 226 (Oct. 28, 1981)

A simultaneous oil and gas lease application is not signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) where the space for the agent's signature contains only three initials and the name of the corporation, and the application is properly rejected.

Charles Goodrich, 60 IBLA 25 (Nov. 16, 1981)

Paulette M. Brashear, 69 IBLA 169 (Dec. 13, 1982)

Although BLM may properly reject a noncompetitive oil and gas lease offer for failure to disclose other parties in interest pursuant to 43 CFR 3102.7 (1979), or because of a multiple filing in violation of 43 CFR 3112.5-2 (1979), such a decision must be supported by facts of record. In the absence of such evidentiary support, the Board will set aside the decision and remand the case to BLM for further consideration and preparation of a proper record.

Tommy L. Lynn, 60 IBLA 47 (Nov. 17, 1981)

The presumption of regularity which supports the official acts of public officers in the discharge of their duties must, for reasons of public policy and under burden of proof analysis, be accorded priority over the presumption that documents properly mailed are duly delivered. Thus, when Government files do not indicate that a document was received, an appellant must show not merely that the document was properly transmitted, but that it was, in fact, actually received.

The provisions of 43 CFR 3102.6-2 must be strictly construed and where an oil and gas lease applicant or his agent fail to comply therewith, the application must be rejected.

Bernard S. Stopper, 60 IBLA 67 (Nov. 19, 1981)

Where an offeror fails to submit a list of corporate officers with his noncompetitive over-the-counter lease offer, as required by 43 CFR 3102.2-5(a)(2), the lease offer is properly rejected. However, when the required evidence of corporate qualifications is submitted with the notice of appeal, the offer may be

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

reinstated and allowed to earn priority from the time of submission of the evidence of qualifications.

Horn Silver Mines Co., Inc., 60 IBLA 107 (Nov. 20, 1981)

An applicant for a simultaneous oil and gas lease who is legally a minor at the time he executes and files the application is not qualified to hold a lease under the regulations, and the application is properly rejected.

Scott Q. Adams, 60 IBLA 288 (Dec. 17, 1981) 88 I.D. 1110

Where an oil and gas lease applicant files an application with alleged statement of qualifications of a partnership but receives no serial number for the statement of qualifications under the regulation at 43 CFR 3102.2-1(c) and later files an application with no statement of qualifications as required by the regulation at 43 CFR 3102.2-4, the second application must be rejected as incomplete.

Zappia Exploration Group, 60 IBLA 336 (Dec. 22, 1981)

A simultaneously filed oil and gas lease application may not be rejected as incomplete simply because the applicant failed to indicate a middle initial or indicate the absence of one on the front of the application form where no ambiguity exists as to the identity of the applicant.

George F. Copley, 61 IBLA 78 (Dec. 31, 1981)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

Cimarron Corp., 61 IBLA 90 (Dec. 31, 1981)

Redwood Empire Land and Royalty Co., 62 IBLA 296 (Mar. 16, 1982)

Impel Energy Corp., 64 IBLA 92 (May 12, 1982)

Redwood Empire Land & Royalty Co., 64 IBLA 267 (June 2, 1982)

A simultaneous oil and gas lease application is properly rejected where the application is dated prior to the filing period.

Herbert W. Winston, 61 IBLA 199 (Jan. 26, 1982)

Charles T. Neff, 64 IBLA 234 (May 27, 1982)

David B. Perry, 67 IBLA 171 (Sept. 21, 1982)

H. W. Roberts, 69 IBLA 76 (Nov. 30, 1982)

John A. Blackhurst, 70 IBLA 219 (Jan. 24, 1983)

Josephine Sloper, 74 IBLA 234 (July 19, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

An American Express money order is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2, which specifically requires that where remittance is by money order it must be by either post office or bank money order.

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

Marie C. Cawley, John J. Cawley, 61 IBLA 205 (Jan. 26, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest and multiple filings, are left unanswered.

Peggy A. Shaw, 61 IBLA 276 (Jan. 29, 1982)

It is improper for the Bureau of Land Management to reject a noncompetitive oil and gas lease offer for acquired lands where the offer is an "exact reproduction" of the approved offer form except that it is on white, rather than yellow, paper and it bears a notation stating that it is a reproduction.

Texas Oil and Gas Corp., 61 IBLA 312 (Feb. 4, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings are left unanswered. An incomplete application must be rejected, regardless of whether the desired information is indicated on an attachment or in other documents in the file.

Ottlin D. Hass, 61 IBLA 338 (Feb. 10, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

William M. Burruss, 62 IBLA 40 (Feb. 24, 1982)

Jack T. Thompson, 66 IBLA 273 (Aug. 17, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered. The submission of an attached document containing the answers to questions (d) through (f) does not comply with 43 CFR 3112.2-1(a), requiring completion of the approved form.

Leroy G. Boudreaux, 62 IBLA 255 (Mar. 15, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Where Bureau of Land Management rejects a noncompetitive oil and gas lease application because the applicant's corporate qualifications file did not accurately reflect the corporate structure at the time of the application's filing as required by 43 CFR 3102.2-5(a), and the applicant establishes that its file was current and accurate, the Bureau of Land Management decision will be vacated and the case remanded for further action.

Champion Resources, Inc., 63 IBLA 46 (Mar. 30, 1982)

Where an oil and gas lease applicant who is an employee, but not a client of a leasing service and has no agreement with the leasing service, uses the service's parcel selection information to complete her application, the leasing service is not her agent within the meaning of 43 CFR 3102.2-6 and the documents required by that regulation need not be filed.

Lillian E. Finklea, 63 IBLA 81 (Mar. 30, 1982)

A simultaneous oil and gas lease application is not signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) where the space for the agent's signature contains only the name of the corporation and a notation that it is the applicant's agent.

Even assuming arguendo that apparent omissions on an oil and gas lease application are not sufficient to put the purchaser of an interest in the application on notice that it was defective, a defective original application is nevertheless subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers, nor by applicant's reliance on alleged misinformation by Departmental employees. Nor is BLM barred from rejecting an application because the applicant, relying on the publication of his name as the recipient of first entitlement to have his application adjudicated, has sold an interest in the lease to a third party.

Robert W. Myers, 63 IBLA 100 (Mar. 31, 1982)

A noncompetitive oil and gas lease application filed in the name of a corporation in a simultaneous drawing is properly rejected where it is not accompanied by a complete list of corporate officers, pursuant to 43 CFR 3102.2-5(a)(3), and where the corporate qualifications file referenced in the application was incomplete. Such a deficiency cannot be cured after the drawing.

Adobe Oil & Gas Corp., 63 IBLA 106 (Mar. 31, 1982)

Wilco Properties, Inc., 66 IBLA 215 (Nov. 10, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

Clifford E. Shaw, 63 IBLA 293 (Apr. 22, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

The Bureau of Land Management may properly reject a noncompetitive oil and gas lease offer where the acreage applied for, as determined from a protracted survey, exceeds the maximum allowable acreage under 43 CFR 3110.1-3(a).

Bruce LeMaire, 63 IBLA 300 (Apr. 26, 1982)

Where a noncompetitive over-the-counter lease offer for unsurveyed acquired lands fails to provide a land description from the deed or other acquisition document, or by courses and distances, and fails to include a map indicating the desired lands, as required by 43 CFR 3101.2-3(b), the offer is properly rejected. However, when the additional required information is filed with the notice of appeal, the offer may be reinstated and given priority from the time of the filing of such information.

Bryan O. Blevins, 63 IBLA 304 (Apr. 26, 1982)

An oil and gas lease application filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied by a list of corporate officers as required by 43 CFR 3102.2-5(a) or by a reference to a BLM serial number indicating where such information can be found. Such an omission cannot be cured after the drawing.

An alleged ambiguity in a regulation can excuse compliance with the terms of the regulation only where the failure to comply has been caused by the alleged ambiguity.

Hickory Creek Oil Co., 63 IBLA 313 (Apr. 27, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Alfred R. Sonsini, 64 IBLA 83 (May 10, 1982)

John Gahr, 65 IBLA 268 (July 9, 1982)

Nellie E. Colley, 68 IBLA 16 (Oct. 19, 1982)

Where a potential oil and gas lease applicant that has filed a statement of corporate qualifications in accordance with 43 CFR 3102.2-1(c), but has received no serial number, later files an application unaccompanied by a statement of qualifications as required by 43 CFR 3102.2-5, the application must be rejected as incomplete.

Cluff Oil, Inc., 64 IBLA 156 (May 25, 1982)

The presumption of regularity which supports the official acts of public officers in the discharge of their duties must, for reasons of public policy and under burden of proof analysis, be accorded priority over the presumption that documents properly mailed are duly delivered. Thus, when Government files do not indicate that a document was received, an appellant must show not merely that the document was properly transmitted, but that it was, in fact, actually received.

The provisions of 43 CFR 3102.6-2 must be strictly construed and where an oil and gas lease applicant or

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

his agent fails to comply therewith by neglecting to include a list of clients' names and addresses, the application must be rejected.

Daniel D. Wyles, 64 IBLA 339 (June 10, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement is filed with the proper BLM office not later than 15 days from the close of the filing period for each drawing under 43 CFR Subpart 3112.

Robert E. Davis, 65 IBLA 135 (June 28, 1982)

Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several applicants and an agent, a single copy of the agreement may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such applicant participating under the agreement be filed with the proper Bureau of Land Management office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

Richard E. Rhyner, 65 IBLA 141 (June 29, 1982)

Where corporation A files on behalf of an individual a simultaneous oil and gas lease application referencing a qualifications file number on the application which file contains qualifications for two corporations, and at the time of the filing, the file includes an executed power of attorney from the individual to corporation B, but no authorization for corporation A to act on behalf of the individual, and a subsequently filed instrument purporting to authorize corporation A to act on behalf of the individual is not personally signed by the individual, there is a failure to comply with 43 CFR 3102.2-1(a), and 43 CFR 3102.2-6, and the application is properly rejected.

Arthur H. Kuether, 65 IBLA 184 (June 29, 1982)

Where a corporation files an application for a lease for a certain parcel of land and is the successful offeror in the drawing and the secretary of the corporation also filed an application for the same parcel of land in the same drawing as an individual, the offer of the corporation must be rejected because an officer of the corporation stands in a fiduciary relationship to the corporation and his offer thereby increases the corporation's chances to be the successful applicant.

Richland Resources, 66 IBLA 68 (July 29, 1982)

Under 43 CFR 3112.2-2(b), a single remittance is acceptable for a group of simultaneous oil and gas lease applications, but the remittance submitted must be sufficient to cover all filings. If the remittance is insufficient, the entire group is unacceptable and BLM properly returns the filings to the applicants.

Where simultaneous oil and gas lease applicants assert that their filings included sufficient fees and

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

were grouped separately from another group of filings with insufficient fees that was transmitted in the same parcel, but fail to submit sufficient evidence to prove the separate grouping, the decision of the BLM to return all filings because of insufficient fees will be affirmed.

Fred L. Engle et al., 66 IBLA 94 (Aug. 4, 1982)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms were not received by BLM within 30 days from the receipt of notice.

Warren B. Haas, 66 IBLA 107 (Aug. 4, 1982)

Under 43 CFR 3112.4-1(a), a prospective lessee (i.e., one whose simultaneous noncompetitive application has been selected and approved by BLM) must either affix a "personal handwritten signature" on the offer to lease form and stipulations, or the prospective lessee's agent must do so. A rubber-stamped facsimile signature is not a "personal handwritten signature," and, where the prospective lessee affixes such a facsimile signature, the application is properly rejected under 43 CFR 3112.6-1(d).

Mary I. Arata, 66 IBLA 160 (Aug. 11, 1982) 89 I.D. 407

Under the provisions of 43 CFR 3102.6-1(a)(2) (1979), where multiple agents were utilized in filing a simultaneous oil and gas lease drawing entry card, the disclosure requirements applied only to the agent who signed the card.

Cliff Hezer (On Reconsideration), 66 IBLA 178 (Aug. 12, 1982)

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through erroneous interpretations of the regulations allegedly provided by Departmental employees.

Dennis M. Joy, 66 IBLA 260 (Aug. 17, 1982)

Where the Department, through a duly promulgated regulation, has increased a rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease applications were drawn with first priority before the regulation became effective.

Peter K. Walstrom, 66 IBLA 269 (Aug. 17, 1982)

An oil and gas lease application filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied by a list of corporate officers as required by 43 CFR 3102.2-5(a) or by a reference to a BLM serial number indicating where such information can be found. Such an omission cannot be cured after the drawing.

Rockies Energy Corp., 66 IBLA 313 (Aug. 24, 1982)

Adobe Oil & Gas Corp., 73 IBLA 263 (June 7, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Where an applicant is to be deprived of a statutory right because of a failure to comply with the requirements of a regulation, that regulation should be so clearly set forth that there is no basis for noncompliance.

Brian D. Haas, 66 IBLA 353 (Aug. 27, 1982)

Audrey Jean Boston, 67 IBLA 117 (Sept. 16, 1982)

The Board will affirm a BLM decision denying a protest contending that the first-drawn applicant for a noncompetitive oil and gas lease has not complied with 43 CFR 3102.2-6 (1980), requiring the disclosure of any agreement with the lease filing service which assisted the applicant, where the record, as supplemented on appeal, indicates that the first-drawn applicant did comply.

Marilyn S. Watson, 67 IBLA 67 (Sept. 10, 1982)

BLM may properly reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the land sought is either patented with no reservation of oil and gas to the United States, acquired or withdrawn from mineral leasing.

Golden Eagle Petroleum, 67 IBLA 112 (Sept. 15, 1982)

BLM properly rejects a simultaneous oil and gas lease application where the applicant submitted a copy of a written agreement with a corporation, which had rendered assistance to him in connection with filing the application, at the time of filing his lease offer, rather than at the time of filing his lease application, in violation of 43 CFR 3102.2-6(a) (1980).

Raymond K. Steitz, 67 IBLA 173 (Sept. 21, 1982)

The 15-working-day filing period for a simultaneously filed oil and gas lease application is rigid; strict adherence thereto establishes fairness and uniformity for all participants, and BLM's strict enforcement thereof is not arbitrary or capricious.

Walter Adomkus, 67 IBLA 177 (Sept. 21, 1982)

Where a noncompetitive over-the-counter oil and gas lease offer indicates that the offeror resides outside the geographical limits of the United States, BLM may properly require the offeror to submit within 30 days proof of United States citizenship, in order to establish his qualifications to hold an oil and gas lease. However, BLM should not then reject such an offer where the offeror, in attempting to comply, submits timely a statement signed by an American consul stating that he is an American national, without first affording the applicant another opportunity to show that he is a citizen.

James M. Chudnow, 67 IBLA 193 (Sept. 22, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

The Board will reverse a BLM decision denying a protest contending that the first-drawn applicant for a noncompetitive oil and gas lease has not complied with 43 CFR 3102.2-6 (1980), requiring the disclosure of any agreement with the lease filing service which assisted the applicant, where the record establishes that the first-drawn applicant did not comply.

Patricia C. Alker, 67 IBLA 214 (Sept. 23, 1982)

Where a simultaneous oil and gas leasing filing service establishes an agent's qualifications file pursuant to 43 CFR 3102.2-1(c), and references that file on an application, but the file contains only an expired authorization for the named applicant, the application is properly rejected.

The provisions of 43 CFR 3102.2-6 must be strictly construed and where an oil and gas lease applicant or his agent fails to comply therewith, the application must be rejected.

Alvin B. Gendelman, 67 IBLA 333 (Oct. 1, 1982)

A simultaneous oil and gas lease application is properly signed by a corporate agent in accordance with 43 CFR 3111.2-1(b) where the space for the agent's signature contains the handwritten names of the corporation and the person signing on behalf of the corporation.

Monty Cranston, 67 IBLA 364 (Oct. 7, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Duane W. Dohse, 68 IBLA 240 (Nov. 16, 1982)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments, and multiple filings, are left unanswered.

Herbert I. Ott, 68 IBLA 336 (Nov. 22, 1982)

BLM may properly reject a first-drawn application in a simultaneous oil and gas lease drawing where the applicant has not complied with 43 CFR 3102.2-6, requiring disclosure of any agreement with the lease filing service which assisted the applicant.

William E. Monk, 68 IBLA 339 (Nov. 22, 1982)

Albert Whitehurst, 70 IBLA 168 (Jan. 19, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

An oil and gas lease application signed by anyone other than the applicant must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Even if an agent's signature is not clearly legible, the regulatory requirement is satisfied if the application form refers to a qualifications file which clearly identifies the agent signing the card.

Liberty Petroleum Corp., 68 IBLA 387 (Nov. 23, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where, on a noncompetitive over-the-counter lease offer, a corporate applicant refers to a corporate qualifications file which lists all officers of the corporation, compliance with 43 CFR 3102.2-5 has been accomplished even if the file fails to show that some of the listed officers hold more than one corporate office.

Prandy, Inc., 69 IBLA 26 (Nov. 26, 1982)

BLM may properly reject a first-drawn application in a simultaneous oil and gas lease drawing where the applicant has not complied with 43 CFR 3102.2-6, requiring disclosure of any agreement with the lease filing service which assisted the applicant, and the applicant asserts, without corroborating evidence, that the required documents were filed timely.

Mrs. G. C. Pajardo, 69 IBLA 70 (Nov. 30, 1982)

Under 43 CFR 3102.2-1(a) (1981), a partnership filing a simultaneous oil and gas lease application was required to file, or have on file under a serial reference number, a certified copy of its articles of partnership.

An agency agreement which was filed for reference pursuant to 43 CFR 3102.2-1(c) (1981), had to be limited in duration to less than 2 years.

The provisions of 43 CFR 3102.2-1, 3102.2-4, and 3102.2-6 must be strictly construed and where an oil and gas lease applicant or his agent fails to comply therewith, the application must be rejected.

Westates Group No. 8, 69 IBLA 186 (Dec. 15, 1982)

A simultaneous oil and gas lease applicant complies with 43 CFR 3112.2-1(b), where the space for the agent's signature contains the initials of the filing service and the holographically signed last name of the authorized agent of the filing service.

Linda R. Blunkin, 69 IBLA 214 (Dec. 16, 1982)

An oil and gas lease application, Form 3112-1 (July 1980), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered, even if the necessary information is subsequently filed.

Robert B. Lee, 69 IBLA 255 (Dec. 21, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Where a potential oil and gas lease applicant that has filed a statement of partnership qualifications in accordance with 43 CFR 3102.2-1(c), but has received no serial number, later files an application unaccompanied by a statement of qualifications as required by 43 CFR 3102.2-4, the application must be rejected as incomplete.

James W. Lacy, 69 IBLA 285 (Dec. 21, 1982)

A simultaneous oil and gas lease application holographically (manually) signed by the applicant is signed in accordance with 43 CFR 3112.2-1(b) where in signing the application, the applicant discloses receipt of assistance from a filing service agent and a copy of applicant's agreement with the service is provided as required by 43 CFR 3102.2-6 (1981).

Patricia C. Alker, 69 IBLA 313 (Dec. 27, 1982)

A Traveler's Express money order, purchased at a savings and loan institution, is not an acceptable form of remittance for payment of the filing fee accompanying an oil and gas lease offer under 43 CFR 3112.2-2 (1981), which specifically requires that where remittance is by money order it must be by either post office or bank money order.

Ellis B. Ferguson, 69 IBLA 352 (Dec. 30, 1982)

Where the regulations require an oil and gas lease applicant who is receiving the assistance of any other person or entity which is in the business of providing assistance to participants in a Federal oil and gas leasing program to file a copy of any agreement with such person or entity and the applicant fails to do so, the application properly is rejected.

Howard K. Davis, 70 IBLA 7 (Jan. 6, 1983)

Oil and gas lease application, Form 3112-1 (Sept. 1981), is not completed in accordance with 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest, assignments, and multiple filings, are left unanswered.

Mark G. Anderson, 70 IBLA 18 (Jan. 6, 1983)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

Thomas E. Lewis, 70 IBLA 69 (Jan. 11, 1983)

Hampton P. Stewart, 72 IBLA 358 (May 2, 1983)

The presumption of regularity which supports the official acts of public officers in the discharge of their duties must, for reasons of public policy and under burden of proof analysis, be accorded priority over the presumption that documents properly mailed are duly delivered. Thus, when Government files do not indicate that a document was received, an appellant must show not merely that the document was properly

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

transmitted, but that it was, in fact, actually received.

Anglo Resources, Inc., 70 IBLA 106 (Jan. 12, 1983)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and first year's rental were submitted to the wrong BLM office and were not thereafter received by the proper BLM office within 30 days from the receipt of notice of priority.

Jerry W. Wolf, 70 IBLA 131 (Jan. 14, 1983)

An oil and gas lease offer is properly rejected under 43 CFR 3111.1-1(a) where the offeror signs one copy of the offer form but fails to sign the other four copies.

Even assuming, arguendo, that apparent omissions on an oil and gas lease offer are not sufficient to put the purchaser of an interest in the offer on notice that it was defective, a defective oil and gas lease offer is subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through lack of or delay in enforcement by some of its officers.

D. H. Yates, 70 IBLA 134 (Jan. 14, 1983)

Where an applicant fails to file five copies of a noncompetitive lease offer as required by the regulations in 43 CFR 3111.1-1(a), the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, is fatal to the oil and gas offer.

Robert G. Lynn, 70 IBLA 141 (Jan. 17, 1983)

BLM may properly reject a simultaneous oil and gas lease application drawn with first priority where the applicant files the application and an attached statement setting forth the names of other parties in interest and the nature of the agreement between the parties, and the statement is not signed by the applicant, as required by 43 CFR 3102.2-7(b) (1981).

Richard S. Talbert, 70 IBLA 145 (Jan. 17, 1983)

An oil and gas lease application filed in the name of a corporation in a simultaneous drawing is properly rejected where it is not accompanied by a complete list of corporate officers, pursuant to 43 CFR 3102.2-5(a)(3) (1981), and where the corporate qualifications file referenced in the application was incomplete. Such a deficiency cannot be cured after the drawing.

Fuel Exploration, Inc., 70 IBLA 361 (Feb. 3, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Where an oil and gas lease offeror signs an offer form in ink, photocopies four exact reproductions of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a), and it is improper to reject that offer because the four photocopies were not personally signed.

Fayette Oil & Gas Corp., 71 IBLA 79 (Feb. 22, 1983)

Where a regulation specifies that a filing fee for an oil and gas lease application shall be paid in United States currency, post office or bank money order, bank cashier's check or bank certified check, with the intent to ensure guaranteed remittance, a remittance drawn by a credit union upon a bank is also acceptable where the applicant has provided evidence that payment is guaranteed by a bank.

Elmer T. Stonecipher, 71 IBLA 203 (Mar. 14, 1983)

Where an oil and gas lease offeror signs an offer form in ink, photocopies four exact reproductions of the front page of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a), and it is improper to reject that offer because the four photocopies were not signed in ink by the offeror.

Where a noncompetitive oil and gas lease offeror submits one original lease offer form and four photocopies which are exact reproductions of the front of the lease form, but fails to reproduce the reverse side of the lease form, he has not met the requirements of 43 CFR 3111.1-1(a), which specifies that five copies of the official form, or valid reproduction thereof, must be filed. However, failure to submit copies of the reverse side of the form is a curable defect under 43 CFR 3111.1-1(e)(4), and BLM must give the offeror an opportunity to comply with 43 CFR 3111.1-1(a).

Richard P. Carroll, 71 IBLA 307 (Mar. 22, 1983)

A noncompetitive over-the-counter oil and gas lease offer for unsurveyed acquired lands which is not accompanied by a map upon which the desired lands are clearly marked in accordance with 43 CFR 3101.2-3(b)(2) is properly rejected. However, when the map is filed with the notice of appeal, the offer may be reinstated and allowed to earn priority as of that date.

Wilburn H. Seals, 71 IBLA 315 (Mar. 22, 1983)

Land which has specifically been withdrawn from mineral leasing is not available for disposition under the Mineral Leasing Act and an offer for that land must be rejected.

Where an order is published which restores certain withdrawn land to availability under the mineral leasing laws at a specific date and time in the future, a regular "over-the-counter" noncompetitive oil and gas lease offer which is delivered in advance to BLM with instructions that it be treated as filed effective as of the designated time and date must be considered a premature filing, and is properly rejected.

Bachalk Production, Inc., 71 IBLA 374 (Mar. 29, 1983)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Where, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn applicant fails to submit his first year's advance rental payment within 30 days after receipt of notice, as prescribed by 43 CFR 3112.4-1(a), his application must be rejected.

Where there is no evidence of receipt of a check, in payment of the first year's advance rental pursuant to 43 CFR 3112.4-1(a), the presumption that BLM employees have properly discharged their duties and not lost or misplaced the check is not overcome by evidence that the check was received where the applicant submits an affidavit that the check was enclosed in the same envelope with other documents that were received by BLM and includes a copy of his personal checkbook register showing that a check was issued to BLM but not cashed.

Richard W. Eulis, 72 IBLA 251 (Apr. 27, 1983)

An oil and gas lease application, Form 3112-1 (June 1980) is not completed within the meaning of 43 CFR 3112.2-1(a) where questions (d) through (f) concerning other parties in interest, assignments, and multiple filings, are left unanswered, even if the required responses are subsequently provided.

Michele M. Davorak, 73 IBLA 36 (May 9, 1983)

An offeror for a noncompetitive oil and gas lease, filing over-the-counter, is not entitled to a refund of the filing fee even though she withdraws the offer prior to issuance of the lease.

Mario W. Suto, 73 IBLA 61 (May 12, 1983)

BLM properly returned an automated simultaneous oil and gas lease application as part of a group of filings with a single remittance, under 43 CFR 3112.2-2(b), where two applications were filed and the various checks submitted therewith, were insufficient to cover all of the filing fees, and not clearly allocated between the applications so as to apply to a separate grouping for which there would be sufficient fees.

William E. Collister, 73 IBLA 64 (May 12, 1983)

The provisions of 43 CFR 3102.6-2, relating to filing of a signed statement or copy of a written agreement with persons who assist an applicant in a Federal oil and gas leasing program, are strictly construed. In the event an offeror fails to comply therewith, the offer is properly rejected.

Tyrex Oil Co., 73 IBLA 241 (June 1, 1983)

Where an applicant fails to file five copies of a noncompetitive lease offer as required by the regulations in 43 CFR 3111.1-1(a), the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, is fatal to the oil and gas offer.

Where an applicant submits evidence which supports a conclusion that all five copies of his noncompetitive lease offer were timely filed as required by the regulations in 43 CFR 3111.1-1(a), a decision rejecting that offer for failure to comply with the applicable

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

regulation by filing only four copies of the lease offer will be set aside.

Robert G. Lynn (On Reconsideration), 73 IBLA 288 (June 7, 1983)

Where an automated simultaneous oil and gas lease application Part B, Form 3112-6a (June 1981), does not reflect in the space designated "MARK SOCIAL SECURITY NUMBER" the same identification number selected or assigned in Part A, Form 3112-6 (June 1981), it is not properly completed and must be rejected.

Filing fees will be retained for simultaneous oil and gas lease applications which are rejected.

Shay Resources, Inc., 73 IBLA 291 (June 7, 1983)

Under 43 CFR 3112.2-1(b), an automated simultaneous oil and gas lease application, Form 3112-6a (June 1981), must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Where an application is executed by a filing service on behalf of an applicant, the signatory must reveal on the face of the application his or her identity and the fact that the signatory is acting for the filing service on behalf of the applicant.

Charles R. Tickel, 73 IBLA 360 (June 15, 1983)
90 I.D. 258

Where an oil and gas lease applicant includes the name of the applicant and refers to a qualifications file which reveals the name of the signatory and the relationship between the signatory and the applicant, the applicant has complied with the requirements of 43 CFR 3112.2-1(b).

Liberty Petroleum Corp., 73 IBLA 368 (June 15, 1983)

A noncompetitive oil and gas lease offer filed by a first-drawn applicant, pursuant to 43 CFR 3112.4-1, is acceptable where the offer form is signed by the applicant but includes the title of the individual as a "General Partner" of a particular partnership, designated on the application as a party in interest, since it is possible to determine that the signature matches the name of the offeror and the words referring to title should have been treated as surplusage.

Ann M. Davis et al., 74 IBLA 96 (June 30, 1983)

A simultaneous oil and gas lease application is properly signed, in terms of indicating the relationship of the signatory and the applicant, as required by 43 CFR 3112.2-1(b), where the applicant is a partnership and the signatory is a partner authorized to act in its behalf, and the application is noted with a reference to the BLM serial number where the articles of partnership and the names of those authorized to act are on file.

A simultaneous oil and gas lease application is properly filed by a partnership, in accordance with 43 CFR 3102.2-4 (1981), requiring the filing of statements of partnership qualifications, where the application is noted with a reference to the BLM serial number

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

where the statements are on file, even though the application is dated prior to receipt by BLM, approval of, and assignment of a serial number for those statements.

A first-drawn application in a simultaneous oil and gas lease drawing must be rejected where the applicant has not complied with 43 CFR 3102.2-6 (1981), requiring disclosure of any agreement with the lease filing service which assisted the applicant.

Pandora Petroleum Co., 74 IBLA 173 (July 13, 1983)

BLM may properly reject a first-drawn application in a simultaneous oil and gas lease drawing where the applicant has not complied with 43 CFR 3102.2-6 (1981), requiring timely disclosure of any agreement with the lease filing service which assisted the applicant, and the applicant asserts, without corroborating evidence, that the required documents were filed timely.

LSDJ Exploration Group, 74 IBLA 185 (July 18, 1983)

LBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

Where a noncompetitive oil and gas lease offeror submits one official lease offer form and four photocopies which are exact reproductions of the front of the lease form, but fails to reproduce the reverse side of the lease form, he has not met the requirements of 43 CFR 3111.1-1(a), which specifies that five copies of the official form, or valid reproduction thereof, must be filed. However, failure to submit copies of the reverse side of the form is a curable defect under 43 CFR 3111.1-1(e)(4), and BLM must give the offeror an opportunity to comply with 43 CFR 3111.1-1(a).

Charles T. Zimmerman, 75 IBLA 6 (Aug. 2, 1983)

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations, regardless of their actual knowledge of what is contained in such regulations. Failure to receive a copy of a regulation does not provide a valid reason for reinstating with original priority an over-the-counter oil and gas lease offer which had been rejected for failure to comply with the regulation.

Rob W. Howard, 75 IBLA 133 (Aug. 15, 1983)

Land which has specifically been withdrawn from mineral leasing is not available for disposition under the Mineral Leasing Act and an offer for that land must be rejected.

Where an offer to lease lands cannot be accepted because the lands are not available for leasing, the offer will be rejected and not held in suspense until the land may become available for leasing.

Paul C. Kohlman, 75 IBLA 171 (Aug. 19, 1983)

BLM may properly reject a simultaneous oil and gas lease application filed by a partnership or a corporation where it is not accompanied by evidence of partnership qualifications, in the case of a partnership, in accordance with 43 CFR 3102.2-4 (1981), or by evidence of corporate qualifications, in the case of a corporation, in accordance with 43 CFR 3102.2-5 (1981), or by any reference to a serial number indicating where such information can be found, in accordance with

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

43 CFR 3102.2-1(c) (1981). Reference to a serial number on a document attached to the application will not suffice to comply with 43 CFR 3102.2-1(c) (1981).

Cretaceous Partnership, RPE, Inc., 75 IBLA 203 (Aug. 22, 1983)

Where an automated simultaneous oil and gas lease application Part B, form 3112-6a (June 1981), does not contain a complete Social Security number in the circles under the space designated "BANK SOCIAL SECURITY NUMBER," it is not properly completed and must be rejected.

Filing fees of $75 will be retained for simultaneous oil and gas lease applications which are rejected. The balance, if any, shall be refunded. 43 CFR 3112.3(b).

George Dolezal, Jr., 75 IBLA 298 (Aug. 29, 1983)

Where an oil and gas lease offeror signs an offer form in ink, photocopies four exact reproductions of the front page of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a).

The authority of the Department to enforce its oil and gas leasing regulations is not vitiated or lost through erroneous interpretations of the regulations allegedly provided by Departmental employees.

Where the first-filed over-the-counter noncompetitive oil and gas lease offers each contain a curable defect listed in 43 CFR 3111.1-1(e), and where the offeror cures such defect, the offeror retains his priority as of the date the original offers were filed, even though a second qualified offeror filed an offer for some of the same lands included in the previously filed offers before the first offeror cured the defect in his offers.

Richard F. Carroll (On Reconsideration), 76 IBLA 151 (Sept. 27, 1983) 90 I.D. 432

Where an oil and gas lease offeror signs an offer form in ink, photocopies four exact reproductions of the front page of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a), and it is improper to reject that offer because the four photocopies were not signed in ink by the offeror.

James L. Camblos III, 76 IBLA 174 (Sept. 30, 1983)

A simultaneous oil and gas lease application is properly rejected if the applicant's identity cannot be established by examining the application form because the applicant signed the application with an illegible signature and placed the name of some other person in the space provided for the name of the applicant.

An applicant for an oil and gas lease must place his personal or business address on a simultaneous application. An applicant has not complied with this requirement if the name of some other person appears as

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

addressee, even though correspondence addressed to that person is to be received in the care of the applicant.

Jack Orman, 76 IBLA 200 (Oct. 6, 1983)

Where an oil and gas lease applicant does not properly darken the circles on the automated simultaneous application form which correspond to her identification number and therefore the computer reads a different identification number on Part B from that on Part A, the application is not properly completed and must be rejected.

Deborah E. Honstief, 76 IBLA 287 (Oct. 18, 1983)

A simultaneous oil and gas lease offer is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

James A. Scandalio, 76 IBLA 290 (Oct. 18, 1983)

Under 43 CFR 3112.2-1(b), a simultaneous oil and gas lease application must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Where there is no reference on the application to the signatory's relationship to the applicant, nor any reference to a qualifications file where the necessary information might be found, the requirements of the regulation have not been satisfied.

Feick Associates, 76 IBLA 292 (Oct. 18, 1983)

Our Turn Now Ass'n, 77 IBLA 24 (Oct. 31, 1983)

Pamela Ann Pipple, 79 IBLA 276 (Mar. 13, 1984)

An executed lease agreement and first year's rental payment must be filed in the proper BLM office within 30 days of receipt of the notice. Filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mail does not constitute filing.

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

Pioneer Fairmont Fl. Ltd., 76 IBLA 337 (Oct. 20, 1983)

A simultaneous oil and gas lease application which is not signed or dated, in accordance with 43 CFR 3112.2-1, is not properly completed and must be rejected.

An automated simultaneous oil and gas lease application Part B, Form 3112-6a, which does not reflect in the space provided for "Social Security Number" the same number used on the corresponding Part A, Form 3112-6, is not properly completed and must be rejected.

A filing fee of $75 will be retained for each automated simultaneous oil and gas lease application form which is rejected. The balance of the filing fee

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

amount submitted with each rejected form, if any, shall be refunded.

D. H. Olson, 76 IBLA 344 (Oct. 24, 1983)

Where a simultaneous oil and gas lease application is submitted by a filing service on behalf of a client, and such application is subsequently rejected by the Bureau of Land Management for being improperly completed, the filing service is not authorized under 43 CFR 1.3 to represent the client in an appeal to the Board.

Where an automated simultaneous oil and gas lease application Part B, form 3112-6a (June 1981), does not contain a correct identification number in the circles under the space designated "MARK SOCIAL SECURITY NUMBER," it is not properly completed and must be rejected.

Donald E. Hook, 76 IBLA 367 (Oct. 25, 1983)

Where a group of simultaneous oil and gas lease applications was received in Nov. 1982 with a single check to cover the filing fees, it was error for the Bureau of Land Management to deposit the check without first examining the applications to ascertain the adequacy of the amount of the check as required by 43 CFR 3112.5(a)(3) (1982).

Charles Anderson, 76 IBLA 402 (Oct. 27, 1983)

Where an automated simultaneous oil and gas lease application Part B, form 3112-6a (June 1981), does not contain a correct identification number in the circles under the space designated "MARK SOCIAL SECURITY NUMBER," it is not properly completed and must be rejected.

Victor S. Dulutsky, 77 IBLA 12 (Oct. 31, 1983)

Where an automated simultaneous oil and gas lease application Part B, Form 3112-6a (June 1981), does not reflect in the space designated "MARK SOCIAL SECURITY NUMBER" the same identification number selected or assigned in Part A, Form 3112-6 (June 1981), it is not properly completed and must be rejected.

Rocky Mountain Exploration Co., 77 IBLA 15 (Oct. 31, 1983)

A first-drawn oil and gas lease application, Form 3112-6a, is properly rejected where there is no proper Form 3112-6 on file with the Bureau of Land Management at the time of the drawing.

T & T Development Co., 77 IBLA 54 (Nov. 7, 1983)

Judy Fleming, 81 IBLA 290 (June 12, 1984)

Automated Simultaneous Oil and Gas Lease Application, Form 3112-6a (June 1981), commonly referred to as Part B, was designed to facilitate automated processing adopted in order to expedite the issuance of leases and lessen the paperwork of the public. If Form 3112-6a is completed in a manner which allows automated machine processing, is correct with respect to the information read by the computer, and is correct and complete with respect to that information not machine read, the application does not contain a fatal error because the arabic numerals corresponding to those numbered circles

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

blackened by the applicant under the heading "Mark Social Security Number" are not placed in the boxes above the corresponding numbered circles. The required information is contained on the face of the application in readable form. No information is lacking, and no ambiguity has been created by the applicant.

Satellite Energy Corp., 77 IBLA 167 (Nov. 17, 1983) 90 I.D. 487

An automated simultaneous oil and gas lease application filed by a partnership in the partnership name is not properly rejected under 43 CFR 3112.2-1(c) (1982), where the name of only one entity as defined in 43 CFR 3102.1 (1982), appears as applicant on Part B of the application.

Where a partnership consists of the names of two individuals and the designation "PTR" and the names and designation are typed on both Part A and Part B of the automated simultaneous oil and gas lease application as the name of the applicant, the fact that the automated part of Part A contains the surname and initials of only one of the individuals is a nonsubstantive error, and it does not require rejection of the application as not being properly completed under 43 CFR 3112.2-1(g) (1982).

Charles Fox & George H. Keith (Partnership), 77 IBLA 199 (Nov. 18, 1983)

BLM may properly reject a noncompetitive oil and gas lease offer for acquired lands to the extent it includes acquired military lands which were subject to a Secretarial moratorium on noncompetitive oil and gas leasing.

Bruce Anderson, 77 IBLA 376 (Dec. 7, 1983)

A simultaneous oil and gas lease application is properly signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) (1981) where the application is manually signed by the agent's employee identifying her position with the corporation and the name of the applicant. The employee is not also required to manually sign the applicant's name to conform to the terms of the agency agreement.

Eugene Q. Colley, 78 IBLA 64 (Dec. 13, 1983)

Where a simultaneous oil and gas lease application is dated prior to the commencement of the filing period and it is established that such misdating was merely inadvertent and not done with an intent to obtain a lease by fraud and that the application was signed during the filing period, the misdating is a nonsubstantive error which does not require the rejection of the application.

Amberex Corp., 78 IBLA 152 (Dec. 29, 1983)

Walter W. Bush, Sr., 78 IBLA 363 (Jan. 30, 1984)

An oil and gas lease offer is properly rejected under provision of 43 CFR 3111.1-1(a) where the offeror signs only two copies of five submitted lease offer forms.

Gian R. Cassarino, 78 IBLA 242 (Jan. 10, 1984) 91 I.D. 9

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Under 43 CFR 3102.2-1 (1981), a simultaneous oil and gas lease applicant could have filed for reference the statement of qualifications of his agent required by 43 CFR 3102.2-6 (1981) in any Bureau of Land Management state office. Upon acceptance of the filing by BLM and assignment of a serial number, the applicant could have properly referenced the serial number on future oil and gas applications filed with any BLM office in lieu of resubmitting the statement.

The Board will set aside a BLM decision denying a protest contending that the first-drawn applicant for a noncompetitive oil and gas lease has not complied with 43 CFR 3102.2-6 (1981), requiring the disclosure of any agreement or arrangement with the lease filing service which assisted the applicant and order a hearing, where on appeal the protestant creates considerable doubt that the applicant provided all relevant information.

Where an issue in an appeal involving a simultaneous oil and gas lease application is the existence or nonexistence of materials defining the relationship between the priority applicant and its filing service, the applicant, as the party with peculiar means of knowledge enabling it to prove the nonexistence of such materials, has the burden of doing so. Failure to do so may give rise to an inference that the applicant's evidence is unfavorable.

An agency agreement which was filed for reference pursuant to 43 CFR 3102.2-1(c)(1981), had to be limited in duration to less than 2 years.

Hal Carlson, Jr., 78 IBLA 333 (Jan. 24, 1984)

Where a simultaneous oil and gas lease application bears a date earlier than the commencement of the filing period, but was dated and signed during the filing period, and it is established that the misdating was merely inadvertent and not done with an intent to obtain a lease by fraud, the misdating is a nonsubstantive error which does not require the rejection of the application.

Richard W. Renwick (On Reconsideration), 78 IBLA 360 (Jan. 27, 1984)

Where an acquired lands oil and gas lease offeror signs an offer form in ink, photocopies exact reproductions of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-2(a) (1981), and it is improper to reject that offer because the photocopies were not personally signed.

Where a noncompetitive acquired lands oil and gas lease offeror submits one original lease offer form together with six copies of the front of the original form and six copies of the back of the form, the offeror has failed to comply with 43 CFR 3111.1-2(a) (1981), which specifies that each copy must be an exact reproduction of one page of both sides of the official approved one-page form. However, failure to submit properly reproduced copies of the form is a curable defect under 43 CFR 3111.1-1(e)(4) (1981).

James L. Camblos III, Christine C. Camblos, 78 IBLA 369 (Jan. 30, 1984)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

BLM must reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976), to the extent that the land has been patented with no mineral reservation to the United States and in its entirety where the land cannot be embraced within a 6-mile square area or an area not exceeding six surveyed sections in length and width and the first year's advance rental is deficient by more than 10 percent.

James M. Chudnow, John L. Bessinger, 79 IBLA 1 (Feb. 2, 1984)

An automated simultaneous oil and gas lease application Part B, Form 3112-6a, which does not reflect in the space designated "MARK SOCIAL SECURITY NUMBER" the same identification number used on the corresponding Part A, Form 3112-6, is not properly completed and must be deemed unacceptable.

Joan Chorney, 79 IBLA 271 (Mar. 12, 1984)

Stella G. Redpath, 80 IBLA 174 (Apr. 13, 1984)

Where an automated simultaneous oil and gas lease application Part B, Form 3112-6a, does not contain a correct identification number in the circles under the space designated "MARK SOCIAL SECURITY NUMBER," it is not properly completed and is therefore unacceptable.

Bowman Partnership, 79 IBLA 281 (Mar. 20, 1984)

A noncompetitive oil and gas lease offer which is not accompanied by the required number of copies is properly rejected.

Helen G. Haggard, 79 IBLA 320 (Mar. 21, 1984)

Where, following a drawing of simultaneously filed oil and gas lease applications, the first-drawn applicant fails to submit the executed lease agreement and advance rental within 30 days of receipt of notice, the application is properly rejected.

Paul C. Peters, 80 IBLA 121 (Apr. 3, 1984)

C. H. Postlewait, 83 IBLA 156 (Oct. 10, 1984)

Raymond C. Long, 83 IBLA 342 (Nov. 6, 1984)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms are not received by the proper BLM office within 30 days from receipt of notice of rental due.

R. A. Rapp, 80 IBLA 133 (Apr. 6, 1984)

Where an automated simultaneous oil and gas lease application Part B (Form 3112-6a) bears a different identification number in the space designated "MARK SOCIAL SECURITY NUMBER" than the identification number entered on Part A (Form 3112-6), the lease application is not properly completed and must be deemed unacceptable.

Thomas Connell, 80 IBLA 135 (Apr. 6, 1984)

Marvin A. Urquhart, Jr., 81 IBLA 370 (June 28, 1984)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Where there is no evidence of receipt of a check in payment of the first year's advance rental pursuant to 43 CFR 3112.4-1(a) (1982), the presumption that BLM employees have properly discharged their duties and not lost or misplaced the check is not overcome by an affidavit executed by applicant which states that the check was enclosed in the same envelope with other documents received by BLM, which affidavit includes a copy of applicant's personal checkbook register showing a check was issued to BLM.

S. H. Parkhurst, 80 IBLA 153 (Apr. 9, 1984)

Where an automated simultaneous oil and gas lease application Part A, Form 3112-6, is either not on file at the time of the drawing or on file and contains a defect (more than one circle darkened per column) which prevents the computer from fully completing the automated processing of the application, the application is properly deemed to be unacceptable.

James B. Taylor, 80 IBLA 157 (Apr. 10, 1984)

A simultaneous oil and gas lease application submitted by an agent for an applicant which is not rendered in a manner to reveal the name of the potential lessee, the name of the signatory, and their relationship, is properly rejected.

Where BLM makes an inquiry because of an apparent discrepancy between a simultaneous oil and gas lease application and the corresponding lease offer, and applicant provides information that establishes the existence of a regulatory violation, the application is properly rejected. Such information does not cure a deficiency; it proves a violation.

Jonas P. Beachy, 80 IBLA 209 (Apr. 26, 1984)

Where a simultaneous oil and gas lease application bears a date subsequent to the close of the filing period, but the evidence discloses that the application was dated, signed, and submitted to BLM during the filing period, and it is established that the misdating was merely inadvertent and not done with an intent to obtain a lease by fraud, the misdating is a nonsubstantive error which does not require the rejection of the application.

Billy W. Eddy, 80 IBLA 213 (Apr. 26, 1984)

Where an applicant for a simultaneous oil and gas lease submits a folded automated application, such application is properly deemed unacceptable under 43 CFR 3112.3(a) (48 FR 33679 (July 22, 1983)), and the applicant is entitled to a refund of filing fees after assessment of a $75 processing fee.

Frances Kunkel, 80 IBLA 333 (May 8, 1984)

An automated simultaneous oil and gas lease application Part B, Form 3112-6a, which is unsigned is not properly completed and must be found to be unacceptable.

Carey D. McDaniel, 80 IBLA 393 (May 14, 1984)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Where an automated simultaneous oil and gas lease application Part B, Form 3112-6a, does not contain a correct identification number in the space designated "MARK SOCIAL SECURITY NUMBER," which is the same number used in the corresponding Part A, Form 3112-6, it is not properly completed and is therefore unacceptable.

David Earl Frye, 81 IBLA 49 (May 18, 1984)

Where an application form is deemed unacceptable under the automated simultaneous oil and gas leasing system, all filing fees submitted with such form are returned after assessment of a $75 processing fee, even if the deficiency which renders the form unacceptable is not discovered until after selection of successful applications.

Harold Eugene Turner, 81 IBLA 106 (May 30, 1984)

Where BLM mails a notice to a first-drawn applicant in a simultaneous oil and gas lease drawing requiring the applicant to submit a lease offer and tender the first year's rental in accordance with 43 CFR 3112.4-1(a), the applicant will be deemed to have received the notice if it was sent to the applicant's last address of record, regardless of whether it was in fact received by him. However, when a letter is returned to BLM as undeliverable, BLM should examine the case record to see if it contains an updated address. If an updated address would be found upon proper examination, the notice must be sent to the new address to effect service.

Stephen C. Ritchie, 81 IBLA 162 (May 31, 1984)

Where the identification number on an automated simultaneous oil and gas lease application form Part B differs from that on Part A, the application is unacceptable, and appellant is entitled to a refund of her filing fees paid in excess of $75 per application form as a result.

Mary Bob Spear, 81 IBLA 220 (June 6, 1984)

Where a simultaneously filed oil and gas lease application is executed in a manner which incorporates numerous errors and violates several regulations, and thus creates ambiguities which cannot be resolved without the subsequent submission of further information, the application should be rejected. The fact that certain of these errors or violations have been held to be trivial or nonsubstantive when considered individually in other cases cannot serve to mitigate the cumulative effect of all of them appearing in a single application.

Maurice W. Coburn (On Reconsideration), 82 IBLA 112 (July 24, 1984)

BLM may properly reject an over-the-counter noncompetitive oil and gas lease offer for acquired military lands which were subject to a Secretarial moratorium on noncompetitive oil and gas leasing at the time that the offer was filed, even where the Secretary has thereafter rescinded the moratorium, but has provided that the land will be leased under the simultaneous oil and gas leasing system.

Barrick Exploration Co., 82 IBLA 172 (Aug. 7, 1984)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Failure of a first-drawn simultaneous oil and gas lease application to reveal the relationship between the person signing the application and the corporate applicant, contrary to provision of 43 CFR 3112.2-1(b), does not constitute a substantial defect so as to prevent lease issuance, where a reviewing United States District Court finds that the Bureau of Land Management employees concerned have actual knowledge of the relationship.

ANR Production Co., 82 IBLA 228 (Aug. 23, 1984)

Where the identification number on an automated simultaneous oil and gas lease application form Part B differs from that on Part A, the application is unacceptable.

Nancy Spencer, 82 IBLA 245 (Aug. 28, 1984)

A simultaneous oil and gas lease application was not properly completed in accordance with 43 CFR 3112.2-1(g) (1982) where more than one circle per column was darkened in the space provided for indicating an applicant's identification number. Such an error renders the application unacceptable, and the applicant is entitled to a return of his filing fees, minus a $75 processing fee.

Warren Robert Haas, 83 IBLA 95 (Oct. 1, 1984)

If the rental payment accompanying an over-the-counter noncompetitive oil and gas lease offer is deficient by less than 10 percent, and BLM requests submission of the deficient rental along with execution of special stipulations within 30 days, BLM may properly assign the offer a new priority as of the date the rental is submitted if the rental is not submitted within the 30-day period.

Richard W. Eckels, 83 IBLA 220 (Oct. 18, 1984)

An application for an oil and gas lease filed in the automated simultaneous system may be withdrawn and another application submitted so long as the first application is withdrawn in writing prior to the close of the filing period. Where this is not done, but another application is nevertheless submitted, both applications must be rejected as prohibited multiple filings, regardless of whether or not an applicant intended to file conflicting applications.

Donald R. Adams, 83 IBLA 322 (Oct. 31, 1984)

Under 43 CFR 3112.2-1(b) and 43 CFR 3102.4 (1982), a simultaneous oil and gas lease application must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship, where the signatory is an agent or attorney-in-fact for the applicant.

T.F.T. Partnership et al., 84 IBLA 10 (Nov. 26, 1984)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing--Continued

Where a successful United States corporate applicant for a simultaneous oil and gas lease is wholly owned by another United States corporation, which may have stockholders with foreign citizenship of a class prohibited by 30 U.S.C. § 181 (1982), the subsidiary corporation is not barred from holding Federal oil and gas leases in the absence of proof that a controlling interest in the parent company is owned by the prohibited class of owner.

Joan Lieberman, 84 IBLA 85 (Dec. 6, 1984)

BLM may properly reject an over-the-counter noncompetitive oil and gas lease offer which was not filed with the required number of copies, in accordance with 43 CFR 3111.1-1(a).

Hemisphere Oil Group Ltd., Inc., 84 IBLA 89 (Dec. 6, 1984)

A noncompetitive oil and gas lease offer which is not accompanied by the required number of copies is properly rejected.

Where there is no evidence of receipt by BLM of the required number of copies of a noncompetitive oil and gas lease offer, the presumption that BLM employees have properly discharged their duties and not lost or misplaced the lease offer documents is not overcome by a statement that the offer was enclosed in the same envelope with another lease offer received by BLM but not rejected for this defect.

U.S.E. Foundation Ltd., Inc., 84 IBLA 199 (Dec. 27, 1984)

Legibility

The regulatory requirement that a simultaneously filed oil and gas lease application be rendered in a manner which reveals the name of the applicant, the name of the signatory, and their relationship is not satisfied where the signature is illegible, no designation of authority appears on the application, and the signatory and his authority cannot be ascertained by reference to the qualifications file of the filing service listed on the application.

Kenneth S. Bradke, 73 IBLA 216 (May 27, 1983)

The regulatory requirement that simultaneously filed oil and gas lease applications be rendered in a manner which reveals the name of the applicant, signatory and their relationship is not satisfied where no designation of authority either appears on the application or can be ascertained by reference to the qualifications file of the filing service listed on the application.

LSRJ Exploration Group, 74 IBLA 185 (July 18, 1983)

LBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

Under 43 CFR 3112.2-1(b), a simultaneous oil and gas lease application must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Where the signature on the application is illegible and there is no

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Legibility--Continued

reference to the signatory's relationship to the applicant, the requirements of the regulation have not been satisfied and BLM properly rejects the application.

Martin, Williams & Judson, 74 IBLA 342 (July 28, 1983)

Under provision of 43 CFR 3112.2-1(b) a simultaneous oil and gas lease application must reveal the name of the applicant, the name of the signatory, and their relationship. Where the agent's signature on the application is illegible and neither the application nor a qualifications statement filed with the agency for reference reveals the signing agent's relationship to the applicant, the regulation requires the application to be rejected.

Maurice W. Coburn, 75 IBLA 293 (Aug. 29, 1983)

A simultaneous oil and gas lease application is properly rejected if the applicant's identity cannot be established by examining the application form because the applicant signed the application with an illegible signature and placed the name of some other person in the space provided for the name of the applicant.

Jack Ortman, 76 IBLA 200 (Oct. 6, 1983)

Reinstatement

A noncompetitive oil and gas lease offer filed "over-the-counter," is properly rejected when the accompanying rental payment is deficient by more than 10 percent. However, in appropriate circumstances, if the balance of the rental is paid and there are no intervening rights of third parties, the offer may be reinstated with priority from the date the deficiency is corrected.

Thomas F. Keating, 53 IBLA 349 (Mar. 30, 1981)

Where, on appeal, an oil and gas lease offeror alleges facts which, if shown, would entitle him to maintain his priority, a decision rejecting the offers will be set aside and remanded to the state office to afford the offeror an opportunity to show that the facts are as he has alleged.

Wyoming Oil & Minerals, Inc. (On Reconsideration), 71 IBLA 15 (Feb. 10, 1983)

A noncompetitive oil and gas lease offer filed "over-the-counter" is properly rejected when the accompanying rental payment is deficient by more than 10 percent. However, in appropriate circumstances, if the balance of the rental is paid prior to rejection by BLM and there are no intervening rights of third parties, the offer may be reinstated with priority from the date the deficiency is corrected.

Joe M. Johnson, 78 IBLA 382 (Jan. 31, 1984)

640-acre Limitation

"Rule of Approximation." The Department of the Interior will not reject an oil and gas lease offer for public domain lands solely for the reason of the offer being for less than 640 acres where the amount by which the offer is under 640 acres is less than the amount by which the offer would exceed 640 acres by

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

640-acre Limitation--Continued

including the smallest adjoining subdivision available for leasing, the offer thereby conforming to the rule of approximation.

James M. Chudnov, 47 IBLA 265 (May 13, 1980)

An oil and gas lease offer to lease less than 640 acres which adjoins land available for leasing is properly rejected.

Douglas H. Willson et al., 52 IBLA 246 (Feb. 6, 1981)

James M. Chudnov, 66 IBLA 372 (Aug. 27, 1982)

Where an offer to lease covers approximately 640 acres of land but at the time the offer is made a portion of those lands is not available for leasing, the lease offer does not meet the requirements of 43 CFR 3110.1-3(a) and is properly rejected.

Nova L. Dodgen, 54 IBLA 340 (May 7, 1981)

Lands under reservoir rights-of-way may be leased for oil and gas only under authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). Such lands are not "available for leasing under the [Mineral Leasing] Act," within the ambit of the 640-acre limitation set forth at 43 CFR 3110.1-3(a). However, a lease offer, which does not include all of the lands within a reservoir right-of-way comprised of only about 110 acres, is properly rejected in the exercise of the Secretary's discretionary authority, and must be rejected as a matter of law when the offeror is not a person qualified under the 1930 Act to lease the lands in question.

Curtis Wheeler, 62 IBLA 384 (Mar. 24, 1982)

Where an applicant files an over-the-counter oil and gas lease offer for less than 640 acres and does not include adjacent land for which an exchange application was then pending because of his reliance on Departmental decisions, a BLM Information Memorandum, and a BLM State Office decision, all interpreting a regulation to mean that an exchange application segregates the selected land from mineral leasing, a subsequent reinterpretation of the salient regulation which holds that such lands are available for leasing will not compel rejection of the offer. A regulation should be so clear that there is no basis for an applicant's noncompliance with it before it may be interpreted and applied with retroactive effect so as to deprive him of a statutory priority.

Lane Lagrich, 63 IBLA 192 (Apr. 8, 1982)

Where a noncompetitive offer to lease covers more than 640 acres of land available for leasing at the time the offer is made, the offeror has complied with 43 CFR 3110.1-3(a), even though some of the land becomes unavailable for noncompetitive leasing before lease issuance and the remaining land involves less than 640 acres.

James M. Chudnov, 63 IBLA 369 (Apr. 30, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

640-acre Limitation--Continued

No over-the-counter offer for a noncompetitive oil and gas lease on the public domain may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation (or that such plan has been approved as to form by the Director, Geological Survey), or where the land is surrounded by lands not available for leasing; where these circumstances do not exist, an offer for less than 640 acres is properly rejected.

James M. Chudnow, 65 IBLA 64 (June 23, 1982)

BLM may properly reject a noncompetitive oil and gas lease offer for less than 640 acres where the land is not within an approved unit or cooperative plan of operation or surrounded by lands unavailable for leasing.

Robert L. Clay, 67 IBLA 115 (Sept. 15, 1982)

Jessie Neal Vaughan, 76 IBLA 146 (Sept. 26, 1983)

BLM may not reject an oil and gas lease offer, as violating the 640-acre rule embodied in 43 CFR 3110.1-3(a), where a disqualifying portion of the land sought was covered by an outstanding oil and gas lease at the time the offer was filed but this fact was not noted in the appropriate public land records.

James M. Chudnow, 67 IBLA 143 (Sept. 16, 1982)

It is proper to issue an oil and gas lease for less than 640 acres where the leased land is surrounded by lands not available for leasing.

Irvin Wall, 69 IBLA 154 (Dec. 13, 1982)

Irvin Wall, 69 IBLA 321 (Dec. 28, 1982)

It is proper to file an oil and gas lease offer for less than 640 acres of land where none of the land adjacent to the parcels described in the application is available for leasing.

Dayton F. Hale, 69 IBLA 167 (Dec. 13, 1982)

Offers for less than 640 acres are not null and void but remain pending until BLM determines a proper showing under 43 CFR 3110.1-3(a) has been made, or the offers are rejected for lack of an adequate showing. While such offers remain pending, the lands described therein are chargeable to the offeror's acreage account.

Jerry M. Pritchard, 70 IBLA 154 (Jan. 18, 1983)

It is improper to issue an oil and gas lease for less than 640 acres where there is land available for leasing adjacent to the parcel described in the offer. Land included in an offer which has not become an issued lease is available for filing of another offer until a lease is signed by an authorized officer of BLM.

Offers for less than 640 acres are not null and void but remain pending until BLM determines a proper

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

640-acre Limitation--Continued

showing under 43 CFR 3110.1-3(a) has been made, or the offers are rejected for lack of an adequate showing. While such offers remain pending, the lands described therein are chargeable to the offeror's acreage account.

Irvin Wall, 70 IBLA 183 (Jan. 20, 1983) 90 I.D. 3

An oil and gas lease offer for less than 640 acres of land is properly rejected when the offer fails to include other adjoining lands which were available for leasing at the time the offer was filed, although included in a prior outstanding lease offer.

Edward E. Nichols, 75 IBLA 4 (Aug. 2, 1983)

Where an over-the-counter oil and gas lease offer is filed for lands in a protracted survey and the offeror subsequently files a relinquishment describing certain lands in the offer as being no longer available because of being withdrawn from mineral leasing, but erroneously includes lands in his relinquishment such that the remaining lands in his offer do not describe all the available lands in a section, the offer is properly rejected.

Donald Epperson, 76 IBLA 4 (Sept. 6, 1983)

Where a junior offeror challenges the issuance of a lease to a senior offeror on the basis that the senior offer improperly included 320 acres of land not available for noncompetitive leasing and thereby asserts that the lease could have only issued for less than 640 acres of land, the appeal is properly rejected where the record shows that, irrespective of the 320 acres in question, there still remained 640 acres of other public land within the lease offer as required by 43 CFR 3110.1-3(a).

John D. LaRue, 78 IBLA 239 (Jan. 10, 1984)

Where a subdivision which is available for oil and gas leasing in one township would normally be adjacent to land similarly available in another township, a holding that a lease offer for one such subdivision which does not include the other is violative of the "640-acre rule" will be vacated upon a showing that the two townships are offset and the subdivisions concerned are not actually adjacent.

Irvin Wall (On Reconsideration), 80 IBLA 339 (May 10, 1984)

Six-mile Square Rule

An oil and gas offer describing land which cannot be encompassed within a 6-mile square or within an area not exceeding six surveyed sections in length or width is defective and must be rejected.

Richard W. Rowe, 69 IBLA 135 (Dec. 8, 1982)

An offer to lease acquired lands for oil and gas which cannot be embraced within a 6-mile square or within an area not exceeding six surveyed sections is defective and unless the exception expressed in 43 CFR 3110.1-3(b) applies, should be rejected.

The area limitation found in 43 CFR 3110.1-3 is stated as an alternative, and the rule may be satisfied

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Six-mile Square Rule--Continued

by complying with either containment of the lands requested within a square 6 miles in length and width or within an area six surveyed sections in length and width.

43 CFR 3110.1-3 specifically states that an offer shall be within the designated area limitation and where it is clear that the lands applied for cannot be included within an area conforming to the regulation, the offer must be rejected in its entirety.

Vester Songer, 69 IBLA 296 (Dec. 23, 1982)

BLM must reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976), to the extent that the land has been patented with no mineral reservation to the United States and in its entirety where the land cannot be embraced within a 6-mile square area or an area not exceeding six surveyed sections in length and width and the first year's advance rental is deficient by more than 10 percent.

James R. Chudnow, John L. Messinger, 79 IBLA 1 (Feb. 2, 1984)

Sole Party in Interest

"Interest." Where an oil and gas leasing service selects lands, files offers, and advances funds on behalf of its clients for leases which the service is willing to sell on behalf of any successful client, strictly at the client's option, in return for a percentage commission on the sale, the service has no enforceable right to any portion of the lease, if issued. The option is no more than a mere hope or expectancy that a client will elect to employ the service as sales agent, so that there is no interest in the lease if issued, which must be disclosed.

Ervin J. Powers, 45 IBLA 186 (Jan. 30, 1980)

Where a majority of the Board of Land Appeals has ruled that an agreement between a filing service company and its clientele create no interest in the company and its president which would violate the regulations requiring disclosure of other interests in the lease offers and which preclude multiple filings in simultaneous filing-drawing procedures and that the president's filing an offer in his own name competing with the clientele of the company does not violate the regulations, a case involving similar factual and legal issues will follow the Board's majority position.

Jack Buckeroan, 45 IBLA 337 (Feb. 7, 1980)

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous noncompetitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to prove an accusation that the offeror/agent agreement gives

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

the agent an enforceable interest in the lease to be issued.

Geosearch, Inc., 48 IBLA 190 (June 9, 1980)

Where a leasing service company's client wins a Federal oil and gas lease at a drawing in which the leasing service and its officer participate, the mere participation of the company and the officer in the same filing, without anything more to create an interest in them in the client's lease, does not constitute a violation of the regulations which should be charged against the client.

A reference in a letter to the Bureau of Land Management from the winning drawee in a simultaneous oil and gas lease filing to "majority owners" of the lease, by itself is not sufficient to show there were undisclosed parties in interest at the time the offer was filed, but it would ordinarily warrant further investigation. Where a hearing is ordered on other issues to determine if there was a violation of the regulations in the filing, evidence should also be presented on this issue to explain the meaning of the reference and to show whether someone other than the offeror had an interest in the offer at the time it was filed.

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting against multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of Eden Capital Corp. and its clientele where there are ambiguities in the complex contract which provides for a preliminary division of lease obligations and proceeds and establishment of a lease escrow fund to protect funds promised to the client if the client exercises an option by which Eden will buy all leases in a particular lease program subscribed to by the client, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients of Eden have given to the terms.

Harry S. Wills, Kenneth E. Roth, 48 IBLA 356 (July 11, 1980)

When an offer to lease is filed by a person asserting he is the sole party in interest in the offer, and 2 months later an interest in the offer is created in another person, it is not proper to reject the offer on the ground that the showings required by 43 CFR 3102.7 were not filed within 15 days after the offer was first filed.

Albert W. Taylor, 49 IBLA 103 (July 28, 1980)

An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected if it contains the names of additional parties in interest, and there is a failure to file the statement of their interests as required by 43 CFR 3102.7.

Clayton H. Read and Gerald A. Myres, 49 IBLA 200 (Aug. 11, 1980)

Clayton H. Read, Gerald A. Myres, 49 IBLA 271 (Aug. 18, 1980)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of a leasing service and its clientele where there are ambiguities in the complex contract between them, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients have given to the terms.

Valerie Mellor, Elizabeth B. Drozda, 49 IBLA 303 (Aug. 20, 1980)

Action on a protest against issuance of a lease to the first-drawn offeror, a client of Resource Service Company, a leasing service, and issuance of the lease, shall be suspended pending appropriate action by BLM to determine whether there has been a violation of the regulations requiring disclosure of interests in a lease, when an offer is filed, and prohibiting against the multiple filings of lease offers in a simultaneous filing, arising from the RSC's client referral program whereby client A, for whom RSC files offers, can share in the proceeds of RSC's commission on a sale of client B's oil and gas lease negotiated by RSC if client B was referred to RSC by client A.

Lloyd Chemical Sales, Inc., 49 IBLA 392 (Sept. 5, 1980)

"Interest in an oil and gas lease or offer." Where a party to a pooling agreement is authorized to advance funds for filing of drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor with interest and receive a consultation fee from the pooled proceeds of any leases issued, all parties to the agreement have an interest in each lease offer within the meaning of 43 CFR 3102.7, requiring the disclosure of interested parties.

Wayne E. DeBord et al., 50 IBLA 216 (Sept. 30, 1980)
87 I.D. 465

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such waiver to the client, and without any contractural consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

and the successful drawee is required to make a showing as to sole party in interest under 43 CFR 3102.7.

Donald H. Coyer, Fred L. Eagle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondents) (On Judicial Remand), 50 IBLA 306 (Oct. 14, 1980)

Although under the Departmental regulations a competitive bidder in an oil and gas lease sale, must, where there is another party in interest, submit the signed statements required by 43 CFR 3102.7, failure to comply with the regulation does not require rejection of the bid. This result follows because in noncompetitive offerings the critical element is determining the first qualified offeror. For competitive bidding, the amount of the bid replaces priority of filing as the dominant factor.

Black Hawk Resources Corp., 50 IBLA 399 (Oct. 24, 1980)
87 I.D. 497

Where it appears that there may have been a violation of the disclosure and/or interest regulations (43 CFR 3102.7 and 3112.5-2) asserted by a protest, the adjudication of the appeal stemming from the dismissal of the protest is properly suspended pending appropriate action by BLM to determine whether there has been a violation of those regulations.

Geosearch, Inc., 50 IBLA 409 (Oct. 24, 1980)

Action on a protest against issuance of a lease to the first-drawn offeror, a client of Resource Service Company, a leasing service, and issuance of the lease, properly is suspended pending appropriate action by BLM to determine whether there has been a violation of the disclosure and interest regulations. BLM will investigate a filing service's relationship with the offeror where it appears that the disclosure and interest regulations may have been violated by a referral program offered by the filing service.

Geosearch, Inc., 51 IBLA 59 (Oct. 31, 1980)

Where an applicant is neither trustee nor guardian of her minor grandsons, she has not violated 43 CFR 3102.7 requiring disclosure of other parties in interest even though she intends to transfer part of her interest in any lease obtained to the grandsons when they reach legal age and makes an indirect reference to them on the face of the drawing entry card. Minors are not qualified applicants under 43 CFR 3102.1-1(b) and under the facts of this case, the grandsons have no "interest" in the prospective lease as defined by 43 CFR 3100.0-5(b). At most, they have a hope or expectation of future benefit from the lease.

Blanche Chomicki, 51 IBLA 128 (Nov. 20, 1980)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such waiver to the client, and without any contractural consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and the successful drawee is required to make a showing as to sole party in interest under 43 CFR 3102.7.

The Department has authority to cancel leases administratively where the lease was granted pursuant to an underlying offer which violated the Departmental regulation requiring an offeror to disclose, at the time of filing, the existence of all parties holding interests in the offer.

The fact that an entitlement to share in the proceeds from the sale of a lease is contingent upon the lease being sold does not mean that this entitlement is not an "interest," as an "interest" includes any claim to a share in profits which may be derived from the lease. Where an agreement creating such an entitlement exists when an offer is filed, its existence must be disclosed on pain of rejection of the offer.

D. R. Weedon, Jr., et al., 51 IBLA 378 (Dec. 31, 1980)

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b), and the offeror is required to disclose this interest at the time of filing under 43 CFR 3102.7

The Department has authority to cancel leases administratively where the lease was granted pursuant to an underlying offer which violated the Departmental regulation requiring an offeror to disclose, at the time of filing, the existence of all parties holding interests in the offer.

Estate of Glenn F. Coy, Resource Service Co., Inc., 52 IBLA 182 (Jan. 25, 1981) 88 I.D. 236

When an offer to lease is filed by a person asserting he is the sole party in interest in the offer, and an interest in the offer is created later in another person, it is not proper to reject the offer on the ground that the showings required by 43 CFR 3102.7 were not filed within 15 days after the offer was first filed.

Thomas H. Connelly, Visco Exploration, Inc., 52 IBLA 206 (Jan. 27, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

When over-the-counter applications for 11 oil and gas leases show that the offeror is not the sole party in interest, 11 separate statements meeting the requirements of 43 CFR 3102.7 must be filed not later than 15 days after the filing of the lease offers. If only 10 statements are submitted and none is individually identified with a corresponding serial number, all 11 offers must be rejected.

An employee's uncorroborated affidavit stating that a separate statement concerning parties in interest was sent for each oil and gas lease offer is insufficient to rebut the legal presumption that administrative officials have properly discharged their duties and have not misplaced or lost the document in issue.

A copy of a document is not considered to be among the number filed if it is only received and date-stamped and returned to an applicant as evidence of receipt. Such acknowledgement of receipt by Bureau of Land Management personnel does not constitute a determination that the filing was complete or that all the documents recited in the cover letter were included. BLM is not required to retain that copy of the document, contrary to an applicant's instructions, in order to make the filing complete.

Oil and gas lease offers are properly rejected when required statements as to other parties in interest are not timely submitted. Under 43 CFR 3111.1-1(e), such a defect is not curable, even with respect to over-the-counter leases. Nevertheless, offers may be reinstated and allowed to earn priority from the time of the filing of the missing statement, or when an applicant withdraws a sufficient number of offers so that there are enough statements to cover the offers that remain active.

Metro Energy, Inc., 52 IBLA 369 (Feb. 19, 1981)

The mere fact that a DEC is signed by someone other than the offeror does not necessarily mean that the person affixing the signature has an interest in the offer which must be disclosed.

An oil and gas lease offeror is not required to disclose the existence of any interests in the offer flowing to his wife on account of community property laws of any state.

John W. Bierlein, 53 IBLA 48 (Feb. 27, 1981)

An oil and gas lease offeror's agreement with a filing service which by its terms gives an offeror an option, exercisable only after the drawing of simultaneously filed lease offers is held, to employ the service to sell offeror's interest in the lease in return for a specified commission does not create an interest in the lease offer at the time the offer is filed which is required to be disclosed under 43 CFR 3102.7 (1979).

Phillip A. Kulin, 53 IBLA 57 (Feb. 27, 1981)

The naming of an additional party in interest on the reverse side of the drawing entry card is prima facie evidence that the named person is in fact an interested party within the ambit of 43 CFR 3102.7. However, it is not within the province of the Department of the Interior to determine the unstated intentions of the offeror as to how and when the right of an interested party will vest.

William E. Price, 53 IBLA 174 (Mar. 16, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

"Interest in an oil and gas lease or offer." Where a party to a pooling agreement is authorized to advance funds for filing of drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor with interest and receive a consultation fee from the pooled proceeds of any leases issued, all parties to the agreement have an interest in each lease offer within the meaning of 43 CFR 3102.7, requiring the disclosure of interested parties.

Vickie J. Landis, 54 IBLA 25 (Apr. 6, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

Hope Petroleum Corp. et al., 54 IBLA 194 (Apr. 23, 1981) 88 I.D. 479

Ineco Oil Co. et al., 54 IBLA 260 (Apr. 28, 1981)

Wilbur G. Desens et al., 54 IBLA 271 (Apr. 28, 1981)

Robert E. Belknap et al., 55 IBLA 200 (June 16, 1981)

Resource Service Co., Inc., Grace K. Greco, 55 IBLA 343 (June 26, 1981)

Woods Petroleum Corp. et al., 55 IBLA 348 (June 26, 1981)

Richard E. McDonald, Resource Service Co., Inc., 56 IBLA 12 (June 30, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest (which, by its own terms, does not apply to the service agreement) with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

Alex Sachen, Resource Service Co., Inc., 56 IBLA 116 (July 16, 1981)

Nancy L. Stewart, Resource Service Co., Inc., 56 IBLA 122 (July 16, 1981)

Jack Zuckerman et al., 56 IBLA 193 (July 22, 1981)

Robert Semanko, Mary L. Bollebon, Resource Service Co., Inc., 58 IBLA 340 (Oct. 19, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to give the service an interest in the lease, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7 (1979).

Floyd O. Lochner, 56 IBLA 271 (July 28, 1981)

"Interest in an oil and gas lease or offer." Where an oil and gas lease offeror in a written agreement gives another person a security interest in any lease issued pursuant to an offer filed under the agreement to secure only payment of lease rentals advanced by that person, that person does not have an interest in the lease offer within the meaning of 43 CFR 3102.7 (1979), requiring the disclosure of interested parties.

Warren R. Haas, 57 IBLA 247 (Aug. 28, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

Where an applicant places the name of another party in interest on his simultaneous noncompetitive oil and gas lease application and files a separate statement indicating that there is an oral agreement between them under which he has 50 percent and the other party has 50 percent, it is reasonable to assume that the applicant refers to 50 percent of all of any interest acquired by him. This statement adequately states the nature of the oral agreement between the applicant and the other party in interest, and BLM's decision rejecting the application for failure to state the nature of the other party's interest will be vacated.

Phillip E. Flanagan, 57 IBLA 357 (Sept. 8, 1981)

A noncompetitive oil and gas lease application filed in a simultaneous drawing must be rejected if it contains the names of additional parties in interest, and there is a failure to submit the information required by 43 CFR 3102.2-7(b).

Affidavits and other evidence, including a shipping notice and a delivery receipt, indicating that the information required by 43 CFR 3102.2-7(b), in connection with noncompetitive oil and gas lease offers, was submitted timely to BLM is not sufficient to overcome the presumption that public officials have properly discharged their duties and have not misplaced or lost the document in issue where the corroborating evidence fails to relate the submission directly to the lease application at issue.

Lawrence E. Dye, 57 IBLA 360 (Sept. 8, 1981)

Where an applicant places the name of another party in interest on his simultaneous oil and gas lease application and files a statement indicating that they have an oral agreement under which he has a 25 percent interest and the other party a 75 percent interest and that they have agreed to divide expenses and proceeds based on those percentages, the applicant has satisfied the requirement of 43 CFR 3102.2-7(b) that the nature of their oral understanding be set forth.

F. C. Nibler III, F. C. Nibler, M.D., 59 IBLA 203 (Oct. 27, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby, when the individual sells a lease acquired during his participation in the program, the proceeds from the sale of that lease will be deposited into the Lease Sales Escrow Account; and 49 percent of any consideration received by the individual shall be assigned to the leasing service should the individual dispose of his interest in a lease in any manner other than by sale, the leasing service does not have an enforceable right to share in the proceeds of any sale or any interest therein. Such an agreement does not create for the leasing service an interest in the lease as that term is defined in 43 CFR 3100.0-5(b) (1979).

"Interest." Where there is an agreement giving an individual the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b) (1979).

Nancy S. Hills et al., 59 IBLA 241 (Oct. 28, 1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

"Interest in an oil and gas lease or offer." Where a party to a pooling agreement is authorized to advance funds for filing of drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor with interest and receive a consultation fee from the pooled proceeds of any leases issued, all parties to the agreement have an interest in each lease offer within the meaning of 43 CFR 3102.7 (1979), requiring the disclosure of interested parties.

The Board of Land Appeals will not order a fact-finding hearing to determine whether a pool agreement violates regulations requiring disclosure of other parties in interest in a simultaneous oil and gas lease filing where there are no ambiguities in the agreement and it is clear that there are other parties in interest to the lease offer other than appellant.

Ilean M. Landis, 59 IBLA 353 (Nov. 9, 1981)

Where an applicant places the name of another party in interest on his simultaneous noncompetitive oil and gas lease application and files a separate statement indicating that there is an oral agreement between them under which he has 50 percent and the other party has 50 percent, it is reasonable to assume that the applicant refers to 50 percent of all of any interest acquired by him. This statement adequately states the nature of the oral agreement between the applicant and the other party in interest, and BLM's decision rejecting the application for failure to state the nature of the other party's interest will be vacated.

A statement setting forth the nature of an oral agreement between a simultaneous noncompetitive oil and gas lease applicant and another party in interest must include, or be accompanied within 15 days after the filing by, statements signed by the latter setting forth his citizenship and compliance with acreage limitations on pain of rejection of the application.

Kenneth M. Gray, Jay R. Gardner, 60 IBLA 110 (Nov. 20, 1981)

An entitlement to share in the proceeds from the sale of a lease or part thereof, contingent upon the lease being sold, is an "interest," as an "interest" includes any claim to a share in profits which may be derived from the lease. Where an agreement creating such an entitlement exists when an offer is filed, its existence must be disclosed on pain of rejection of the offer.

Rosita Trujillo, 60 IBLA 316 (Dec. 18, 1981)

A simultaneous oil and gas lease application filed on behalf of a joint venture must be rejected if it is signed only by an individual member with no proper reference to the name of the joint venture or other members thereof.

James E. Wett, 60 IBLA 323 (Dec. 18, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b) (1979).

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected if it contains the names of additional parties in interest and, within 15 days of the filing, the offeror fails to submit a statement signed by himself and the other interested parties setting forth the nature of their respective interests and a copy of agreements between them.

Richard B. Spoerio, 62 IBLA 159 (Mar. 8, 1982)

A noncompetitive oil and gas lease application filed in a simultaneous drawing must be rejected if it contains the names of additional parties in interest, and there is a failure to submit the information required by 43 CFR 3102.2-7(b).

Diane M. Berndt, Richard M. Byers, 62 IBLA 288 (Mar. 16, 1982)

Bob Reid, 64 IBLA 17 (May 4, 1982)

An oil and gas lease offeror's agreement with a filing service which by its terms give an offeror an option, exercisable only after the drawing of simultaneously filed lease offers is held, to employ the service to sell offeror's interest in the lease in return for a specified commission does not create an interest in the lease offer at the time the offer is filed which is required to be disclosed under 43 CFR 3102.7 (1979).

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease offer which must be disclosed under 43 CFR 3102.7 (1979).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to give the service an interest in the lease, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

the client and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7 (1979).

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

Where, in the course of an appeal from the rejection of an oil and gas lease application for other reasons, the pleadings and evidence raise for the first time the question of the existence of an outstanding undisclosed interest in the application, the Board will not decide that issue, but in no event may a lease be granted the appellant unless and until the question is ultimately resolved in appellant's favor.

Lynda Bagley Doyle, 65 IBLA 340 (July 16, 1982)

Although, under the Departmental regulations in effect at the time of the sale, a competitive bidder in an oil and gas lease sale, where there are other parties in interest, was required to submit the signed statements required by 43 CFR 3102.2-7 (1981), failure to comply with the regulation does not require rejection of the bid. Whereas, in noncompetitive offerings, the critical element is determining the first qualified offeror, in competitive bidding, the amount of the bid replaces priority of filing as the dominant factor.

Turner C. Smith, Jr., Signe P. Smith, 66 IBLA 1 (July 23, 1982) 89 I.D. 386

Where substantial evidence of record supports BLM's rejection of a lease application on the basis of its finding that another party holds an undisclosed interest therein, the mere denial of that fact by the applicant is insufficient to overturn the decision on appeal.

Audrey Jean Boston, 67 IBLA 117 (Sept. 16, 1982)

Where the regulation, 43 CFR 3102.2-7, requiring the offeror for an oil and gas lease to file a copy of an agreement under which a royalty interest in the lease will be conveyed to a third party is repealed, it is not proper to reject the offer for failure to comply with the repealed regulation unless there was a proper conflicting offer filed for the same land prior to the date of the repeal, which was Feb. 26, 1982.

Richard S. Gaddy, W. B. Newberry, 67 IBLA 373 (Oct. 8, 1982)

A decision partly rejecting an oil and gas lease offer because the lands are included in a lease issued to a prior applicant will be affirmed on appeal upon a finding that appellant's contention that the prior applicant failed to comply with the requirements for disclosure of other parties in interest is simply unfounded.

Irvin Wall, 68 IBLA 276 (Nov. 17, 1982)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

Oil and gas lease offers filed prior to Feb. 26, 1982, are properly rejected when statements as to other parties in interest required by 43 CFR 3102.2-7(b) (1981) are not timely submitted. Nevertheless, over-the-counter offers may be reinstated and allowed to earn priority from the time of the filing of the missing statements.

Sunetka Energy Co., 68 IBLA 313 (Nov. 19, 1982)

BLM may properly reject a simultaneous oil and gas lease application drawn with first priority where the applicant files the application and an attached statement setting forth the names of other parties in interest and the nature of the agreement between the parties, and the statement is not signed by the applicant, as required by 43 CFR 3102.2-7(b) (1981).

Richard S. Talbert, 70 IBLA 145 (Jan. 17, 1983)

An undisclosed interest was not created in a person referring a customer to an oil and gas leasing service where the referring person had only a hope or expectancy that some financial benefit might result from the referral. Where there was no enforceable right in the referring party to share in the proceeds of a lease obtained through the simultaneous oil and gas leasing drawing held by the Department, there was no violation of the provisions of the sole party in interest regulation, 43 CFR 3102.7.

Geosearch, Inc., Lloyd Chemical Sales, Inc. v. Resource Service Co., Inc., Bureau of Land Management, 71 IBLA 138 (Mar. 9, 1983)

A simultaneous oil and gas lease application must be rejected if it contains the names of additional parties in interest and, within 15 days of the filing, the applicant fails to submit a statement signed by herself and the other interested parties setting forth the nature of their respective interests and a copy of agreements between them.

Virginia V. Devlin, 72 IBLA 361 (May 2, 1983)

An offeror is not disqualified where a written agreement creating other parties in interest in an oil and gas lease offer, filed in support of an offer pursuant to 43 CFR 3102.2-7 (1981), is signed by the offeror through an agent.

S.O.C. Oil Co., 73 IBLA 350 (June 14, 1983)

Statements required of other parties in interest in connection with a lease offer under 43 CFR 3102.2-7(b) (1981) must include a statement affirming the party's compliance with the acreage limitations of 43 CFR 3101.1-5 and 3101.2-4. With respect to an over-the-counter lease offer, where such a statement is not filed timely within 15 days of filing the lease offer as required by regulation, but is filed prior to final rejection of the lease offer, the offer may be reinstated only with priority as of the time the required information is filed.

An over-the-counter oil and gas lease offer which is executed by two offerors will not be rejected for failure to provide a copy of an agreement with other parties in interest under 43 CFR 3102.2-7(b) (1981)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

where both offerors have properly certified that they are the sole parties in interest.

Joe B. Johnson, J. Dean Mahoney, Resources Investment Corp., 74 IBLA 383 (July 29, 1983)

Where a partner in a firm engaged in the oil and gas business files an oil and gas lease offer in his own name, the partnership is entitled, in the absence of an agreement to the contrary, to participate in the benefits accruing from any issued lease and has an "interest" therein within the meaning of 43 CFR 3100.0-5(b) as a consequence of the partner's fiduciary duty to the firm. Such an interest is properly found where the partnership agreement contains a covenant not to compete.

Rosita Trujillo, 77 IBLA 35 (Oct. 31, 1983)

ASSIGNMENTS OR TRANSFERS

In general, the assignee, upon approval of the assignment, becomes the lessee of the Government as to the assigned interest and is responsible for complying with all lease terms and conditions.

Dale Carr, 45 IBLA 183 (Jan. 30, 1980)

Assuming arguendo, that the Department had authority otherwise to reinstate a terminated oil and gas lease under 30 U.S.C. § 188(c) (1976), where there has been late payment of rental, it could not do so where reasonable diligence was not shown nor a justifiable excuse given for the failure to exercise such diligence. Generally, a lessee will not be deemed to have exercised reasonable diligence where payment is transmitted after the due date. No justifiable excuse arises where an assignee of the lease relies on the assignor for payment, where a lessee relies on receipt of a courtesy billing notice from the Bureau of Land Management, or where a lessee was uninformed of the rental payment requirements.

Alice M. Conte, Phyllis Lane Zehr, 46 IBLA 312 (Apr. 4, 1980)

BLM properly refuses to recognize the asserted interest of a party in a lease offer where no application for BLM's approval of a transfer of any interest in this offer and lease (if issued) has ever been filed, and BLM properly determines to issue the lease, if appropriate, to the offeror and not to the asserted interest holder.

An amended regulation restricting transfer of oil and gas interests governs where an offeror has not sought approval of a transfer of a pending offer to lease and lease (if issued) prior to June 16, 1980, the effective date of the amendment. Accordingly, under this regulation, BLM cannot consider any application for approval of such a transfer until after issuance of the lease.

D. R. Weedon, Jr., et al., 51 IBLA 378 (Dec. 31, 1980)

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

Where no application for BLM's approval of a transfer of any interest in an offer and lease (if issued) has ever been filed, BLM should issue the lease, if appropriate, to the offeror only.

The regulations controlling transfer of oil and gas interests were amended on June 16, 1980, and the amended regulations govern where the interest holder has not sought approval of a transfer of his interest prior to this date. Under these amended regulations, BLM cannot consider any application for approval of a transfer of a lease interest until after the lease is issued.

Estate of Glenn F. Coy, Resource Service Co., Inc., 52 IBLA 182 (Jan. 26, 1981) 88 I.D. 236

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant therefor. An extension of time may be granted to supply necessary evidence of joinder in a unit agreement prior to lease issuance and a lease offer will not be rejected in favor of a junior offeror where an extension is timely requested and the requested evidence is provided in good faith and without unreasonable delay thereafter.

Barbara J. Nisenberger, Thomas M. Connelly, 53 IBLA 112 (Mar. 4, 1981) 88 I.D. 347

No assignment can be approved for a terminated oil and gas lease.

Jack J. Grynberg, 53 IBLA 165 (Mar. 12, 1981)

Where there is a private dispute as to the validity or effect of an oil or gas lease assignment and where that assignment has been approved without notice of a controversy as to its effect or validity, and the Department subsequently receives notice of a controversy, it has declined to disturb existing conditions or to approve any change without evidence of an agreement among the parties or a court decree on the matter in controversy. Departmental policy is to allow an approved assignment to stand, maintaining the status quo, in order to allow the parties to resolve their disputes.

William B. Price, 53 IBLA 174 (Mar. 16, 1981)

Where two assignments are executed transferring complete record title of an oil and gas lease from the lessee to a second party and from him to a third party, where the assignments are submitted to the Bureau of Land Management for approval at the same time so that each will be effective on the same day, and where the third party has certified his qualifications to hold the lease, BLM need not refuse to approve the assignments for failure of the second party to submit a supplemental qualifications certification because, at no time, will the second party be the effective lessee and no interest in the lease has been retained by him.

Richard P. Walker, 54 IBLA 4 (Apr. 1, 1981)

Under 30 U.S.C. § 184(h) (1976), the determination whether an assignee of an oil and gas lease is a bona fide purchaser must be based on the circumstances existing on the date the assignment is effective between the lessee of record and the assignee. An assignee is not

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

required to file the assignment with BLM for approval as a condition of bona fide purchaser status.

Frederick J. Schlicher, 54 IBLA 61 (Apr. 10, 1981)

A party which purchases a first-drawn simultaneous noncompetitive DEC lease offer is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the DEC was defective or that a protest against the offer was ongoing; and where, at the time it consummated the agreement by payment of consideration for the offer, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the DEC, provided that the purchaser had no actual knowledge of any defect in the DEC.

A "remote purchaser," that is, one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as is the latter, even where it is chargeable with knowledge that there may have been a legal discrepancy when the lease was initially issued.

Hope Petroleum Corp. et al., 54 IBLA 194 (Apr. 23, 1981) 88 I.D. 479

A party which purchases a first-drawn simultaneous noncompetitive DEC lease offer is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the DEC was defective or that a protest against the offer was ongoing, or in prospect; and where, at the time it consummated the agreement by payment of consideration, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the offer, provided that the purchaser had no actual knowledge of any defect in the offer or the resultant lease.

Inexco Oil Co. et al., 54 IBLA 260 (Apr. 28, 1981)

A party which purchases a first-drawn simultaneous noncompetitive DEC lease offer is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the offer was defective or that a protest against the offer was ongoing or in prospect; and where, at the time the purchaser consummated the agreement by payment of consideration for the offer, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the offer, provided that the purchaser had no actual knowledge of any defect in the offer.

A "remote purchaser," that is, one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as is the latter.

Wilbur G. Downs et al., 54 IBLA 271 (Apr. 28, 1981)

A request for approval of assignment of record title to an oil and gas lease is properly denied in the absence of evidence of the qualifications of the assignee trust to hold Federal oil and gas leases.

Montana Bank (Trustee), 54 IBLA 359 (May 18, 1981)

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

A party who purchased a first-drawn simultaneous noncompetitive DEC lease offer under authority of a regulation then in effect, is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the offer was defective or that a protest against the offer was ongoing or in prospect; and where, at the time the purchaser consummated the agreement by payment of consideration for the offer, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the offer, provided that the purchaser had no actual knowledge of any defect in the offer.

Robert E. Belknap et al., 55 IBLA 200 (June 16, 1981)

Where approval of an assignment of oil and gas lease record title was not requested of the Bureau of Land Management until over 4 years after the assignment transaction, approval was properly denied under 43 CFR 3106.3-1.

Although the regulation governing Bureau of Land Management approval of assignments of oil and gas lease record title, 43 CFR 3106.3-1, does not strictly require rejection of the request for approval in every case where the stated 90-day limit has been exceeded, the approval cannot be given where the applicant is almost 4 years tardy with his request and another party has in the interim received approval for transfer of the same record title. It is Departmental policy to decline adjudication of issues regarding the validity or effect of conflicting assignments until the parties have first settled their dispute privately or in court.

Alminex USA, Inc., 55 IBLA 315 (June 26, 1981)

A party which purchased a first-drawn simultaneous noncompetitive DEC lease is a bona fide purchaser of this interest where, throughout the time during which it agreed to purchase the offer, paid consideration, and formally requested approval of the assignment, BLM's case records indicated that BLM had resolved a question about the validity of the offer in favor of the offeror and had proceeded to issue the lease to him, and where there had been no formal protest against the lease, provided that the purchaser had no actual knowledge of any defect in the offer.

Woods Petroleum Corp. et al., 55 IBLA 348 (June 26, 1981)

When an applicant for assignment of an oil and gas lease fails to submit a certification of new qualifications to hold an oil and gas lease, it is proper to reject the application for assignment. Such an application may be reinstated where the applicant has provided the required certification on appeal and no third party rights are involved.

Jane Ray Dietrich, 55 IBLA 380 (June 29, 1981)

A party which purchased an oil and gas lease is a bona fide purchaser of this interest where, throughout the time it agreed to purchase the lease, paid fair value, and formally requested approval of the assignment, BLM's records indicated that BLM had resolved a question about the validity of the underlying offer in favor of the offeror and had proceeded to issue the lease to him, and where there had been no formal protest against the lease, provided that the purchaser of

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

the lease had no actual knowledge of any defect in the underlying offer.

Jack Zuckerman et al., 56 IBLA 193 (July 22, 1981)

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser, is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2.

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

In the absence of evidence of actual knowledge that a lease offer was made in violation of the regulations, reliance by an assignee of the lease on the Bureau of Land Management decision to issue the lease is not unreasonable and will support assignee's claim of bona fide purchaser status where there is no pending inquiry, protest, or appeal proceeding.

David Burr et al., 56 IBLA 225 (July 22, 1981)

Upon approval by BLM of an assignment of an oil and gas lease, the responsibility for providing an adequate bond transfers from the assignor to the assignee pursuant to 43 CFR 3106.2-3. BLM should evaluate the adequacy of the bond offered by the assignee and resolve any deficiencies before approving the assignment. Once BLM approves the assignment, it may not thereafter refuse to release the assignor's bond.

Karis Oil Co., Inc., 58 IBLA 123 (Sept. 24, 1981)

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2.

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

A "remote purchaser," that is, one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as is the latter, even where it is chargeable with knowledge that there may have been a legal discrepancy when the lease was initially issued.

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

A request for approval of assignment of record title to an oil and gas lease is properly denied in the absence of evidence of the qualifications of the assignee to hold Federal oil and gas leases or lack of sufficient bond. However, the failure to submit three manually executed assignment forms as required by 43 CFR 3106.2-2, is a curable defect.

North Central Oil Corp., 62 IBLA 38 (Feb. 24, 1982)

Where a proposed assignment has been filed with BLM but has not yet been approved, the original lessee of an oil and gas lease is the holder of record.

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as the holder of record of the lease, and not the potential assignee, may have the lease reinstated on the ground that due diligence was exercised or that late payment was justified.

Grace Petroleum Corp., 62 IBLA 180 (Mar. 8, 1982)

An assignee of a preexisting oil and gas lease which is held by BLM to have been terminated by operation of law has standing to appeal, even though the assignment has not yet been approved, although BLM may not be required to give separate notice of termination to such an assignee.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

A party purchasing an oil and gas lease from the first-drawn winner of a drawing of simultaneous offers to lease is a bona fide purchaser where prior to and during the time it agreed to purchase the lease, paid consideration, and requested approval of the assignment, BLM's files were silent as to any irregularities in the lease or offer and the purchaser had no knowledge of any defect in the lease or offer.

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

Where subsequent to the approval by the Department of an assignment of interests in an oil and gas lease at the request of the assignee it appears that there is such a dispute between the parties as to the intent and purpose of the assignment instrument that, had the Department known of the dispute it would not have acted on the purported assignment until the dispute between the parties had been resolved by the courts or the parties themselves, the Department will not rescind the approval but will not approve further assignments of rights stemming from the disputed assignment or permit drilling by any one claiming operating rights deriving from the disputed assignments for a period of time sufficient to permit the parties a chance to settle their dispute by agreement or litigation.

Utah Gas & Oil Corp., 64 IBLA 254 (June 2, 1982)

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

Beverly J. Macdowell, Dorothy Langley, 71 IBLA 23 (Feb. 15, 1983)

Application for approval by the Bureau of Land Management of an assignment of record title to an oil and gas lease is made by the assignee of the lease. Any decision adverse to an applicant for approval of assignment must be issued to the applicant and is not effective during the period when the applicant may file an appeal or while the appeal is pending.

A unilateral request by the assignor of an oil and gas lease for withdrawal of an unapproved assignment is properly regarded as a protest of the assignment and as an indication of a dispute between the parties to the assignment. Longstanding Departmental policy requires withholding action to either approve or reject the assignment until the dispute between the parties is resolved through agreement or litigation.

Petrol Resources Corp., 65 IBLA 104 (June 24, 1982)

Where the Bureau of Land Management has denied approval of an assignment for failure to file three completed and manually signed copies in the appropriate BLM office and this Department is made aware of private litigation between the assignor and assignee as to the validity or effect of the assignment, the Department will suspend action on any assignment or request for permission to drill until the parties resolve the controversy by agreement or by litigation.

The July Corp., 66 IBLA 20 (July 23, 1982)

Where there is a private dispute as to the validity or effect of an oil and gas lease assignment, the Bureau of Land Management will not take action on a request for assignment approval, but will maintain the status quo until presented with evidence that the parties have settled their dispute or with a copy of a court decree concerning the matter in controversy.

Pimple Enterprises, Inc. et al., 70 IBLA 180 (Jan. 20, 1983)

Where a partial assignment of an oil and gas lease was filed with the Bureau of Land Management several months before the anniversary date of the lease by a qualified entity, and where the rental for the assigned acreage was timely paid by the putative assignee, the assignment may be approved by BLM after termination of the base lease for nonpayment of the full lease rental on the anniversary date of the lease.

Ladd Petroleum Corp., 70 IBLA 313 (Jan. 28, 1983)

The Department is obligated to notify only the lessee of record about the termination of an oil and gas lease for cessation of production. If the lessee has created an interest in any other person, whether by assignment, agreement, or otherwise, such other person must look to the lessee of record to provide notice of the termination of the lease or for redress if such notice is not provided.

KernCo Drilling Co. et al., 71 IBLA 53 (Feb. 22, 1983)

OIL AND GAS LEASES--Continued

ASSIGNMENTS OR TRANSFERS--Continued

BLM may not act to approve or disapprove the assignment of an oil and gas lease where the assignor's legal guardian has revoked the power of attorney pursuant to which the assignment was executed and has requested BLM to disapprove the assignment, as any action would be contrary to established Departmental policy to maintain the status quo of the lease where there is evidence of a private dispute or controversy concerning the validity of the assignment.

Spectrum Oil & Gas Co., 73 IBLA 162 (May 24, 1983)

Pending approval of the assignment by BLM, the assignor shall continue to be responsible for the performance of any and all obligations under the lease. Only the lessee of record can claim or request reinstatement of the lease.

Harry C. Peterson, 75 IBLA 195 (Aug. 22, 1983)

Where a 1941 private oil and gas lease provides that the lease be held by production beyond its 3-year term and where there was no evidence of production beyond 1956 on the leased lands when the Forest Service acquired the lands in 1976, an "assignment" of such lease in 1979 is invalid since the lease terminated when production ceased.

Constitution Petroleum Co., Inc., 78 IBLA 3 (Dec. 12, 1983)

BONA FIDE PURCHASER

Under 30 U.S.C. § 184(h)(2) (1970) and 43 CFR 3102.1-2(a) BLM properly dismissed a protest and refused to cancel an oil and gas lease which had been assigned to a bona fide purchaser, even though the lease might have been subject to cancellation prior to the assignment if the offeror/assignor's original offer was defective under 43 CFR 3102.7 and 3112.5-2.

Geosearch, Inc., 47 IBLA 39 (Apr. 11, 1980)

Even though created by a lease issued to a junior noncompetitive over-the-counter oil and gas lease offer in derogation of the superior rights to the same land of a senior offeror, oil and gas lease rights based on the junior offer may not be cancelled where they have been acquired by a bona fide purchaser, and, where assignees of such lease rights have not had the opportunity to show that they acquired and hold these rights as bona fide purchasers, the matter will be remanded to BLM to allow them to so show, and to allow the senior offeror to show to the contrary.

George F. Wolter, Jr., 47 IBLA 396 (May 22, 1980)

Where BLM does not officially reject or return the simultaneous noncompetitive oil and gas lease offers drawn with second and third priority after the issuance of the leases to the first drawees, the second and third drawees retain an interest which must be considered if the leases are cancelled because the first drawees' offers are defective, provided that the leases have not been assigned to bona fide purchasers.

Geosearch, Inc., 51 IBLA 59 (Oct. 31, 1980)

OIL AND GAS LEASES--Continued

BONA FIDE PURCHASER--Continued

Where an oil and gas lease has inadvertently been issued for land, which was the subject of a then current lease in good standing and the newly issued lease is properly canceled, there is no authority to refund to assignees the purchase price paid for the lease or to issue to them an oil and gas lease on Federal land in value equal thereto.

Husky Oil Co., Pan Eastern Exploration Co., 52 IBLA 41 (Jan. 6, 1981)

Under 30 U.S.C. § 184(h) (1976), the determination whether an assignee of an oil and gas lease is a bona fide purchaser must be based on the circumstances existing on the date the assignment is effective between the lessee of record and the assignee. An assignee is not required to file the assignment with BLM for approval as a condition of bona fide purchaser status.

Frederick J. Schlicher, 54 IBLA 61 (Apr. 10, 1981)

A party which purchases a first-drawn simultaneous noncompetitive DEC lease offer is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the DEC was defective or that a protest against the offer was ongoing; and where, at the time it consummated the agreement by payment of consideration for the offer, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the DEC, provided that the purchaser had no actual knowledge of any defect in the DEC.

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

A "remote purchaser," that is, one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as is the latter, even where it is chargeable with knowledge that there may have been a legal discrepancy when the lease was initially issued.

Home Petroleum Corp. et al., 54 IBLA 194 (Apr. 23, 1981) 88 I.D. 479

A party which purchases a first-drawn simultaneous noncompetitive DEC lease offer is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the DEC was defective or that a protest against the offer was ongoing, or in prospect; and where, at the time it consummated the agreement by payment of consideration, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the offer, provided that the purchaser had no actual knowledge of any defect in the offer or the resultant lease.

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are

OIL AND GAS LEASES--Continued

BONA FIDE PURCHASER--Continued

also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

Inexco Oil Co. et al., 54 IBLA 260 (Apr. 28, 1981)

A party which purchases a first-drawn simultaneous noncompetitive DEC lease offer is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the offer was defective or that a protest against the offer was ongoing or in prospect; and where, at the time the purchaser consummated the agreement by payment of consideration for the offer, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the offer, provided that the purchaser had no actual knowledge of any defect in the offer.

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

A "remote purchaser," that is, one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as is the latter.

Wilbur G. Desens et al., 54 IBLA 271 (Apr. 28, 1981)

A party who purchased a first-drawn simultaneous noncompetitive DEC lease offer under authority of a regulation then in effect, is a bona fide purchaser of this interest where, at the time it agreed to purchase the offer, BLM's case records contained nothing to indicate that the offer was defective or that a protest against the offer was ongoing or in prospect; and where, at the time the purchaser consummated the agreement by payment of consideration for the offer, these records showed that BLM had proceeded to issue the lease, thus indicating that there was no defect in the offer, provided that the purchaser had no actual knowledge of any defect in the offer.

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

Robert E. Belknap et al., 55 IBLA 200 (June 16, 1981)

OIL AND GAS LEASES--Continued

BONA FIDE PURCHASER--Continued

A party which purchased a first-drawn simultaneous noncompetitive DEC lease is a bona fide purchaser of this interest where, throughout the time during which it agreed to purchase the offer, paid consideration, and formally requested approval of the assignment, BLM's case records indicated that BLM had resolved a question about the validity of the offer in favor of the offeror and had proceeded to issue the lease to him, and where there had been no formal protest against the lease, provided that the purchaser had no actual knowledge of any defect in the offer.

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

Woods Petroleum Corp. et al., 55 IBLA 348 (June 26, 1981)

A party which purchased an oil and gas lease is a bona fide purchaser of this interest where, throughout the time it agreed to purchase the lease, paid fair value, and formally requested approval of the assignment, BLM's records indicated that BLM had resolved a question about the validity of the underlying offer in favor of the offeror and had proceeded to issue the lease to him, and where there had been no formal protest against the lease, provided that the purchaser of the lease had no actual knowledge of any defect in the underlying offer.

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

Jack Zuckerman et al., 56 IBLA 193 (July 22, 1981)

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser, is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2.

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

In the absence of evidence of actual knowledge that a lease offer was made in violation of the regulations, reliance by an assignee of the lease on the Bureau of Land Management decision to issue the lease is not unreasonable and will support assignee's claim

OIL AND GAS LEASES--Continued

BONA FIDE PURCHASER--Continued

of bona fide purchaser status where there is no pending inquiry, protest, or appeal proceeding.

David Burr et al., 56 IBLA 225 (July 22, 1981)

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to an apparently valid previously filed offer, and rejects the previously filed offer as to lands encompassed in the lease issued to the junior offeror asserting that the junior offeror's assignee is a bona fide purchaser, the decision will be vacated as the statute governing oil and gas leasing of non-KGS lands dictates that the person first making application for a lease (the senior offeror) is qualified to hold it. Where the junior offeror and his successor in interest have not been joined to BLM's proceedings or named as parties on appeal, the matter will be remanded to BLM with instructions to allow them to show cause why the leases issued pursuant to the junior offer should not be canceled and to show that they acquired their interests as bona fide purchasers.

A. D. Matchett, 56 IBLA 231 (July 22, 1981)

Where, at the time of an assignment of an oil and gas lease, BLM's oil and gas status plat reveals that the leased lands are subject to a senior, and therefore superior, oil and gas lease offer, the assignee of the lease is not a bona fide purchaser, for it is imputed to have knowledge of BLM's records which contained information adequate to raise doubt that the assigned lease was validly issued.

York Associates, Ltd., 58 IBLA 25 (Sept. 16, 1981)

An assignee of a Federal oil gas lease who qualifies as a bona fide purchaser is protected from cancellation or forfeiture of his interests notwithstanding the violation by his assignor, the first drawee in the simultaneous oil and gas lease drawing, of regulations concerning undisclosed parties in interest. 30 U.S.C. § 184(h)(2) (1976); 43 CFR 3102.1-2.

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

A "remote purchaser," that is, one who purchases an oil and gas lease interest from a bona fide purchaser, is protected just as is the latter, even where it is chargeable with knowledge that there may have been a legal discrepancy when the lease was initially issued.

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM must sell such canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

James Koch et al., 62 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

OIL AND GAS LEASES--Continued

BONA FIDE PURCHASER--Continued

A bona fide purchaser must have acquired his interest in an oil and gas lease in good faith, for valuable consideration, and without notice of the violation of Departmental regulations. The test of notice of a superior right is whether the facts are sufficient to put an ordinarily prudent man on inquiry which if followed with reasonable diligence would lead to discovery of defects in title or equitable rights of others affecting the lease.

The knowledge of the assignee's agent and/or employee acting for the principal in connection with obtaining the lease is generally attributable to the assignee in determining whether the assignee qualifies as a bona fide purchaser.

Payment of valuable consideration prior to knowledge or notice of a superior right is a necessary element of bona fide purchaser status.

Richard W. Eckels, 62 IBLA 1 (Feb. 22, 1982)

Where an oil and gas lessee has assigned an interest to a party which is assertedly a bona fide purchaser, and where the lessee subsequently relinquishes his lease interest as part of a guilty plea agreement in a Federal criminal proceeding in which he is charged with illegally manipulating the noncompetitive lease sale system, the assignee's interest is not preserved by the bona fide purchaser provisions, which do not protect any purchasers of lease interests from destruction by the relinquishment or compelled disposition of the underlying lease by the lessee.

J. B. Dunbar, A. G. Andrikopoulos, 62 IBLA 119 (Mar. 4, 1982)

Even assuming arguendo that apparent omissions on an oil and gas lease application are not sufficient to put the purchaser of an interest in the application on notice that it was defective, a defective original application is nevertheless subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

Robert W. Byers, 63 IBLA 100 (Mar. 31, 1982)

An assignee of an oil and gas lease offeror drawn with second or third priority has standing to protest the issuance of a lease to first-priority offeror, as well as standing to appeal from a rejection of such protest.

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

A party purchasing an oil and gas lease from the first-drawn winner of a drawing of simultaneous offers to lease is a bona fide purchaser where prior to and during the time it agreed to purchase the lease, paid consideration, and requested approval of the assignment, BLM's files were silent as to any irregularities in the lease or offer and the purchaser had no knowledge of any defect in the lease or offer.

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of

OIL AND GAS LEASES--Continued

BONA FIDE PURCHASER--Continued

the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976).

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

A party which purchased an oil and gas lease is a bona fide purchaser of this interest where, throughout the time it agreed to purchase the lease, paid fair value, and formally requested approval of the assignment, BLM's records indicated that BLM had resolved a question about the validity of the underlying offer in favor of the offeror and had proceeded to issue the lease to him, and where there was no formal protest against the lease pending, provided that the purchaser of the lease pending had no actual knowledge of any defect in the underlying offer.

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

The protection afforded a bona fide purchaser of an oil and gas lease applies only where consideration has been paid. An unperformed obligation to pay the assignor is not generally sufficient value. Receipt by the purchaser of notice that a lease is subject to cancellation prior to payment of the obligation to the assignor which the purchaser has assumed will bar bona fide purchaser status even if the assignee thereafter pays the obligation.

Richard W. Eckels (On Reconsideration), 65 IBLA 76 (June 23, 1982)

Where an oil and gas lease has inadvertently been issued for land that was the subject of a then current lease in good standing, the later lease is properly canceled to the extent that it conflicts with the earlier lease notwithstanding the fact that the later lease has been assigned to parties claiming bona fide purchaser status. An assignee can stand in no better position than the assignor.

Fortune Oil Co., 69 IBLA 13 (Nov. 24, 1982)

OIL AND GAS LEASES--Continued

BONA FIDE PURCHASER--Continued

Even assuming, arguendo, that apparent omissions on an oil and gas lease offer are not sufficient to put the purchaser of an interest in the offer on notice that it was defective, a defective oil and gas lease offer is subject to rejection, because the bona fide purchaser protection does not apply to any purchaser of interests in a lease offer or application and does not limit the Department's authority to reject such defective applications or offers.

D. R. Yates, 70 IBLA 134 (Jan. 14, 1983)

A bona fide purchaser must have acquired his interest in good faith, for valuable consideration, and without notice of a violation of Departmental regulation. The protection of a bona fide purchaser of an oil and gas lease applies only where consideration has been paid before notice of cancellation of the lease has been received by the lessor and has become part of BLM's records.

Bernard Kosik, 70 IBLA 373 (Feb. 4, 1983)

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

Where, at the time of an assignment of an oil and gas lease, BLM's records pertaining to the lease reveal that the lease had been improperly issued to the number one drawee in a simultaneous oil and gas lease drawing and also reveal that the second drawee had made inquiries as to why the lease had not been issued to her, the assignee of the lease is not a bona fide purchaser, for she is deemed to have knowledge of BLM's records which contained information adequate to raise doubt that the assigned lease was validly issued.

Beverly J. Macdowell, Dorothy Langley, 71 IBLA 23 (Feb. 15, 1983)

Where, at the time of an assignment of an oil and gas lease, the official BLM records reveal that the leased lands are subject to a senior, and therefore superior, oil and gas lease offer, the assignee of the lease is not a bona fide purchaser, for it is imputed to have knowledge of BLM's records which contained information adequate to raise doubt that the assigned lease was validly issued.

A. H. Butter, Jr., 74 IBLA 345 (July 28, 1983)

The bona fide purchaser of an oil and gas "lease" without notice of a defect in the assignor's title is protected by statute from cancellation of his interest in the lease. The purchaser of an interest in a "lease offer" cannot foreclose the Department from properly adjudicating the lease offer. Hence, the assignee is properly deemed to have notice of any potential defects disclosed in the case record during adjudication prior to lease issuance to the extent that an administrative decision on adjudication is not final but subject to appeal by a party adversely affected.

Rosita Trujillo, 77 IBLA 35 (Oct. 31, 1983)

OIL AND GAS LEASES--Continued

BONA FIDE PURCHASER--Continued

Where a noncompetitive oil and gas lease was issued to a junior offeror who assigned his entire interest in the lease to others prior to issuance of a lease to the senior offeror for the same lands, the record is found not to be sufficient to sustain the lease issuance to the junior offeror and his assignees, whose statements appearing of record fail to establish them to be bona fide purchasers within the meaning of 43 CFR 3108.3(c). A hearing is ordered to permit the making of an adequate record upon which a determination of priority of interest may be made.

While the interests of a bona fide purchaser may be protected from cancellation by 30 U.S.C. § 184, the interest of an assignor who knows his title was defective is not protected. Overriding royalty interest reserved by assignor of lease acquired with knowledge of senior lease offer ordered canceled.

Frank M. Youngblood, 78 IBLA 162 (Dec. 30, 1983)

The provisions of 30 U.S.C. § 184(h)(2) (1982) protecting the interests of bona fide purchasers from certain actions by the Department to cancel an oil and gas lease are not applicable to automatic termination of a lease by operation of law for failure to pay the rental on or before the anniversary date under 30 U.S.C. § 188(b) (1982).

Estate of Arlyne Lansdale, 83 IBLA 190 (Oct. 16, 1984)

BONDS

An oil and gas lease bond may not have its period of liability terminated until all the terms and conditions of the lease have been satisfied.

O. P. Merrick, Jr., 49 IBLA 347 (Aug. 22, 1980)

Regulation 43 CFR 3104.2 requires a general lease and drilling bond in an amount not less than $10,000, conditioned upon compliance with all the terms and conditions of the lease, to be furnished prior to entry and commencement of geophysical exploration or drilling operations by the lessee.

SID, 50 IBLA 262 (Sept. 30, 1980)

Where an oil or gas lessee has on file with a Bureau of Land Management State Office an approved statewide bond, a separate bond for the protection of surface owners is no longer required. 43 CFR 3104.2 and 3104.3.

Theo R. Gassin, 55 IBLA 257 (June 22, 1981)

Upon approval by BLM of an assignment of an oil and gas lease, the responsibility for providing an adequate bond transfers from the assignor to the assignee pursuant to 43 CFR 3106.2-3. BLM should evaluate the adequacy of the bond offered by the assignee and resolve any deficiencies before approving the assignment. Once BLM approves the assignment, it may not thereafter refuse to release the assignor's bond.

Karis Oil Co., Inc., 58 IBLA 123 (Sept. 24, 1981)

OIL AND GAS LEASES--Continued

CANCELLATION

Where an oil and gas lease has inadvertently been issued for land, part of which was the subject of a forest exchange application, the cancellation of that part of the lease will be reversed if the exchange application did not include the mineral estate and has been withdrawn by the proponent, and no other obstacle or objection to the lease exists.

Kerr-McGee Corp., 46 IBLA 156 (Mar. 19, 1980)

Under 30 U.S.C. § 184(h)(2) (1970) and 43 CFR 3102.1-2(a) BLM properly dismissed a protest and refused to cancel an oil and gas lease which had been assigned to a bona fide purchaser, even though the lease might have been subject to cancellation prior to the assignment if the offeror/assignor's original offer was defective under 43 CFR 3102.7 and 3112.5-2.

Geosearch, Inc., 47 IBLA 39 (Apr. 11, 1980)

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to an apparently valid previously filed offer, and where it subsequently issues a second conflicting lease for the same lands to the senior offeror, its decision cancelling the lease issued to the senior offeror will be vacated, as the statute governing oil and gas leasing of non-KGS lands dictates that the person first making application for a lease (the senior offeror) is qualified to hold it. Where the junior offeror and his successors in interest have not been joined to BLM's proceedings nor named as parties on appeal, the matter will be remanded to BLM with instructions to allow them to show cause why the leases issued pursuant to the junior offer should not be cancelled insofar as they conflict with the senior, legally superior offer.

Even though created by a lease issued to a junior noncompetitive over-the-counter oil and gas lease offer in derogation of the superior rights to the same land of a senior offeror, oil and gas lease rights based on the junior offer may not be cancelled where they have been acquired by a bona fide purchaser, and, where assignees of such lease rights have not had the opportunity to show that they acquired and hold these rights as bona fide purchasers, the matter will be remanded to BLM to allow them to so show, and to allow the senior offeror to show to the contrary.

George P. Holter, Jr., 47 IBLA 396 (May 22, 1980)

Under 30 U.S.C. § 188(b) (1976), an oil and gas lease issued after Aug. 21, 1935, under the provisions of 30 U.S.C. § 226 (1976), is subject to cancellation by the Secretary for lease violation unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas. A lease known to contain such deposits is subject to cancellation in accordance with 30 U.S.C. § 184(h)(1) (1976), which requires a proceeding in Federal district court instituted by the Attorney General.

By the terms of 30 U.S.C. § 184(h)(2) (1976), the Department is prevented from cancelling a lease held by a qualified bona fide purchaser, even though the interest of its assignor or other predecessor in title (including the original lessee of the United States) may have been subject to cancellation for a violation of the Mineral Leasing Act. In the absence of any evidence that the facts surrounding certain mesne assignments were sufficient to put an ordinary prudent person on inquiry, an inquiry which, if followed with reasonable diligence, would lead to the discovery of defects

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

in the title to the lease or equitable rights of any other persons affecting the property, the Department is prevented from cancelling a lease based upon violations by a lease holder's predecessor-in-interest.

Where a protestant challenges the bona fides of an oil and gas leaseholder, the burden is upon appellant, not the BLM, to establish by facts the substance of its charge.

If a lease is cancelled or forfeited to the Government pursuant to 30 U.S.C. § 184(h) (1976), such lease shall be sold by the Secretary to the highest responsible bidder by competitive bidding.

Maartex Consulting Corp., 48 IBLA 166 (June 9, 1980)

The Department has authority to cancel leases administratively where the lease was granted pursuant to an underlying offer which violated the Departmental regulation requiring an offeror to disclose, at the time of filing, the existence of all parties holding interests in the offer.

D. H. Weedon, Jr., et al., 51 IBLA 378 (Dec. 31, 1980)

The Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertance of his subordinates.

Where an oil and gas lease has inadvertently been issued for land, which was the subject of a then current lease in good standing and the newly issued lease is properly canceled, there is no authority to refund to assignees the purchase price paid for the lease or to issue to them an oil and gas lease on Federal land in value equal thereto.

Husky Oil Co., Pan Eastern Exploration Co., 52 IBLA 41 (Jan. 6, 1981)

The Department has authority to cancel leases administratively where the lease was granted pursuant to an underlying offer which violated the Departmental regulation requiring an offeror to disclose, at the time of filing, the existence of all parties holding interests in the offer.

Estate of Glenn F. Coy, Resource Service Co., Inc., 52 IBLA 182 (Jan. 26, 1981) 88 I.D. 236

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

Hose Petroleum Corp. et al., 54 IBLA 194 (Apr. 23, 1981) 88 I.D. 479

Inexco Oil Co. et al., 54 IBLA 260 (Apr. 28, 1981)

Wilbur G. Desens et al., 54 IBLA 271 (Apr. 28, 1981)

Robert E. Belknap et al., 55 IBLA 200 (June 16, 1981)

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

Woods Petroleum Corp. et al., 55 IBLA 348 (June 26, 1981)

Jack Zuckerman et al., 56 IBLA 193 (July 22, 1981)

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to an apparently valid previously filed offer, and rejects the previously filed offer as to lands encompassed in the lease issued to the junior offeror asserting that the junior offeror's assignee is a bona fide purchaser, the decision will be vacated as the statute governing oil and gas leasing of non-KGS lands dictates that the person first making application for a lease (the senior offeror) is qualified to hold it. Where the junior offeror and his successor in interest have not been joined to BLM's proceedings or named as parties on appeal, the matter will be remanded to BLM with instructions to allow them to show cause why the leases issued pursuant to the junior offer should not be canceled and to show that they acquired their interests as bona fide purchasers.

A. D. Hatchett, 56 IBLA 231 (July 22, 1981)

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant. Where an oil and gas lease has issued to a corporate applicant whose offer lacked priority because of noncompliance with 43 CFR 3102.2-5, requiring the filing of a list of corporate officials, such lease is properly canceled where another offer was filed for the same lands before the applicant cured the defect in its own offer.

Trans-Texas Energy, Inc., 56 IBLA 295 (July 28, 1981)

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to a valid previously filed offer, where it subsequently issues a second conflicting lease for the same lands to the senior offeror, and where the junior lease has not been assigned to a bona fide purchaser, BLM's decision canceling the lease issued to the senior offeror will be vacated, because the statute governing oil and gas leasing of non-KGS lands dictates that the qualified person first making application for a lease (the senior offeror) is entitled to receive any lease which is issued.

Where, at the time of an assignment of an oil and gas lease, BLM's oil and gas status plat reveals that the leased lands are subject to a senior, and therefore superior, oil and gas lease offer, the assignee of the lease is not a bona fide purchaser, for it is imputed to have knowledge of BLM's records which contained information adequate to raise doubt that the assigned lease was validly issued.

York Associates, Ltd., 58 IBLA 25 (Sept. 16, 1981)

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM must sell such canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

Irvin Stoschs et al., 62 IBLA 278 (Mar. 16, 1982)

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since terminated, and BLM failed to post such lands to its list of lands available for simultaneous oil and gas lease applications.

Paul S. Cooper, 64 IBLA 146 (May 24, 1982)

Stanley Yatan, 71 IBLA 116 (Mar. 2, 1983)

Conoco, Inc., 75 IBLA 83 (Aug. 10, 1983)

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976).

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease.

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

Where minerals not owned by the United States have been leased for oil and gas purposes under the terms of the Mineral Leasing Act for Acquired Lands, the lease must be canceled because only acquired minerals owned by the United States are subject to leasing under the Act.

R. L. Sulholland, 67 IBLA 14 (Sept. 3, 1982)

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

Where a noncompetitive regular offer for an oil and gas lease contains minor defects, the resultant lease shall not be canceled upon the request of a subsequent offeror who filed after the lease had been issued to the first-qualified applicant.

Irvin Wall, 67 IBLA 301 (Sept. 30, 1982)

The Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertance of his subordinates.

Where an oil and gas lease has inadvertently been issued for land that was the subject of a then current lease in good standing, the later lease is properly canceled to the extent that it conflicts with the earlier lease notwithstanding the fact that the later lease has been assigned to parties claiming bona fide purchaser status. An assignee can stand in no better position than the assignor.

Fortune Oil Co., 69 IBLA 13 (Nov. 24, 1982)

A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant, and cancellation is mandatory where an oil and gas lease is issued to a party other than the first-qualified applicant in violation of a statute or regulation of the Department.

Paul M. Temple, 69 IBLA 54 (Nov. 29, 1982)

Where a noncompetitive oil and gas lease has erroneously been issued to a party other than the first-qualified applicant, cancellation is mandatory.

Bernard Kosik, 70 IBLA 373 (Feb. 8, 1983)

Where, at the time of an assignment of an oil and gas lease, BLM's records pertaining to the lease reveal that the lease had been improperly issued to the number one drawee in a simultaneous oil and gas lease drawing and also reveal that the second drawee had made inquiries as to why the lease had not been issued to her, the assignee of the lease is not a bona fide purchaser, for she is deemed to have knowledge of BLM's records which contained information adequate to raise doubt that the assigned lease was validly issued.

Beverly J. Macdowell, Dorothy Langley, 71 IBLA 23 (Feb. 15, 1983)

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

The signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is the act that constitutes issuance of the lease and creates a binding contract. A subsequent decision not to issue oil and gas leases in an area will not support cancellation of a preexisting lease. Cancellation of a lease based on a post-lease event is limited to circumstances where there has been a statutory or regulatory violation or a violation of the lease terms.

Carl J. Taffera, 71 IBLA 72 (Feb. 22, 1983)

Where an oil and gas lease offer when first filed is not accompanied by full payment of the first year's rental, but the deficiency is less than 10 percent of the required amount, and the lease is subsequently issued with a notice that the deficiency must be paid within 30 days under penalty of cancellation, the lease must be canceled pursuant to 43 CFR 3103.3-1 where the required deficiency payment is not submitted within the prescribed period. A 3-year delay by BLM in cancelling the lease does not prevent subsequent cancellation even where BLM never received the deficiency payment for the first year, yet continued to accept the correct annual rental payment for 2 succeeding lease years.

Warren L. Jacobs, 71 IBLA 385 (Mar. 29, 1983)

An oil and gas lease issued pursuant to the first-drawn application in the simultaneous filing procedures is properly canceled where the rent is not paid within 30 days of notice to do so as required by 43 CFR 3112.4-1(a) because applicant's check for the payment, although timely tendered, is dishonored by the drawee.

Longhorn Oil, Ltd., 72 IBLA 45 (Apr. 7, 1983)

Mark A. Emmons, 76 IBLA 262 (Oct. 17, 1983)

A noncompetitive oil and gas lease must be canceled pursuant to 43 CFR 3103.3-1 where the offer was not accompanied by full payment of the first year's rental, but the deficiency is less than 10 percent, and the deficiency was not paid within 30 days from notice thereof.

Arden R. Grover, John R. Schumacher, 73 IBLA 308 (June 7, 1983)

Ordinarily, the signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is equivalent to issuance of the lease and creates a binding contract. However, where a regulation provides that no oil and gas lease offers will be accepted on lands withdrawn for the protection of wildlife, and the authorized officer fails to follow the regulation, such signing is not authorized and, therefore, not binding on the Secretary.

D. M. Yates, 74 IBLA 159 (July 12, 1983)

Where BLM erroneously issues a noncompetitive over-the-counter oil and gas lease to a junior offeror, BLM's decision canceling that lease will be affirmed, since the law requires that the qualified person first making application for a lease (the senior offeror) is entitled to receive any lease which is issued.

Where, at the time of an assignment of an oil and gas lease, the official BLM records reveal that the leased lands are subject to a senior, and therefore superior, oil and gas lease offer, the assignee of the lease is not a bona fide purchaser, for it is imputed

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

to have knowledge of BLM's records which contained information adequate to raise doubt that the assigned lease was validly issued.

A. W. Butter, Jr., 74 IBLA 345 (July 28, 1983)

Where BLM has unilaterally imposed special stipulations in issuing oil and gas leases and the lessee accepts such leases without protest for 7-1/2 months, she may not thereafter "withdraw" from or relinquish such leases and recover the annual advance rentals paid therefor on the ground that she did not consent to the imposition of the special stipulations, although she might have been permitted to do so had she protested promptly.

Frances Kunkel, 75 IBLA 199 (Aug. 22, 1983)

The Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates. This authority is properly invoked to cancel a lease erroneously issued for land which is the subject of a prior contract of sale and which has thus been withdrawn from mineral leasing under the terms of the Public Land Sales Act of 1964, 43 U.S.C. §§ 1421-1427 (1976).

D. M. Yates, 76 IBLA 208 (Oct. 11, 1983)

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since canceled, and therefore should have been leased pursuant to the simultaneous oil and gas leasing system, in accordance with 43 CFR 3112.1-1.

Mike Guffey, 78 IBLA 139 (Dec. 29, 1983)

BLM must cancel a noncompetitive oil and gas lease of acquired lands where it is determined after lease issuance that the lands are situated within the boundaries of an incorporated city. Such lands are not subject to oil and gas leasing under sec. 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (Supp. V 1981).

Robert Lyon, 78 IBLA 232 (Jan. 9, 1984)

It is improper to attempt to cancel an oil and gas lease in part where it has not been shown that the lease was issued in contravention of any statutory or regulatory provision, and where an assignment of the lease has previously been submitted to BLM by a bona fide purchaser, with a request for approval.

Beverly M. Harris, Aminoil, Inc., 78 IBLA 251 (Jan. 10, 1984)

Where a noncompetitive oil and gas lease erroneously reflects a lesser mineral interest in federally owned lands than is actually held by the United States, but where the lease has not been issued in contravention of any regulatory or statutory authority, it need not be canceled, but may be amended to reflect that all of the available Federal interest in the land has, in fact, been leased.

Horace H. Alvord IV, 80 IBLA 49 (Mar. 28, 1984)

OIL AND GAS LEASES--Continued

CANCELLATION--Continued

Cancellation of a lease or portion of a lease is improper when it was not issued in violation of any statute or regulation.

John Bloyce Castle, 81 IBLA 53 (May 22, 1984)

BLM has no authority under the Mineral Leasing Act as amended by the Combined Hydrocarbon Leasing Act of 1981, 30 U.S.C. § 226(b) (1982), to issue a noncompetitive oil and gas lease for land within a designated tar sand area. A noncompetitive lease improvidently issued after the enactment of the amendment in violation of its requirements is properly canceled upon discovery of the error.

Dorothy Langley, 81 IBLA 349 (June 25, 1984)

Where an oil and gas lease has been issued for lands which have been withdrawn from the public domain by Executive Order for Indian purposes, the lease must be canceled. The Secretary of the Interior has the authority to cancel any oil and gas lease which is issued contrary to law.

Navajo Tribe of Indians, 82 IBLA 387 (Sept. 13, 1984)

BLM must cancel a noncompetitive oil and gas lease erroneously issued to a party other than the first-qualified offeror, where the lease was issued while that offeror's prior lease offer was pending on appeal before the Board and the offeror was ultimately determined to be qualified to receive a lease.

American Mineral Leasing, Inc., 83 IBLA 372 (Nov. 15, 1984)

COMMUNITIZATION AGREEMENTS

Federal lands included in a unit agreement approved pursuant to 30 CFR Part 226 or a communitization agreement approved pursuant to 43 CFR 3105.2 are treated like an individual oil and gas leasehold for the purpose of determining whether rights-of-way are required for facilities located thereon.

Right-of-Way Requirements for Gathering Lines and Other Production Facilities Located Within Oil and Gas Leaseholds, M-36921 (June 19, 1980) 87 I.D. 291

Where oil and gas lessees allege that they have entered into a communitization agreement associating the leased land with adjacent lands on which there is a producing well, but do not so show, and where the record shows that no such agreement was filed for approval with GS prior to the anniversary date of the lease in any event, the lease is not properly regarded as having been in "producing" status on the anniversary date, so that it terminates automatically by operation of law upon the lessees' failure to submit annual rental on or before this date.

Melvin A. Brown, Douglas Pickerstaff, 49 IBLA 234 (Aug. 12, 1980)

OIL AND GAS LEASES--Continued

COMMUNITIZATION AGREEMENTS--Continued

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976) and 43 CFR 3107.2-3, the evidence must show that actual drilling operations were being diligently pursued on the leasehold or for the lease under an approved cooperative or unit agreement on the last day of the lease term. Where no communitization agreement associating leased lands with a producing well on other lands is filed for approval with Geological Survey prior to the end of the primary term of the lease, and where Survey, therefore, has no opportunity to approve such an agreement prior to this time, the lease does not qualify for an extension under 43 CFR 3107.2-3.

Devon Corp., 57 IBLA 131 (Aug. 25, 1981)

Under regulations adopted pursuant to sec. 5(a) of the Outer Continental Shelf Lands Act, both before and after its amendment in 1978, the Geological Survey can direct two lessees on a single competitive offshore gas reservoir to enter into a unit agreement if doing so is "in the interest of conservation." Survey's decision to require unitization will be affirmed where, but for unitization, one of the lessees would have been entitled to drill an additional well or wells in order to protect its correlative rights, in view of the waste of expensive, critical offshore drilling resources and the potential for adverse environmental consequences which drilling the additional well would have entailed, and in view of the fact that such additional drilling would have done nothing to increase ultimate recovery.

Where actual production figures from a jointly produced offshore gas reservoir show that one party overproduced its entitlement to gas-in-place, as determined by Geological Survey, by a factor of almost 3, and where the record contains nothing suggesting that this party engaged in drilling practices that might have unfairly increased its production, the matter will be referred for a hearing to allow that party to show that Survey's entitlement determination is incorrect.

Sun Oil Co. et al. (Appellants), Shell Oil Co. (Appellee), 67 IBLA 80 (Sept. 10, 1982)

Where no approval of a communitization agreement has been given by the Department, production of oil or gas from another lease within a state spacing unit cannot be attributed to a Federal lease on which there is no well capable of producing oil or gas prior to the expiration of the primary term of the lease, and such lease expires by operation of law at the end of its primary term.

Kennedy & Mitchell, Inc., 68 IBLA 80 (Oct. 21, 1982)

Production of oil or gas pursuant to an approved communitization agreement is regarded as production for each lease committed to the agreement. A lease does not qualify for extension by reason of production at the end of its primary term where a communitization agreement associating the leased lands with a producing well on other lands is not filed with Geological Survey until after expiration of the lease.

Marathon Oil Co., 68 IBLA 191 (Nov. 9, 1982)

"Paying quantities." For the purposes of a communitization agreement providing for the extension of such agreement so long as communitized substances are produced in paying quantities, "paying quantities" requires production sufficient for the lessee to

OIL AND GAS LEASES--Continued

COMMUNITIZATION AGREEMENTS--Continued

recover the costs of operation and marketing but not to recoup drilling costs.

Hoover & Bracken Energies, Inc., 71 IBLA 220 (Mar. 17, 1983)

Under 30 U.S.C. § 188(b) (1976), an oil and gas lease terminates automatically by operation of law for failure to pay the annual rental timely. Automatic termination applies to the regular, annual rental payment, the necessity for which a lessee has continuous notice, and does not apply where a lessee has no way of knowing that the obligation has accrued. Where, on the anniversary date of a lease, there is no well capable of production in paying quantities on a lease, the lease is not committed to an approved communitization agreement, and the lessee has not been notified of any change in the rental status of the lease, the lessee is held to have known that rental was due and the lease automatically terminated for failure to pay the rental timely.

Sanson Resources Co., 71 IBLA 224 (Mar. 17, 1983)

Where a lessee represents to BLM that 40 acres of a 48.98 acre lease has been committed to a producing unit and inquires about the rental amount next due, BLM's answer that rental need be paid only on the 8.98 acres outside the unit is correct. But if, in fact, the other 40 acres has not been committed to such a unit on the anniversary date of the lease, the payment of only the fractional rental will result in the automatic termination of the lease.

Funk Exploration, 73 IBLA 111 (May 23, 1983)

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976) and 43 CFR 3107.2-3, the evidence must show that actual drilling operations were being diligently pursued on the leasehold or for the lease under an approved cooperative or unit agreement on the last day of the lease. Where on appeal such evidence is provided, the decision holding that the lease has expired will be reversed.

Husky Oil Co., 76 IBLA 380 (Oct. 25, 1983)

In the absence of an approved communitization agreement involving a Federal oil and gas lease, production from fee land within a state spacing unit cannot be attributed pro rata to Federal oil and gas leases within the spacing unit, and where there is no drilling operation, producing well or well capable of production of oil or gas in paying quantities on such Federal lease, the lease expires at the end of its primary term.

Union Oil Co. of California, 77 IBLA 32 (Oct. 31, 1983)

Under recent amendments to 43 CFR 3105.2-3 (published at 48 FR 33670 (July 22, 1983)), a communitization agreement affecting a Federal oil and gas lease may be approved retroactively and serve to extend a Federal lease, even when the agreement is not submitted to the Department until after the expiration date of the Federal lease, so long as the communitization agreement has been executed prior to the expiration date.

Bruce Anderson, 80 IBLA 286 (May 4, 1984) 91 I.D. 203

OIL AND GAS LEASES--Continued

COMPENSATORY ROYALTY

Neither the standard lease terms nor the applicable regulation, 30 CFR 221.21(c), require the payment of compensatory royalty for drainage from Government lands, where it can be established that a prudent operator would not drill an offsetting well.

Where a lessee, after due notice, fails to submit evidence that a requested offset well was unneeded, and also fails to timely complete the well, compensatory royalty is properly assessed, regardless whether the well which is eventually drilled is "a paying well."

Before a lessee may plead impossibility of performance as a bar to fulfillment of a contractual requirement, the lessee must show that no alternate method of compliance is possible. Where possible alternatives exist, a lessee is not excused from a contractual obligation merely because one alternative is not feasible.

Compensatory royalties for failure to complete a protective well are properly assessed after a reasonable time from notice of drainage by the lessor until an offset well has been completed.

Nola Grace Ptasynski, 63 IBLA 240 (Apr. 19, 1982) 89 I.D. 208

A lease may be extended beyond its primary term under 43 CFR 3107.9-1 (1982) only where the lessee has been notified that the Department has made an initial determination that drainage is occurring and the lessee has informed the Department, prior to the lease expiration date, of his willingness to tender compensatory royalty in accordance with its determination or has actually tendered such royalty in response to an assessment before the lease expiration date.

Bruce Anderson, 80 IBLA 286 (May 4, 1984) 91 I.D. 203

COMPETITIVE LEASES

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

The Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

John C. Efird, 45 IBLA 84 (Jan. 17, 1980)

H. S. Mack, 45 IBLA 99 (Jan. 17, 1980)

Bernard Gencorelli, 46 IBLA 53 (Feb. 20, 1980)

Harry Ptasynski, 48 IBLA 246 (June 17, 1980)

Harold R. Leeds, 60 IBLA 383 (Dec. 23, 1981)

Where a bidder submits with his bid one-fifth of the amount due in the form of a personal money order payable to the Bureau of Land Management pursuant to the provisions of the applicable regulation, 43 CFR 3120.1-4(b), and statements on the sale notice allowing money orders, his bid may not be rejected for not being in conformity with the intent of the regulations.

Ross L. Kingman, 48 IBLA 239 (June 17, 1980)

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

The Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis in evaluating a lease bid.

Where, following remand because the record fails to disclose a rational basis for rejection of the high bid at a competitive oil and gas sale, the Geological Survey supplies the factual basis and a reasoned analysis supporting the conclusion that the bid is inadequate, BLM may so conclude and properly reject the bid.

Ojai Oil Co., 49 IBLA 33 (July 21, 1980)

Although under the Departmental regulations a competitive bidder in an oil and gas lease sale, must, where there is another party in interest, submit the signed statements required by 43 CFR 3102.7, failure to comply with the regulation does not require rejection of the bid. This result follows because in noncompetitive offerings the critical element is determining the first qualified offeror. For competitive bidding, the amount of the bid replaces priority of filing as the dominant factor.

Black Hawk Resources Corp., 50 IBLA 399 (Oct. 24, 1980)
87 I.D. 497

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where BLM incorporates by reference a Geological Survey memorandum into its decision rejecting a competitive oil and gas lease offer and where such memorandum was the principal basis on which the decision rejecting the offer was made, the memorandum must be made available to the offeror.

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose the factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum which merely describes the process by which the Geological Survey determines the presale value for a parcel and states the resulting value without revealing the underlying facts is not sufficient to support a bid's rejection.

Southern Union Exploration Co., 51 IBLA 89 (Nov. 5, 1980)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

The Geological Survey is the Secretary's technical expert in matters concerning geological evaluation of tracts of land offered at a sale of competitive oil and

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

gas leases and the Secretary is entitled to rely on its reasoned analysis.

Where an uplands competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose sufficient justification for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid.

Southern Union Exploration Co., 51 IBLA 149 (Nov. 26, 1980)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where the Bureau of Land Management rejects a competitive oil and gas lease offer as too low and provides no factual explanation to the offeror and where it appears from the record that the decision was not based on a reasoned evaluation of the facts, the offeror is entitled to readjudication of the bid. The case will be remanded to BLM for readjudication where subsequent justification for the rejection submitted to the Board of Land Appeals is insufficient to permit reevaluation of the bid by the Board on appeal.

Yates Petroleum Corp., 51 IBLA 181 (Dec. 2, 1980)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Where a high bid tendered at a competitive oil and gas lease sale, not clearly spurious or irresponsible, is rejected solely on the basis of a conclusory statement by the Geological Survey that the bid was inadequate and no substantial factual basis for that conclusion appears in the record, the decision will be set aside and the case remanded for compilation of a proper record and readjudication of the bid.

Amoco Production Co., 53 IBLA 72 (Mar. 2, 1981)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Southern Union Exploration Co., 54 IBLA 59 (Apr. 9, 1981)

Billy Krumbein, 75 IBLA 216 (Aug. 23, 1983)

Where the Bureau of Land Management (BLM) has offered lands for competitive oil and gas lease sale, and on appeal the high bidder presents evidence which raises a question concerning the leasability by BLM of certain of those lands because of possible conflicting ownership problems between the United States and the Choctaw, Chickasaw, and Cherokee Indian Nations, the

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

sale shall be voided and the high bidder's bonus bid deposit returned.

Sanson Resource Co., 55 IBLA 51 (May 29, 1981)

Although under the Departmental regulations a competitive bidder in an oil and gas lease sale must certify as to the acreage limitations and must submit a statement of citizenship or of corporate qualifications under 43 CFR 3120.1-4, failure to comply with the regulations does not require rejection of the bid. In competitive lease offers, where price rather than priority of filing is the primary criterion, certain deviations from mandatory requirements are curable defects.

Eurafrep, Inc., 55 IBLA 275 (June 25, 1981)

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

E. W. Priest, Michael Randuca, 55 IBLA 398 (June 30, 1981)

Maria C. Cayley, John J. Cayley, 61 IBLA 205 (Jan. 26, 1982)

Failure of the high bidder at a competitive oil and gas lease sale to execute a lease results in forfeiture of the deposit submitted with the high bid. Refund of the deposit because offeror elects after the sale to withdraw his offer is not allowed.

Howell Spear, 56 IBLA 151 (July 20, 1981)

A personal check is not an acceptable form of remittance under 43 CFR 3120.1-4(b) requiring a successful bidder to submit one-fifth of the amount bid as a deposit and must result in rejection of the competitive bid.

Belco Petroleum Corp., 57 IBLA 3 (Aug. 5, 1981)

Where a competitive, fractional interest, oil and gas lease is issued with conflicting and confusing rental provisions recited in the lease terms and in an attachment to the lease, a deficient rental payment by the lessee in reasonable reliance on the section providing for rental based upon the pro rata fractional interest of the United States will be considered justified so as to qualify the terminated lease for reinstatement.

Texas Oil and Gas Corp., 58 IBLA 175 (Sept. 28, 1981) 88 I.D. 879

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

The Department of the Interior is not required under the Freedom of Information Act to release its presale evaluation of parcels prior to the acceptance of competitive oil and gas lease bids.

The Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

William C. Walsh, 60 IBLA 248 (Dec. 4, 1981)

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 89 I.D. 82 (Feb. 26, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

James M. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

Oil and gas leases may be acquired and held only by citizens of the United States, associations of citizens (including partnerships), corporations, and municipalities. The Mineral Leasing Act does not prohibit the creation of joint tenancies when oil and gas leases are issued. Where the two offerors are designated on a competitive oil and gas lease bid as "Turner C. Smith, Jr. and Signe D. Smith, husband and wife, as Joint Tenants, DBA Turner Smith & Associates" and the bid is signed by each person individually, the bid is acceptable in that form since it is possible to determine the full names of the offerors.

Although, under the Departmental regulations in effect at the time of the sale, a competitive bidder in an oil and gas lease sale, where there are other parties in interest, was required to submit the signed statements required by 43 CFR 3102.2-7 (1981), failure to comply with the regulation does not require rejection of the bid. Whereas, in noncompetitive offerings, the critical element is determining the first qualified

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

offeror, in competitive bidding, the amount of the bid replaces priority of filing as the dominant factor.

Turner C. Smith, Jr., Signe P. Smith, 66 IBLA 1 (July 23, 1982) 89 I.D. 386

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

Where the high bidder for a competitive oil and gas lease presents evidence on appeal that its bid is not spurious or unreasonable and Geological Survey fails to provide a reasoned explanation in support of BLM's decision to reject the bid as inadequate, the decision will set aside and the case remanded for compilation of a more complete record and readjudication of the bid.

Harris-Headrick, 66 IBLA 84 (July 29, 1982)

Where a unit agreement approved by the Department provides that where a leased tract committed to the unit agreement is relinquished, unless the tract is included in a new lease within 6 months thereafter, the fee owner of the tract is deemed to have waived the right to lease such lands within a participating area in the unit and to have agreed, in consideration of compensation provided by the unit agreement, that operations under the unit agreement in the participating area shall not be affected by the relinquishment. The United States is considered to be the "fee owner" of unleased public domain in the context of the unit agreement.

Belco Development Corp., 66 IBLA 134 (Aug. 10, 1982)

Where the notice of a competitive sale of oil and gas leases clearly provided that the leases would be subject to a "No Surface Occupancy" stipulation, by making a bid for the indicated parcel, the bidder was bound to accept the stipulation.

Where, through inadvertence, there was failure to include the "No Surface Occupancy" stipulation recited in the sale notice with the executed lease, BLM is not

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

estopped to require compliance with the omitted stipulation when the omission is discovered after issuance of the lease.

Anadarko Production Co., 66 IBLA 174 (Aug. 12, 1982)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Where the high bid in a competitive oil and gas lease sale is rejected as inadequate and on appeal the bidder raises considerable doubt whether the bid is, in fact, inadequate, the decision rejecting the bid may be set aside and the case remanded to BLM for reconsideration of the bid.

Vierson & Cochran, 67 IBLA 1 (Sept. 1, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Minerals Management Service is the Secretary's technical expert in matters concerning geologic evaluations of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

L. B. Blake, 67 IBLA 103 (Sept. 15, 1982)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Stanley E. Davis, 67 IBLA 348 (Oct. 5, 1982)

Read & Stevens, Inc., 75 IBLA 121 (Aug. 15, 1983)

Clarence Sherman, 82 IBLA 64 (July 12, 1984)

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Minerals Management Service is the Secretary's technical expert in matters concerning geological evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

The bids received at a sale of competitive oil and gas leases on any parcel do not necessarily represent an accurate test of fair market value, as bidders may consider other factors in making their bids.

Mary E. Gonzales, 67 IBLA 351 (Oct. 5, 1982)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where competitive oil and gas lease high bids are not clearly spurious or unreasonable on their face and the record fails to disclose sufficient factual basis for the conclusion that the bids are inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bids. A justification memorandum that does not reveal the estimated minimum values for the parcels and the factual data on which the estimates were based is not sufficient to support rejection of the high bids for the parcels.

M. Robert Pegleg, 68 IBLA 231 (Nov. 16, 1982)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and the factual data on which the estimate was based is not sufficient to support rejection of the high bid for the parcel.

Snyder Oil Co., 69 IBLA 259 (Dec. 21, 1982)

Petrovest, Inc., 71 IBLA 250 (Mar. 21, 1983)

TXO Production Corp., 73 IBLA 258 (June 7, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-98, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

Dorothy Langley, 70 IBLA 324 (Jan. 31, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

The Minerals Management Service is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

Read & Stevens, Inc., 70 IBLA 377 (Feb. 8, 1983)

A decision rejecting the high bid in a competitive oil and gas lease sale as inadequate is properly set aside and the case remanded for reconsideration of the bid where the record on appeal discloses that the Government's presale bid evaluation for the parcel in question was based on erroneous computations.

Stephen M. Rees, Alice Rees, 71 IBLA 122 (Mar. 7, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

The Minerals Management Service is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

The bids received at a sale of competitive oil and gas leases on any parcel do not necessarily represent an accurate test of fair market value, as bidders may consider other factors in making their bids.

Harvey E. Yates Co., 71 IBLA 134 (Mar. 9, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where the high bid in a competitive oil and gas lease sale is rejected as inadequate, and on appeal the bidder raises considerable doubt whether the bid is, in fact, inadequate, and the record fails to disclose a sufficient factual basis for the conclusion of inadequacy, the decision rejecting the bid will be set aside and the case remanded to BLM for reconsideration of the bid.

Amoco Production Co. et al., 71 IBLA 241 (Mar. 21, 1983)

Exxon Corp., 73 IBLA 176 (May 26, 1983)

Ronald C. Agee, 73 IBLA 340 (June 10, 1983)

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. BLM must reject a simultaneous, noncompetitive application where, before issuance of the lease, the parcel won in the drawing is included in a special tar sand area leaseable only through competitive bidding pursuant to the Combined Hydrocarbon Leasing Act of 1981.

F. C. Winkler, 71 IBLA 328 (Mar. 23, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Where the high bid in a competitive oil and gas lease sale is rejected as inadequate and on appeal the bidder raises considerable doubt whether the bid is, in fact, inadequate, the decision rejecting the bid may be set aside and the case remanded to BLM for reconsideration of the bid.

Larry White, 72 IBLA 242 (Apr. 27, 1983)

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and the factual data on which the estimate was based is not sufficient to support rejection of the high bid for the parcel.

Mortex Gas & Oil Co., 72 IBLA 379 (May 4, 1983)

Davis & Smith, Ltd., 73 IBLA 22 (May 9, 1983)

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and sufficient factual data cannot support rejection of the high bid for the parcel.

Read & Stevens, Inc., 72 IBLA 390 (May 5, 1983)

Glen M. Hedge, 73 IBLA 377 (June 15, 1983)

Read & Stevens, Inc., 75 IBLA 349 (Aug. 31, 1983)

Viking Resources Corp., 77 IBLA 57 (Nov. 7, 1983)

Southern Union Exploration Co., 79 IBLA 225 (Feb. 29, 1984)

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to it. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981. The fact that appellant filed its offer before the enactment of the Combined Hydrocarbon Leasing Act and BLM delayed in acting on the offer until after the effective date of the Combined Hydrocarbon Leasing Act does not entitle appellant to a lease.

CAF Co., 73 IBLA 203 (May 27, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Minerals Management Service is the Secretary's technical expert in matters concerning geological evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis. However, when the Bureau of Land Management relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision.

The bids received at a sale of competitive oil and gas leases on any parcel do not necessarily represent an accurate test of fair market value, as bidders may consider other factors in making their bids.

Edward L. Johnson, 73 IBLA 253 (June 2, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Minerals Management Service was the Secretary's technical expert in matters concerning geological evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary was entitled to rely on its reasoned analysis. However, when the Bureau of Land Management relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision.

Where the high bid in a competitive oil and gas lease sale is rejected as inadequate and on appeal the bidder raises considerable doubt whether the bid is, in fact, inadequate, the decision rejecting the bid may be set aside and the case remanded to BLM for reconsideration.

Ambra Oil & Gas Co., 75 IBLA 11 (Aug. 2, 1983)

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

Where a high bid for a competitive oil and gas lease is rejected as being too low, and where, on appeal, substantial questions of fact are raised concerning the methodology used by the Bureau of Land Management in determining the minimum acceptable value for a parcel of land offered at a competitive oil and gas lease sale, the matter may be referred for a hearing to allow appellant an opportunity to show that the valuation determination was incorrect.

Milton L. Morrison, 75 IBLA 107 (Aug. 11, 1983)

Harold Green, 75 IBLA 288 (Aug. 26, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

The Bureau of Land Management acts as the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

Suzanne Walsh, 75 IBLA 247 (Aug. 24, 1983)

Contention by appellant that the agency generally conducted a competitive oil and gas lease sale so as to deprive appellant of information needed to compile a reasonable competitive bid is inadequate to support an appeal where it fails to specify how any agency conduct complained of operated to appellant's detriment or how appellant is entitled to relief claimed.

B. H. Northcutt, 75 IBLA 305 (Aug. 30, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid for a competitive oil and gas lease in the National Petroleum Reserve--Alaska--because it is less than fair market value where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where the high bid for a competitive oil and gas lease sale in the National Petroleum Reserve--Alaska--is rejected as inadequate, and on appeal the bidder raises considerable doubt whether the bid is, in fact, inadequate, and the record fails to disclose a sufficient factual basis for the conclusion of inadequacy, the decision rejecting the bid will be set aside and the case remanded to BLM for reconsideration of the bid.

ARCO Alaska, Inc., 78 IBLA 115 (Dec. 22, 1983)

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to it. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a favorable petroleum geological province, which is leaseable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as modified by the Alaska National Interest Lands Conservation Act.

E. B. Joiner, 78 IBLA 323 (Jan. 24, 1984)

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to ascertain the existence of a rational basis for the decision if disputed on appeal.

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a rational basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and sufficient factual data to establish a rational basis therefor cannot support rejection of the high bid for the parcel.

Southern Union Exploration Co., 79 IBLA 90 (Feb. 16, 1984)

The Department is entitled to rely on the reasoned analysis of its technical experts in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. Where a decision to reject a bid has been made in a careful and systematic manner utilizing the advice of such experts, the decision will not be reversed, even though the determination may be subject to reasonable differences of opinion, notwithstanding any immaterial defects in BLM's analysis, where an appellant fails to meet its affirmative obligation to establish that its bid is a reasonable reflection of fair market value.

Viking Resources Corp., 80 IBLA 245 (Apr. 30, 1984)

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A record that does not reveal the estimated minimum acceptable value for a parcel and sufficient factual data indicating the derivation of that value cannot support rejection of the high bid for the parcel.

Larry White, 81 IBLA 19 (May 15, 1984)

R. T. Nakaoka, 81 IBLA 197 (June 1, 1984)

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid.

Mesa Petroleum Co., 81 IBLA 194 (June 1, 1984)

BLM has no authority under the Mineral Leasing Act as amended by the Combined Hydrocarbon Leasing Act of 1981, 30 U.S.C. § 226(b) (1982), to issue a noncompetitive oil and gas lease for land within a designated tar sand area. A noncompetitive lease improvidently issued after the enactment of the amendment in violation of

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

its requirements is properly canceled upon discovery of the error.

Dorothy Langley, 81 IBLA 349 (June 25, 1984)

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale where the record shows a rational basis for the conclusion that the amount of the bid was inadequate.

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A record that does not reveal the presale evaluation for a parcel and sufficient factual data indicating the derivation of that value cannot support rejection of the high bid for the parcel.

Kevin J. Bliss et al., 82 IBLA 31 (July 6, 1984)

Where a competitive oil and gas lease imposes additional stipulations without prior notice to the offeror, the offeror may accept or reject the lease containing the additional stipulations. The imposition of additional stipulations without notice to the offeror defers the 15-day period in 43 CFR 3132.5(e) until the offeror has notice of the stipulations to be included in the lease.

Texaco U.S.A. et al., 82 IBLA 61 (July 11, 1984)

Shell Oil Co. et al., 83 IBLA 22 (Sept. 21, 1984)

A BLM decision rejecting a high bid for a parcel of land in a competitive oil and gas lease sale as inadequate will be affirmed where appellant fails to overcome the Government's prima facie showing of the correctness of its estimated minimum acceptable fair market value for the parcel and to establish that appellant's bid reasonably reflects fair market value.

The Westlands Co., 82 IBLA 129 (July 25, 1984)

The Westlands Co., 83 IBLA 43 (Sept. 24, 1984)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to verify a rational basis for the decision if disputed on appeal.

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a factual basis sufficient to support the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid.

Craig Folsom, 82 IBLA 294 (Aug. 31, 1984)

OIL AND GAS LEASES--Continued

COMPETITIVE LEASES--Continued

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid.

Michael Shearn, 83 IBLA 53 (Sept. 24, 1984)

Suzanne Walsh, 83 IBLA 274 (Oct. 25, 1984)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

The Department is entitled to rely on the reasoned analysis of its technical experts in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. Where a decision to reject a bid has been made in a careful and systematic manner utilizing the advice of such experts, the decision will not be reversed, even though the determination may be subject to reasonable differences of opinion, where an appellant fails to meet its affirmative obligation to establish that its bid is a reasonable reflection of fair market value.

Ronald C. Agel, 83 IBLA 76 (Sept. 28, 1984)

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale where the record shows a rational basis for the conclusion that the amount of the bid was inadequate.

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A record that does not reveal the presale evaluation for a parcel and sufficient supporting data to establish its prima facie correctness cannot support rejection of the high bid for the parcel.

Suzanne Walsh, 83 IBLA 187 (Oct. 16, 1984)

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A record that does not reveal the estimated minimum acceptable value for a parcel and sufficient factual data to establish its prima facie correctness cannot support rejection of the high bid for the parcel.

Southland Royalty Co., 83 IBLA 302 (Oct. 30, 1984)

OIL AND GAS LEASES--Continued

CONSENT OF AGENCY

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1970), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

Arthur E. Reinhart and Irwin Rubenstein, 46 IBLA 27 (Feb. 20, 1980)

Before an oil and gas lease for Federal acquired lands can issue, the consent of the agency administering the surface is required by statute, and an applicant for such a lease must execute any special stipulations required by the administering agency as a condition to the giving of its consent. In such cases the Department of the Interior has no jurisdiction to waive execution of the special stipulations or to alter the terms thereof.

Thomas Connell, 46 IBLA 331 (Apr. 4, 1980)

Where public lands are withdrawn for use by the National Guard, the refusal of an offer to lease the land for oil and gas must be supported by cogent and specific reasons in order to avoid a determination that the action is arbitrary, capricious, or an abuse of discretion.

Howard L. Ross, 49 IBLA 87 (July 22, 1980)

Where public domain land is withdrawn or reserved for administration by another agency for a particular purpose, BLM should properly consider the recommendations of the surface management agency regarding lease issuance and any required stipulations, but this does not relieve BLM of the need to make an independent determination supported by the record of whether and under what conditions a lease may issue in the public interest consistent with multiple use values.

Esdras K. Hartley, 54 IBLA 38 (Apr. 9, 1981) 88 I.D. 437

Western Interstate Energy, Inc., 71 IBLA 19 (Feb. 15, 1983)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease offer be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease.

Dennis Harris, 55 IBLA 280 (June 25, 1981)

Rachalk Production, Inc., 64 IBLA 4 (May 3, 1982)

The recommendations of the Forest Service are important in determining whether or not an oil and gas lease should issue for public lands but are not conclusive. Ultimately, the Secretary of the Interior is entrusted with the responsibility of determining whether or not to issue a lease.

Natural Gas Corp. of California, 59 IBLA 348 (Nov. 5, 1981)

OIL AND GAS LEASES--Continued

CONSENT OF AGENCY--Continued

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in an oil and gas lease offer be obtained prior to the issuance of a lease for such land. Absent such consent, the Department of the Interior is without authority to issue a lease.

Altex Oil Corp., Peery Energy, Inc., 66 IBLA 307 (Aug. 24, 1982)

Joseph C. Hanna, 71 IBLA 187 (Mar. 10, 1983)

Florence Wentworth, 72 IBLA 248 (Apr. 27, 1983)

Robert G. Lynn, 72 IBLA 355 (Apr. 29, 1983)

Altex Oil Corp., 73 IBLA 73 (May 17, 1983)

Joe E. Shelton, 73 IBLA 250 (June 2, 1983)

Frederick L. Smith, 78 IBLA 345 (Jan. 25, 1984)

Under sec. 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1976), the Secretary of the Interior is without authority to waive compliance with a condition imposed by the agency having jurisdiction over the acquired lands as a prerequisite to giving its consent to issuance of a noncompetitive oil and gas lease. Moreover, the Department has no authority to require that the agency provide a rational justification for imposition of the condition.

Amoco Production Co., 69 IBLA 279 (Dec. 21, 1982)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over the acquired land described in the lease offers be obtained prior to the issuance of leases for such land. Where the Corps of Engineers does not consent to lease lands noncompetitively, but indicates a willingness to lease competitively, the Department of the Interior is without authority to lease the lands noncompetitively.

Sam R. Jones, 74 IBLA 242 (July 19, 1983)

The Act establishing the Flaming Gorge National Recreation Area requires that any oil and gas lease or permit be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe. 16 U.S.C. § 460v-4 (1976). Where BLM conditions the grant of a lease upon stipulations required by the Forest Service, the Department of the Interior has no authority to waive compliance with the Act.

Thomas F. Stroock, 77 IBLA 137 (Nov. 15, 1983)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (Supp. V 1981), authorizes the Secretary of the Interior to lease all deposits of oil and gas, inter alia, which are owned by the United States and which are within the lands acquired by the United States. Where the mineral interest in lands sought by appellant is owned by the State of Colorado, BLM may not issue a lease pursuant to 30 U.S.C. § 352, even though the United States owns the surface. BLM's management of the public lands pursuant to sec. 302 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732 (1976), does not extend to lands whose mineral estate is owned by

OIL AND GAS LEASES--Continued

CONSENT OF AGENCY--Continued

the State of Colorado and whose surface is managed by the Army.

Donald Ernest Wilkens, 77 IBLA 144 (Nov. 15, 1983)

The Secretary of the Interior may require an oil and gas lease offeror to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease for land located in a national forest. Where on appeal an offeror registers objections concerning such stipulations, and the Forest Service subsequently clarifies the nature of the stipulations and the offeror raises no further complaints, the imposition of the stipulation will be upheld.

James M. Chudnow, Laurent A. Giesbert, 78 IBLA 317 (Jan. 24, 1984)

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in a lease application be obtained prior to the issuance of a lease for such land. Absent consent, the Department of the Interior is without authority to issue a lease. Where an offeror seeks to lease lands under the jurisdiction of the Department of the Navy, and that Department refuses consent, no lease may issue.

Union Oil Co. of California, Stephen E. Bubala, 79 IBLA 86 (Feb. 16, 1984)

CONTRACTS FOR SALE OF ROYALTY OIL OR GAS

When the point of delivery of OCS royalty oil produced under a sec. 8 lease, 43 U.S.C. § 1337 (1976), as amended, 43 U.S.C. § 1337 (Supp. II 1978), is on or immediately adjacent to the leased area, the lessee is not entitled to reimbursement for costs incurred in transporting the royalty oil to such delivery point.

JFD, Inc., 49 IBLA 337 (Aug. 25, 1980)

Where consideration of an application to participate in the Government royalty oil sales program filed after the deadline could interfere with the rights of other applicants and would unduly interfere with the orderly conduct of the program, the application is properly rejected.

Allied Materials Corp., 50 IBLA 353 (Oct. 16, 1980)

An application to purchase offshore royalty oil, submitted in response to a notice published in the Federal Register on Jan. 14, 1980, is properly rejected where the applicant's runs to stills per calendar day exceed the applicant's refining capacity per calendar day.

Quitman Refining Co., 57 IBLA 53 (Aug. 17, 1981)

An application to purchase offshore royalty oil, submitted in response to a notice published in the Federal Register on Jan. 14, 1980, is properly rejected

OIL AND GAS LEASES--Continued

CONTRACTS FOR SALE OF ROYALTY OIL OR GAS--Continued

where the refinery capacity presented in the application was not certified by the Economic Regulatory Administration as operable on or before Apr. 1, 1980, as required by the notice of sale.

Isthmus Refining Corp., 60 IBLA 331 (Dec. 22, 1981)

Limitation of a small refiner's allocation in a sale of Outer Continental Shelf royalty oil under sec. 27(b)(2) of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. § 1353(b)(2) (Supp. II 1978), to excess refinery capacity, as determined by subtracting the volume of oil actually refined in a representative period from the applicant's refinery capacity, is both reasonable and consistent with the statutory authority.

Mid-America Refining Co., 61 IBLA 84 (Dec. 31, 1981)

DESCRIPTION OF LAND

If acquired lands sought for oil and gas leasing have been surveyed under the rectangular system of public land surveys, and their description can be conformed to that system, the lands must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner.

The responsibility of furnishing a proper and adequate description of lands in an oil and gas lease offer is upon the offeror, and any difficulties in ascertaining a proper metes and bounds description do not preclude the requirement that such lands be correctly described.

A description of land applied for in an oil and gas lease offer for acquired lands is proper so long as it meets the requirements of the applicable regulation whether it includes some land not available for lease or omits some that is.

Where an offer for a noncompetitive oil and gas lease for acquired lands contains a defective description of the lands sought and prior to lease issuance a second offer is filed correctly describing the same lands, the lease must be cancelled to the extent of the conflict in the two offers.

Sam P. Jones, 45 IBLA 208 (Jan. 30, 1980)

Where a regulation allows land description by legal subdivision, section, township and range, by metes and bounds, and by "tract acquisition numbers," but is insufficiently clear to allow a determination as to when one, rather than another of these methods of description should be used, an oil and gas lease offeror who has described the lands sought by tract acquisition numbers will not be held to have lost his statutory preference right for failure to comply with the regulation if the description afforded is accurate for the purpose.

Walter R. Wilson, Jr., 55 IBLA 96 (June 1, 1981)

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND--Continued

The description of an entire section of surveyed public land modified by the words "[a]ll available (incl. Lots 19 through 33)" is an offer to lease all of that section, subject to availability for leasing.

James M. Chudnow, Laurent A. Giesbert, 62 IBLA 19 (Feb. 24, 1982)

An over-the-counter noncompetitive oil and gas lease offer for acquired lands is properly rejected where no such lands exist as described. The filing upon appeal of an unsigned, undated public domain offer form bearing a corrected land description constitutes neither an offer nor an amendment, and thus it cannot be accepted by BLM for either purpose.

Fayette I. Bristol, 62 IBLA 317 (Mar. 22, 1982)

Where an oil and gas lease offer includes land described as all of a particular section excluding fee land (Sec. ___: ALL (Excl. fee)), the parcel description does not meet the requirements of 43 CFR 3101.1-4(a). The offer is defective as to that parcel and subject to rejection to that extent.

Milan S. Papulak, 63 IBLA 16 (Mar. 26, 1982)

An oil and gas lease offer which on its face describes the land as being in R. 34 W., but on a supplemental attachment describes land in R. 24 W., is unacceptably ambiguous. BLM personnel are without authority to alter, modify, or correct errors in land descriptions or to so construe ambiguities in lease offers as to qualify an unacceptable offer.

Bob G. Howell, 63 IBLA 156 (Apr. 6, 1982)

Where 43 CFR 3101.2-3(b)(3) allows the use of the acquisition number assigned by the acquiring agency to identify the tract sought to be leased, as shown on a map accompanying the offer, an acquired lands oil and gas lease offer with such tract description and accompanied by such map is acceptable.

Moran Exploration, Inc., 63 IBLA 392 (Apr. 30, 1982)

"Smallest legal subdivision." In general, it is proper to reject an oil and gas lease offer to the extent that it includes a parcel of land smaller than the smallest legal subdivision, i.e., a quarter-quarter section, except where the offer is for a lot in a fractional section. However, an offer which describes land in parcels smaller than a quarter-quarter section may be accepted if it includes all of the land available for leasing within a quarter-quarter section.

Elliott A. Riggs, 65 IBLA 22 (June 21, 1982)

Where the lessees of a competitive oil and gas lease suggest that a revised description of the leased land, based on an approved resurvey of the township, shifts their leasehold 2,292.18 feet farther west of the southeast section corner than under the original survey, but the new status plat reflects instead that the southeast section corner has simply been relocated 2,292.18 feet farther to the east, the Bureau of Land Management's revised description will be affirmed

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND--Continued

because no change has been made in the land actually covered by the lease.

Max A. Krey et al., 65 IBLA 192 (June 29, 1982)

Where an oil and gas lease offer includes all of certain sections excluding certain patented parcels which are unavailable for leasing, the parcel description by patent number are sufficiently precise and unambiguous to meet the requirements of 43 CFR 3101.1-4(a).

Leon Jeffcoat et al., 66 IBLA 80 (July 29, 1982)

Where BLM issues an oil and gas lease pursuant to an oil and gas lease offer which includes a land description which meets the requirements of 43 CFR 3101.1-4(a), the offer is not defective and BLM may properly reject a subsequent offer for the leased lands.

Irwin Wall, 66 IBLA 130 (Aug. 10, 1982)

An oil and gas lease offer for surveyed land or land within a protracted survey must describe the land by legal subdivision, section, township, and range, even though irregular parcels of land within that subdivision may not be available for leasing. The addition of phrases such as "all available" or "less patents" to such a description does not make the description improper. However, where the excepted land is not specifically identified in the offer, the offeror is required to submit the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to the patented acreage, and rejection of the offer is required where the offeror fails to submit sufficient rental within the limits of curable deficiency.

James M. Chudnow, John L. Messinger, 67 IBLA 76 (Sept. 10, 1982)

James M. Chudnow, John L. Messinger, 68 IBLA 228 (Nov. 15, 1982)

James M. Chudnow, John L. Messinger, 69 IBLA 157 (Dec. 13, 1982)

Under Departmental regulation 43 CFR 3101.1-4(d), an oil and gas lease offer for land within a protracted survey must include only entire sections of land except where only a portion of a protracted section is available for lease, in which event the offeror must describe all of the land available within that section. An oil and gas lease offer may not be construed as an offer for all available lands within a protracted section where the offer describes the section as expressly excluding land within a specifically numbered mineral survey which remains available for leasing, and such an offer must be rejected.

Departmental regulation 43 CFR 3101.1-4(d) does not permit the splitting of protracted sections between two offers, even if they are filed at the same time.

Hrubetz Oil Co., 67 IBLA 109 (Sept. 15, 1982)

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND--Continued

It is proper to reject an oil and gas lease submitted for less than an entire tract of acquired land, not surveyed under the rectangular system of public land surveys, where the boundary of the tract is not described by course and distance between the successive angle points of the boundary of the tract. Where there is an exclusion of an area within the boundary of the tract, the exclusion must likewise be described by course and distance between its angle points.

Chevron, U.S.A., Inc., 67 IBLA 266 (Sept. 27, 1982)

Katherine C. Thouez, 69 IBLA 391 (Jan. 4, 1983)

An oil and gas lease offer for irregular parcels of acquired land within a surveyed township must be described by metes and bounds under 43 CFR 3101.2-3(a). Where offerors list lands in an offer by legal subdivision but indicate that they only desire "BSFW and FWS" acquired lands within those subdivisions including both regular and irregular parcels, the Bureau of Land Management may evaluate the offer on the basis of the total land properly described by legal subdivision. However, the offeror is required to submit the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to undesired acreage, and rejection of the offer is required where the offeror fails to submit sufficient rental within the limits of curable deficiency.

James M. Chudnow, John L. Messinger, 68 IBLA 181 (Nov. 8, 1982)

The failure to designate a meridian is not a fatal defect in the land description in an over-the-counter noncompetitive oil and gas lease offer where the state in which the land is located is governed by only one meridian.

Irvin Wall, 68 IBLA 308 (Nov. 19, 1982)

Irvin Wall, 70 IBLA 183 (Jan. 20, 1983) 90 I.D. 3

Oil and gas lease offers for surveyed lands must describe the lands by legal subdivision, section, township, and range. Indication of the county where the described land lies is an added convenience found on the offer form, and erroneous indication of the county does not render a land description fatally defective.

Irvin Wall, 68 IBLA 311 (Nov. 19, 1982)

Where 43 CFR 3101.2-3(b)(3) allows the use of the acquisition number assigned by the acquiring agency to identify the tract sought to be leased, an acquired lands oil and gas lease offer using such a description must be accompanied by a map clearly marked showing the location of the requested lands or the offer will be rejected.

Vester Songer, 69 IBLA 177 (Dec. 15, 1982)

An offer for an acquired lands oil and gas lease covering lands which have not been surveyed under the rectangular system of public land surveys must be rejected where the offer does not describe the lands by metes and bounds, giving courses and distances and a tie to a public land survey corner. Where BLM must go outside of the offer form itself to determine exactly

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND--Continued

what land the offer embraced, the offer is defective and rejected as insufficent.

James M. Chudnow et al., 70 IBLA 71 (Jan. 11, 1983)

Nothing in the applicable statutes or regulations prohibits the issuance of oil and gas leases for less than a full protracted section of Federal land.

Ida Lee Anderson, 70 IBLA 259 (Jan. 26, 1983)

It is proper to reject an acquired lands oil and gas lease offer submitted for less than an entire tract of acquired lands, not surveyed under the rectangular system of public land surveys, where the boundary of the land sought is not described by course and distance between each successive pair of angle points of the boundary of the tract.

Thomas Connell, 70 IBLA 289 (Jan. 27, 1983)

An acquired lands oil and gas lease offer is properly rejected when the metes and bounds description in the offer is stated as starting from corner 1 of tract S-18, when in actuality, the metes and bounds description originates from corner 2 of tract S-18. BLM is not required to alter, modify, or correct the metes and bounds description in an over-the-counter acquired lands oil and gas lease offer in order to resolve a disparity in the land description.

Thomas Connell 70 IBLA 292 (Jan. 27, 1983)

It is proper to reject oil and gas lease offers for less than an entire tract of acquired lands that are not surveyed under the rectangular system of public land surveys, where the desired lands are neither described in the offers by metes and bounds, as in the deed by which the United States acquired title to them, nor described by courses and distances between successive angle points, tying by course and distance into the description of the lands in the deed.

Mapco Production Co., Inc., 70 IBLA 339 (Feb. 2, 1983)

Under 43 CFR 3101.2-3(c) an offer or application for accreted lands not described in the deed to the United States, must include a description by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions appertain.

Paul C. Kohlman, Lee E. McDonald, 71 IBLA 357 (Mar. 28, 1983)

It is proper to reject an oil and gas lease offer submitted for a tract of acquired land, not surveyed under the rectangular system of public land surveys, where the boundary of the tract is not described by course and distance between the successive angle points on the boundary of the tract.

The responsibility of furnishing a proper and adequate description of lands in an oil and gas lease offer is upon the offeror, and difficulties in ascertaining a proper metes and bounds description do not

OIL AND GAS LEASES--Continued

DESCRIPTION OF LAND--Continued

preclude the requirement that such lands be correctly described.

Husky Oil Co., 74 IBLA 264 (July 25, 1983)

An oil and gas lease offer for surveyed land or land within a protracted survey must describe the land by legal subdivision, section, township, and range, even though irregular parcels of land within that subdivision may not be available for leasing. The addition of phrases such as "all available" or "less patents" to such a description does not make the description improper. Where the offeror submits the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to the patented acreage the use of the descriptive phrase "all except patents" is acceptable and the offer is properly filed with sufficient rental.

James M. Chudnow, John L. Messinger, 77 IBLA 77 (Nov. 8, 1983)

Where 43 CFR 3101.2-3(b)(3) (1982) allowed the use of the acquisition tract number assigned by the acquiring agency to identify land sought to be leased, an acquired lands oil and gas lease offer using numbers assigned by the acquiring agency and accompanied by a map on which the location of individual tracts within the administrative unit is clearly marked and labeled is acceptable.

Leon F. Scully, Jr., Paul D. Beaird, 79 IBLA 117 (Feb. 22, 1984)

Where an oil and gas lease offer for unsurveyed, acquired lands in the Monongahela National Forest is protested on the basis that the metes and bounds description of the lands sought fails to close, and the protest is dismissed because even though the description does not close, the offer is accompanied by a map clearly showing the desired lands, such dismissal is improper. Notwithstanding the inclusion of the map, a description that fails to close is a defective description which does not entitle the offeror to the award of a lease thereto.

Amoco Production Co., 81 IBLA 323 (June 19, 1984)

A description in an over-the-counter offer for the SE 1/4 SE 1/4 sec. 9, T. 3 N., R. 32 W., fifth principal meridian, less and except a 5-acre parcel that the applicant describes by a metes and bounds description tied to the nearest existing survey corner is sufficient to satisfy the regulation governing land descriptions of surveyed public domain.

Tim R. Smith, 81 IBLA 337 (June 21, 1984)

A noncompetitive acquired lands oil and gas lease offer for lands not surveyed under the rectangular system for public land surveys is properly rejected where the offeror fails to include a map, where land is included in the description which is not owned by the United States, or where the land description is inadequate.

James M. Chudnow, 82 IBLA 95 (July 19, 1984)

OIL AND GAS LEASES--Continued

DISCOVERY

The automatic termination provision of 30 U.S.C. § 188(b) (1976) is applicable to a lease whose lands formed part of a unit upon which production has at all times been maintained, but were thereafter eliminated therefrom and simultaneously segregated by reason of their inclusion in a second unit, since terminated.

Bass Enterprises Production Co., 47 IBLA 53 (Apr. 14, 1980)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

It is not the policy of this Department to redefine a known geologic structure until all sands or formations therein have been exhausted or proved barren.

Known geologic structures are of two kinds: undefined and defined. The essential difference between these structures is the formality and detail of the defined procedure which does not permit the necessary day-to-day determinations needed by the Bureau of Land Management in its current administration of leases and lease applications.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Vernon and Rita Benson, 48 IBLA 64 (May 29, 1980)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

It is not the policy of this Department to redefine a known geologic structure until all sands or formations therein have been exhausted or proved barren.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

James Muslow, Sr., 51 IBLA 19 (Oct. 28, 1980)

OIL AND GAS LEASES--Continued

DISCOVERY--Continued

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Jack J. Bender, 54 IBLA 375 (May 19, 1981) 88 I.D. 550

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear showing that the determination was improperly made, nor will the applicable rental be reduced without such showing.

Roy L. McKay, 57 IBLA 401 (Sept. 14, 1981)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Robert G. Lynn, 60 IBLA 117 (Nov. 24, 1981)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as with absolute accuracy showing the extent, in each instance, of the geologic structure producing oil and gas.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear

OIL AND GAS LEASES--Continued

DISCOVERY--Continued

and definite showing that the determination was improperly made.

Robert G. Lynn, 61 IBLA 153 (Jan. 19, 1982)

A determination by Geological Survey that lands are within a known geologic structure (KGS) of a producing oil or gas field will be reversed where appellant has demonstrated, by a clear and definite showing of error, that a permeability pinchout occurs in the lands designated as KGS and the pinchout is so situated as to overcome the presumption that lands included in appellant's oil and gas lease offer are productive.

James Muslow, Sr. (On Reconsideration), 65 IBLA 352 (July 16, 1982)

DISCRETION TO LEASE

Under sec. 17 of the Mineral Leasing Act of 1920, as amended, the Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other purposes in the public interest.

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

Carol Lee Hatch, 45 IBLA 4 (Jan. 8, 1980)

An oil and gas lease offer for minerals reserved to the United States is properly rejected where the Secretary of the Interior in a notice published in the Federal Register has declared that such minerals will not be subject to leasing.

David A. Provinse, 45 IBLA 8 (Jan. 8, 1980)

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

John C. Efird, 45 IBLA 84 (Jan. 17, 1980)

M. S. Mack, 45 IBLA 99 (Jan. 17, 1980)

Bernard Goncorelli, 46 IBLA 53 (Feb. 20, 1980)

Harry Ptasynski, 48 IBLA 246 (June 17, 1980)

William C. Welch, 60 IBLA 248 (Dec. 4, 1981)

Harold R. Leeds, 60 IBLA 383 (Dec. 23, 1981)

It is proper for the authorized officer of the Bureau of Land Management to reject an offer for an oil and gas lease for lands, the title of which is in controversy.

David A. Provinse, 45 IBLA 111 (Jan. 23, 1980)

Eldin L. R. Johnson, Marilyn Johnson, 47 IBLA 366 (May 21, 1980)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

Under sec. 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1976), the Secretary of the Interior has discretion to refuse to issue an oil and gas lease lying within the boundaries of the National Desert Wildlife Range in the interest of conservation, wildlife protection, and other purposes in the public interest.

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1976).

Dean W. Rowell, 45 IBLA 225 (Jan. 31, 1980)

Tucker & Snyder Exploration, Inc., 49 IBLA 176 (July 30, 1980)

John R. Anderson, 50 IBLA 38 (Sept. 9, 1980)

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

Tucker & Snyder Exploration, Inc., 45 IBLA 248 (Feb. 4, 1980)

John R. Anderson, 46 IBLA 123 (Feb. 29, 1980)

Ida Lee Anderson, 46 IBLA 385 (Apr. 10, 1980)

The Secretary of the Interior has the discretionary authority to refuse to lease public land for oil and gas where leasing would not be in the public interest, even though the land applied for is not withdrawn from operation of the Mineral Leasing Act. The refusal to lease must be supported by facts of record that the lease would not be in the public interest because it is incompatible with uses of the land which are worthy of preservation or would otherwise be undesirable.

W. E. Haley, 46 IBLA 151 (Mar. 19, 1980)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

The Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis in evaluating a lease bid.

Where, following remand because the record fails to disclose a rational basis for rejection of the high bid at a competitive oil and gas sale, the Geological Survey supplies the factual basis and a reasoned analysis supporting the conclusion that the bid is inadequate, BLM may so conclude and properly reject the bid.

Ojai Oil Co., 49 IBLA 33 (July 21, 1980)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

In the absence of a withdrawal of public land from mineral leasing, public lands are usually subject to leasing for oil and gas in the discretion of and under conditions imposed by the Secretary of the Interior, but lands withdrawn for use by the Department of Defense may be leased only where the Secretary of Defense, after consultation with the Secretary of the Interior, determines that such leasing is not inconsistent with the military use.

Where public lands are withdrawn for use by the National Guard, the refusal of an offer to lease the land for oil and gas must be supported by cogent and specific reasons in order to avoid a determination that the action is arbitrary, capricious, or an abuse of discretion.

Howard L. Ross, 49 IBLA 87 (July 22, 1980)

Under sec. 17 of the Mineral Leasing Act of 1920, as amended, the Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other purposes in the public interest.

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Pursuant to the regulation, land within the Lake Ilo National Wildlife Refuge is not subject to oil and gas leasing unless the lands are subject to drainage.

David A. Provinse, 49 IBLA 134 (July 28, 1980)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas upon a determination, supported by facts of record, that the leasing would not be in the public interest because it is incompatible with uses of the lands which are worthy of preservation. Where the land is being used as a habitat for endangered animals, is a natural scenic asset, and has potential recreational value, and where BLM determines that oil and gas operations would result in unavoidable adverse impact on these attributes, rejection of the lease offer will be affirmed in the absence of countervailing compelling reasons.

Carol Lee Hatch, 50 IBLA 80 (Sept. 17, 1980)

Where the Secretary of the Interior has specifically determined by formal publication of a memorandum that lands in a certain section of a national forest are to be withheld from leasing, he has exercised his plenary discretion to refuse to issue leases, and subsequent offers for affected lands are properly rejected.

James R. Learned et al., 50 IBLA 416 (Oct. 24, 1980)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. The refusal to lease should be supported by facts to demonstrate that the leasing would not be in the public interest. Mere conclusory findings, unsupported by facts, do not warrant rejection.

Tucker and Snyder Exploration Co., Inc., et al., 51 IBLA 35 (Oct. 30, 1980)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose the factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum which merely describes the process by which the Geological Survey determines the presale value for a parcel and states the resulting value without revealing the underlying facts is not sufficient to support a bid's rejection.

Southern Union Exploration Co., 51 IBLA 89 (Nov. 5, 1980)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

Southern Union Exploration Co., 51 IBLA 149 (Nov. 26, 1980)

Amoco Production Co., 53 IBLA 72 (Mar. 2, 1981)

Vierson & Cochran, 67 IBLA 1 (Sept. 1, 1982)

L. W. Blake, 67 IBLA 103 (Sept. 15, 1982)

Stanley E. Davis, 67 IBLA 348 (Oct. 5, 1982)

Mary M. Gonzales, 67 IBLA 351 (Oct. 5, 1982)

Read & Stevens, Inc., 70 IBLA 377 (Feb. 8, 1983)

Harvey E. Yates Co., 71 IBLA 134 (Mar. 9, 1983)

Larry White, 72 IBLA 242 (Apr. 27, 1983)

Edward L. Johnson, 73 IBLA 253 (June 2, 1983)

Ambra Oil & Gas Co., 75 IBLA 11 (Aug. 2, 1983)

Read & Stevens, Inc., 75 IBLA 121 (Aug. 15, 1983)

Suzanne Walsh, 75 IBLA 247 (Aug. 24, 1983)

Clarence Sherman, 82 IBLA 64 (July 12, 1984)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Yates Petroleum Corp., 51 IBLA 181 (Dec. 2, 1980)

Southern Union Exploration Co., 54 IBLA 59 (Apr. 9, 1981)

Billy Krumbein, 75 IBLA 216 (Aug. 23, 1983)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

Where title to the minerals in a tract of acquired land which is the subject of an oil and gas lease offer cannot be determined from records in the possession of the BLM, the burden is on the applicant to search the land records to ascertain the chain of title and establish the eligibility of the tract for leasing. Applicant may be required to furnish evidence from the county recorder's office in the nature of a title abstract sufficient to allow BLM to determine the status of title to the oil and gas in the tract sought for leasing. Rejection of the offer in the exercise of the Secretary's discretion over leasing is proper where an applicant declines to provide such information.

Where there is uncertainty regarding title to the oil and gas in an acquired land tract embraced in an oil and gas lease offer, and the evidence provided by the applicant does not provide a sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the BLM. However, if the applicant provides new evidence on appeal tending to show the existence of a Federal interest in the oil and gas in the tract, the case may be remanded for consideration of the new evidence.

Edward C. Sherardson, 53 IBLA 79 (Mar. 2, 1981)

The Secretary may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the Mineral Leasing Act. When the Secretary determines not to lease a certain area for oil and gas and that determination is based upon considerations of public interest, his exercise of discretion is neither arbitrary nor capricious. Where BLM rejects an isolated 15-acre tract for oil and gas because of its relatively small size, such decision will be reversed as arbitrary and capricious.

Frances M. Rodke, 53 IBLA 98 (Mar. 4, 1981)

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record does not show that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper departmental purposes, a decision requiring stipulations will be set aside and remanded for reconsideration.

James E. Sullivan, 54 IBLA 1 (Apr. 1, 1981)

James M. Chudnow, 62 IBLA 16 (Feb. 23, 1982)

A decision of BLM refusing to issue an oil and gas lease in the exercise of the discretionary authority of the Secretary of the Interior over oil and gas leasing will be affirmed where it sets forth the reasons therefore and the facts of record support the conclusion that refusal to lease is in the public interest.

Rejection of an oil and gas lease offer is a more severe measure than the most stringent stipulations and the record supporting a decision rejecting a lease offer in the public interest should ordinarily reflect consideration of whether leasing subject to clear and reasonable stipulations would adequately protect the public interest concerns of the surface management agency.

Where public domain land is withdrawn or reserved for administration by another agency for a particular purpose, BLM should properly consider the recommendations of the surface management agency regarding lease issuance and any required stipulations, but this does

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

not relieve BLM of the need to make an independent determination supported by the record of whether and under what conditions a lease may issue in the public interest consistent with multiple use values.

Esdras K. Hartley, 54 IBLA 38 (Apr. 9, 1981)
88 I.D. 437

Under sec. 17 of the Mineral Leasing Act of 1920, as amended, the Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other purposes in the public interest.

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Lands acquired for the specific purpose of creating a sanctuary for, and the protection of, wildlife in the vicinity of the Lake Zahl National Wildlife Refuge fall within that prohibition.

Lee R. Williamson, 54 IBLA 326 (Apr. 30, 1981)

Where an acquired lands noncompetitive oil and gas lease offer is partially rejected on the basis of a recommendation made by the Bureau of Reclamation and merely concurred in by the Forest Service and on appeal the offeror alleges that the present policy of the Bureau of Reclamation is to lease with appropriate stipulations and the record fails to support adequately the original recommendation, the case will be remanded in order to determine whether a lease may issue for such lands.

Esdras K. Hartley, 57 IBLA 293 (Aug. 31, 1981)

A regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted only precludes leasing lands withdrawn for the protection of all species of wildlife within a particular area.

Designation of an area as a critical habitat pursuant to sec. 7 of the Endangered Species Act of 1973, as amended, 16 U.S.C.A. § 1536 (West Supp. 1980), does not necessarily foreclose oil and gas leasing in that area.

The Secretary of the Interior may, in his discretion, reject any offer to lease Federal lands for oil and gas, upon a determination supported by facts of record that the leasing would not be in the public interest because it is incompatible with uses of the lands which are worthy of preservation. Where the land has been designated a critical habitat pursuant to sec. 7 of the Endangered Species Act of 1973, as amended, 16 U.S.C.A. § 1536 (West Supp. 1980), and where BLM determines that oil and gas development would result in an unavoidable adverse impact, rejection of a lease offer will be affirmed in the absence of countervailing compelling reasons.

Esdras K. Hartley, Impel Energy Corp., 57 IBLA 319 (Sept. 1, 1981)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. The refusal to lease should be supported by facts of record demonstrating that leasing would not be in the public

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

interest, e.g., where leasing might adversely affect the Mexican desert bighorn sheep or its habitat, that animal being a State of New Mexico endangered species and the subject of a cooperative agreement between the State and BLM made pursuant to sec. 2 of the Act of Oct. 18, 1974, 16 U.S.C. § 670g (1976).

Placid Oil Co. et al., 58 IBLA 294 (Oct. 14, 1981)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn under the Mineral Leasing Act.

The recommendations of the Forest Service are important in determining whether or not an oil and gas lease should issue for public lands but are not conclusive. Ultimately, the Secretary of the Interior is entrusted with the responsibility of determining whether or not to issue a lease.

A decision of BLM refusing to issue an oil and gas lease in the exercise of the discretionary authority of the Secretary of the Interior over oil and gas leasing will be affirmed where it sets forth the reasons therefore and the facts of record support the conclusion that refusal to lease is in the public interest.

Natural Gas Corp. of California, 59 IBLA 348 (Nov. 5, 1981)

The general prohibition against oil and gas leasing in wildlife refuge lands contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976). Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

Nugget Oil Corp., 61 IBLA 43 (Dec. 31, 1981)

Under sec. 17 of the Mineral Leasing Act of 1920, as amended, the Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other considerations in the public interest.

Kenneth P. Cummings, 62 IBLA 206 (Mar. 10, 1982)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn under the Mineral Leasing Act. BLM properly rejects an oil and gas lease offer as to (1) lands within an Indian reservation, (2) lands where the oil and gas rights are not in Federal ownership, and (3) lands subject to a pending transfer to the State of Arizona.

Joe Lyon, Jr., 63 IBLA 53 (Mar. 30, 1982)

Where separate lease stipulations are proposed by different agencies having management responsibilities for the same land, and their combined effect is to preclude the lessee from operating on any portion of the lease, the case will be remanded for possible modification or substitution to accommodate leasing operations where it appears that neither agency intended that the

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

lessee be barred from surface occupancy of the entire leasehold.

Marie E. Stroock, 63 IBLA 119 (Apr. 2, 1982)

A decision of BLM refusing to issue an oil and gas lease in the exercise of the discretionary authority of the Secretary of the Interior over oil and gas leasing will be affirmed where it sets forth the reasons therefor and the facts of record support the conclusion that refusal to lease is in the public interest.

James E. Chudnow, 63 IBLA 309 (Apr. 27, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas upon a determination, supported by facts of record, that leasing is not in the public interest because leasing is incompatible with other uses of the land which are worthy of preservation. Where BLM has consolidated its holdings in order to manage the lands for recreational, scenic, and wildlife values, which BLM determines oil and gas leasing would damage, rejection of the lease offer will be affirmed.

Connie Mull, 63 IBLA 317 (Apr. 27, 1982)

Great White, Inc., 65 IBLA 207 (June 30, 1982)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area.

If lands sought to be leased for oil and gas are not in a wildlife refuge withdrawn pursuant to 43 CFR 3101.3-3, the Secretary may exercise his discretion about leasing such lands, and the recommendation by the Fish and Wildlife Service that the lands not be leased is not conclusive, and where the case does not dispose of the questions of withdrawal or of leasing under the Secretary's discretion, the decision is vacated and remanded for further findings.

Bernard A. Holman, 64 IBLA 13 (May 4, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the mineral leasing laws. The refusal to lease should be supported by facts to demonstrate that the leasing would not be in the public interest. Mere conclusory findings, not supported by facts, do not warrant rejection.

Mary A. Pettijohn, 64 IBLA 336 (June 10, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. However, where the record is unclear whether the justification for refusing to lease specifically refers to certain lands in the offer, the case may be remanded to

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

BLM for determination of whether a lease may issue for those lands.

Bachalk Production, Inc., 65 IBLA 271 (July 12, 1982)

Ida Lee Anderson, 76 IBLA 395 (Oct. 27, 1983)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas upon a determination, supported by facts of record, that leasing is not in the public interest because leasing is incompatible with other uses of the land which are worthy of preservation. Where BLM has accomplished an oil and gas environmental analysis which supports the rational conclusion that leasing would be detrimental to its efforts to manage the lands for recreational, scenic, and wildlife values, rejection of the lease offer will be affirmed.

Great White, Inc., 65 IBLA 310 (July 13, 1982)

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

Where the high bidder for a competitive oil and gas lease presents evidence on appeal that its bid is not spurious or unreasonable and Geological Survey fails to provide a reasoned explanation in support of BLM's decision to reject the bid as inadequate, the decision will set aside and the case remanded for compilation of a more complete record and readjudication of the bid.

Harris-Headrick, 66 IBLA 84 (July 29, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas upon a determination, supported by facts of record, that the leasing would not be in the public interest because it is incompatible with uses of the lands which are worthy of preservation.

Thomas Connolly et al., 66 IBLA 265 (Aug. 17, 1982)

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest. However, if he decides to issue a lease, he may require the acceptance of stipulations reasonably designed to protect environmental and other land use values as a condition precedent to issuance of such a lease.

James E. Chudnow, John L. Hensinger, 67 IBLA 360 (Oct. 7, 1982)

Ted C. Pindyinn, 69 IBLA 34 (Nov. 29, 1982)

Carl J. Taffera, 71 IBLA 72 (Feb. 22, 1983)

A determination by BLM refusing to issue an oil and gas lease on the ground that the lands applied for are within outstanding natural areas will be set aside and remanded for clarification where BLM's declarations as to the public interest are conclusory and where the record indicates that approximately half the lands rejected may not actually lie within areas of outstanding environmental values.

Bachalk Production, Inc., 68 IBLA 75 (Oct. 21, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. The refusal to lease should be supported by facts of record demonstrating that leasing would not be in the public interest, e.g., where leasing might adversely affect relict plant communities and the suitability of the West Potrillo Mountains as habitat for pronghorn antelope.

James E. Chudnow, John L. Hensinger, 68 IBLA 128 (Oct. 28, 1982)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where competitive oil and gas lease high bids are not clearly spurious or unreasonable on their face and the record fails to disclose sufficient factual basis for the conclusion that the bids are inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bids. A justification memorandum that does not reveal the estimated minimum values for the parcels and the factual data on which the estimates were based is not sufficient to support rejection of the high bids for the parcels.

E. Robert Paglee, 68 IBLA 231 (Nov. 16, 1982)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

A BLM decision refusing to issue an oil and gas lease in the exercise of the discretionary authority of the Secretary of the Interior over oil and gas leasing will be vacated where the reasons set forth are not supported by the record.

R. M. Yates, 68 IBLA 237 (Nov. 16, 1982)

Uncertainty of title to oil and gas in a tract of land is sufficient ground for the rejection of a lease offer in the exercise of the Secretary's discretionary authority over leasing. The burden is on the lease applicant to demonstrate that the minerals he seeks to lease are owned by the United States. A decision rejecting an offer covering islands in a navigable river will be affirmed where appellant has failed to meet this burden and a significant question of title remains.

Lee E. McDonald, 68 IBLA 272 (Nov. 17, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest. However, if he decides to issue a lease, he may require the acceptance of stipulations reasonably designed to protect environmental and other land use values as a condition precedent to issuance of such a lease.

Where the Bureau of Land Management imposes a no surface occupancy stipulation on certain lands in an oil and gas lease offer and rejects the remainder of the lands in the offer stating that all lands in the offer are in the Jackson Canyon Bald Eagle Roost, and there is no information in the record to support a distinction between the lands available for leasing subject to stipulation and those considered unavailable, the decision will be set aside and the case remanded for reconsideration.

Fortune Oil Co., 68 IBLA 288 (Nov. 19, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. Rejection of an offer is proper where the record demonstrates leasing might adversely affect sensitive biological species in the Algodones Dunes Outstanding Natural Area.

Eagle Exploration Co., 69 IBLA 96 (Nov. 30, 1982)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and the factual data on which the estimate was based is

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

not sufficient to support rejection of the high bid for the parcel.

Snyder Oil Co., 69 IBLA 259 (Dec. 21, 1982)

Petrovest, Inc., 71 IBLA 250 (Mar. 21, 1983)

Davis & Smith, Ltd., 73 IBLA 22 (May 9, 1983)

TXO Production Corp., 73 IBLA 258 (June 7, 1983)

A determination pursuant to 43 CFR 3101.3-3(c) not to subject coordination lands to oil and gas leasing is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976). Pursuant to the regulation, an agreement has been reached that land within the Sun River Winter Elk Range, Montana, will not be subject to noncompetitive oil and gas leasing.

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits, or to lease oil and gas deposits owned by the United States in patented lands, upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. The refusal to lease should be supported by facts of record demonstrating that leasing would not be in the public interest, e.g., where leasing would be incompatible with the management of the Sun River Winter Elk Range for wildlife conservation purposes.

Chester L. Prindle, 70 IBLA 254 (Jan. 25, 1983)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas upon a determination, supported by facts of record, that leasing would not be in the public interest because it is incompatible with the character of the land as a "primitive area," under 43 CFR Subpart 8352.

Where a state office has established various categories relating to the availability of land for leasing, including a category "Suspended or No Lease," it is error to reject an offer to lease lands included in such a category without providing an opportunity to accept the lands under a "no surface occupancy" stipulation and other such stipulations where such an opportunity is expressly provided for under the "Suspended or No Lease" category.

Ida Lee Anderson, 70 IBLA 259 (Jan. 26, 1983)

Where BLM rejects over-the-counter noncompetitive oil and gas lease offers in part and imposes no-surface-occupancy stipulations on almost all of the remaining lands, covering almost 19,000 acres, and where the record contains nothing explaining BLM's reasons for its decision and no evidence showing that its decision was valid as to the specific lands involved, BLM's decision will be set aside and the matter remanded for further consideration.

Fortune Oil Co., 70 IBLA 286 (Jan. 26, 1983)

A decision of BLM refusing to issue an oil and gas lease in the exercise of the discretionary authority of the Secretary of the Interior over oil and gas leasing

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

will be affirmed where it sets forth the reasons therefor and the facts of record support the conclusion that refusal to lease is in the public interest.

Rejection of an oil and gas lease offer is a more severe measure than the most stringent stipulations and the record supporting a decision rejecting a lease offer in the public interest should ordinarily reflect consideration of whether leasing subject to clear and reasonable stipulations would adequately protect the public interest concerns of the surface management agency.

Where public domain land is withdrawn or reserved for administration by another agency for a particular purpose, BLM should properly consider the recommendations of the surface management agency regarding lease issuance and any required stipulations, but this does not relieve BLM of the need to make an independent determination supported by the record of whether and under what conditions a lease may issue in the public interest consistent with multiple use values.

Western Interstate Energy, Inc., 71 IBLA 19 (Feb. 15, 1983)

A decision rejecting the high bid in a competitive oil and gas lease sale as inadequate is properly set aside and the case remanded for reconsideration of the bid where the record on appeal discloses that the Government's presale bid evaluation for the parcel in question was based on erroneous computations.

Stephen M. Bess, Alice Bess, 71 IBLA 122 (Mar. 7, 1983)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. Where an offer is rejected on the basis of that regulation, but the case record provides no evidence of such a withdrawal, the decision to reject will be set aside and the case remanded for investigation into the nature of the creation of the refuge.

D. M. Yates, 71 IBLA 126 (Mar. 7, 1983)

D. M. Yates, 74 IBLA 23 (June 24, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where the high bid in a competitive oil and gas lease sale is rejected as inadequate, and on appeal the bidder raises considerable doubt whether the bid is, in fact, inadequate, and the record fails to disclose a sufficient factual basis for the conclusion of inadequacy, the decision rejecting the bid will be set aside and the case remanded to BLM for reconsideration of the bid.

Amoco Production Co. et al., 71 IBLA 241 (Mar. 21, 1983)

Exxon Corp., 73 IBLA 176 (May 26, 1983)

Ronald C. Agel, 73 IBLA 340 (June 10, 1983)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

The Secretary of the Interior has discretion to refuse to issue an oil and gas lease in the interest of conservation, wildlife protection, and other considerations in the public interest. However, where a BLM state office has established various categories relating to the availability of land for leasing, and there is a question concerning the definition of the pertinent category and that question is not answered by the case record, the decision will be set aside and remanded.

Rachalk Production, Inc. (On Reconsideration), 71 IBLA 360 (Mar. 28, 1983)

The Secretary of the Interior may, in his discretion, refuse to lease lands for oil and gas upon a proper determination that leasing would not be in the public interest.

Rachalk Production, Inc., 71 IBLA 374 (Mar. 29, 1983)

The Secretary of the Interior may, in his discretion, condition the issuance of an oil and gas lease upon the acceptance of special stipulations reasonably designed to protect environmental and other land use values. Where on appeal evidence suggests that a "no surface occupancy" stipulation has embraced more land than necessary to protect the identified resource values due to BLM's use of full legal subdivisions to describe the land to be so restricted, and that a topographical description might provide the same protection while limiting the restriction to a smaller area, the decision will be set aside and remanded for reconsideration.

Bill J. Maddox, 72 IBLA 22 (Apr. 4, 1983)

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and the factual data on which the estimate was based is not sufficient to support rejection of the high bid for the parcel.

Nortex Gas & Oil Co., 72 IBLA 379 (May 4, 1983)

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and sufficient factual data cannot support rejection of the high bid for the parcel.

Read & Stevens, Inc., 72 IBLA 390 (May 5, 1983)

Glen M. Hedge, 73 IBLA 377 (June 15, 1983)

Read & Stevens, Inc., 75 IBLA 349 (Aug. 31, 1983)

Viking Resources Corp., 77 IBLA 57 (Nov. 7, 1983)

Southern Union Exploration Co., 79 IBLA 225 (Feb. 29, 1984)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

The general prohibition against oil and gas leasing in wildlife refuge lands contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976). Pursuant to the regulation, land within the Columbia National Wildlife Refuge is not subject to noncompetitive oil and gas leasing.

Altex Oil Corp., 73 IBLA 73 (May 17, 1983)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. Where an offer is rejected on the basis of that regulation, but the offeror contends that such a withdrawal does not cover the lands in question and the Board is unable to establish that the subject lands are embraced in such a withdrawal, the decision to reject will be set aside and the case remanded.

D. M. Yates, 74 IBLA 8 (June 24, 1983)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. This regulation is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976).

D. M. Yates, 74 IBLA 159 (July 12, 1983)

A BLM decision rejecting a noncompetitive oil and gas lease offer for acquired lands, because the mineral estate was reserved by the grantor when the land was conveyed to the United States, will be affirmed on appeal where the offeror, who asserts that the mineral estate has vested in the United States under the Michigan Dormant Minerals Act, fails to submit any evidence in support thereof.

Space Investors, 75 IBLA 183 (Aug. 22, 1983)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas upon a determination, supported by facts of record, that leasing would not be in the public interest because it is incompatible with the character of the land which is being considered for designation as an "outstanding natural area," under 43 CFR 2071.1(b)(1), or an area of critical environmental concern, under sec. 103(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1702(a) (1976).

Lawrence M. Hart, 75 IBLA 186 (Aug. 22, 1983)

Pursuant to provision of 43 CFR 3111.1-3(c), leasing of lands the surface of which is patented to the State of California with minerals reserved to the United States may be denied where the State objects to the lease for reasons determined by the authorized officer to be satisfactory.

Placid Oil Co., 76 IBLA 37 (Sept. 14, 1983)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

Where public domain land is reserved for a particular use by another agency, BLM should properly consider the recommendations of the surface managing agency regarding lease issuance, but this does not relieve BLM of the need to determine independently whether a lease may issue in the public interest.

Petrovest, Inc., 76 IBLA 327 (Oct. 19, 1983)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest.

David A. Provinse, 76 IBLA 340 (Oct. 20, 1983)

The Secretary has discretion to reject an offer to lease public lands for oil and gas exploration upon a determination supported by facts of record that leasing is not in the public interest because it is not consistent with the character of land classified as an outstanding natural area under 43 CFR Subpart 8352.

Where an offeror wishes to accept an oil and gas lease subject to a no surface occupancy stipulation, it is error to reject his offer to lease public lands where the record does not show consideration was given to whether issuance of such a lease was in the public interest.

Robert G. Lynn, 76 IBLA 383 (Oct. 27, 1983)

The Act establishing the Flaming Gorge National Recreation Area requires that any oil and gas lease or permit be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe. 16 U.S.C. § 460v-4 (1976). Where BLM conditions the grant of a lease upon stipulations required by the Forest Service, the Department of the Interior has no authority to waive compliance with the Act.

Thomas F. Stroock, 77 IBLA 137 (Nov. 15, 1983)

Where oil and gas leasing in Alaska was suspended by Secretarial policy at the time noncompetitive lease offers were pending and the land identified in those offers was thereafter formally withdrawn from mineral leasing for the protection of Alaskan Natives' selection rights, the Secretary of the Interior has not abused his discretion in delaying adjudication of the offers until after the status of the land is settled.

Aspers Oil, Inc., Kenneth J. Gain, 77 IBLA 181 (Nov. 18, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid for a competitive oil and gas lease in the National Petroleum Reserve--Alaska--because it is less than fair market value where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where the high bid for a competitive oil and gas lease sale in the National Petroleum Reserve--Alaska--is rejected as inadequate, and on appeal the bidder raises considerable doubt whether the bid is, in fact, inadequate, and the record fails to disclose a sufficient factual basis for the conclusion of inadequacy, the decision rejecting the bid will be set aside and

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

the case remanded to BLM for reconsideration of the bid.

ARCO Alaska, Inc., 78 IBLA 115 (Dec. 22, 1983)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to ascertain the existence of a rational basis for the decision if disputed on appeal.

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a rational basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and sufficient factual data to establish a rational basis therefor cannot support rejection of the high bid for the parcel.

Southern Union Exploration Co., 79 IBLA 90 (Feb. 16, 1984)

The Department is entitled to rely on the reasoned analysis of its technical experts in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. Where a decision to reject a bid has been made in a careful and systematic manner utilizing the advice of such experts, the decision will not be reversed, even though the determination may be subject to reasonable differences of opinion, notwithstanding any immaterial defects in BLM's analysis, where an appellant fails to meet its affirmative obligation to establish that its bid is a reasonable reflection of fair market value.

Viking Resources Corp., 80 IBLA 245 (Apr. 30, 1984)

BLM may, in its discretion, reject any offer to lease Federal lands for oil and gas upon a determination supported by facts of record that leasing would not be in the public interest, e.g., where leasing might adversely affect the Yuma clapper rail, a federally listed endangered species.

Where BLM rejects an oil and gas lease offer, in order to protect a federally listed endangered species, the record should ordinarily reflect consideration of whether leasing subject to protective stipulations, including no surface occupancy, would not adequately serve the public interest. Where the record indicates that BLM failed to consider alternatives to no leasing, the case will be remanded to BLM for such an assessment.

BLM may properly reject an oil and gas lease offer in order to protect a federally listed endangered species pending the availability of further studies of the effect of oil and gas exploration and development on a resident population of that species.

Chevron U.S.A., Inc., 80 IBLA 324 (May 8, 1984)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A record that does not reveal the estimated minimum acceptable value for a parcel and sufficient factual data indicating the derivation of that value cannot support rejection of the high bid for the parcel.

Larry White, 81 IBLA 19 (May 15, 1984)

R. T. Nakaoka, 81 IBLA 197 (June 1, 1984)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid.

Mesa Petroleum Co., 81 IBLA 194 (June 1, 1984)

Michael Shearn, 83 IBLA 53 (Sept. 24, 1984)

Suzanne Walsh, 83 IBLA 274 (Oct. 25, 1984)

BLM may, in its discretion, decline to issue an oil and gas lease, pursuant to an over-the-counter offer, where its records do not clearly show that the title to the oil and gas is in the United States. Prior to such action, however, BLM should afford the offeror an opportunity to show that the United States does, in fact, own title to the oil and gas interests in the lands sought to be leased.

Russell H. Green, Jr., 81 IBLA 201 (June 1, 1984)

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale where the record shows a rational basis for the conclusion that the amount of the bid was inadequate.

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A record that does not reveal the presale evaluation for a parcel and sufficient factual data indicating the derivation of that value cannot support rejection of the high bid for the parcel.

Kevin J. Bliss et al., 82 IBLA 31 (July 6, 1984)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

If an oil and gas lease is to be issued for a particular tract, it must be issued to the first-qualified applicant. An application filed pursuant to the simultaneous filing procedure and selected with first priority is a noncompetitive application to lease for oil and gas and does not create a property right in the applicant but is merely a hope or expectation. The Secretary of the Interior may, in his discretion, reject any application to lease for oil and gas. An application, however, may not be rejected on a basis other than that permitted by law.

Nola Grace Ptasynski, 82 IBLA 48 (July 11, 1984)

A BLM decision rejecting a high bid for a parcel of land in a competitive oil and gas lease sale as inadequate will be affirmed where appellant fails to overcome the Government's prima facie showing of the correctness of its estimated minimum acceptable fair market value for the parcel and to establish that appellant's bid reasonably reflects fair market value.

The Westlands Co., 82 IBLA 129 (July 25, 1984)

The Westlands Co., 83 IBLA 43 (Sept. 24, 1984)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to verify a rational basis for the decision if disputed on appeal.

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a factual basis sufficient to support the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid.

Craig Folson, 82 IBLA 294 (Aug. 31, 1984)

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

The Department is entitled to rely on the reasoned analysis of its technical experts in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. Where a decision to reject a bid has been made in a careful and systematic manner utilizing the advice of such experts, the decision will not be reversed, even though the determination may be subject to reasonable differences of opinion, where an appellant fails to meet its affirmative obligation to establish that its bid is a reasonable reflection of fair market value.

Donald C. Agel, 83 IBLA 76 (Sept. 28, 1984)

OIL AND GAS LEASES--Continued

DISCRETION TO LEASE--Continued

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale where the record shows a rational basis for the conclusion that the amount of the bid was inadequate.

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A record that does not reveal the presale evaluation for a parcel and sufficient supporting data to establish its prima facie correctness cannot support rejection of the high bid for the parcel.

Suzanne Walsh, 81 IBLA 187 (Oct. 16, 1984)

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A record that does not reveal the estimated minimum acceptable value for a parcel and sufficient factual data to establish its prima facie correctness cannot support rejection of the high bid for the parcel.

Southland Royalty Co., 83 IBLA 302 (Oct. 30, 1984)

DRAINAGE

30 CFR 221.21(c) provides that an oil and gas lessee shall drill and produce from such wells as are necessary to protect the lessor from loss of royalty by reason of drainage or pay a sum estimated to reimburse the lessor for such loss of royalty. Where Geological Survey affords the lessee an opportunity to submit evidence as to why a paying well cannot be drilled and the lessee does not submit an adequate response, or drill the well, compensatory royalty is properly assessed.

Inexco Oil Co., 65 IBLA 377 (Feb. 13, 1980)

An order by a Conservation Manager of the Geological Survey directing oil and gas lessees of Outer Continental Shelf lands to subscribe to a unit plan allocating production from a specific reservoir on the basis of original net acre-feet of gas-bearing sand, i.e., the volume of gas-bearing sand in place prior to production of any gas from the reservoir, will be affirmed where such a plan of allocation of production is in common use on OCS lands and it has not been shown that the order is arbitrary or capricious.

Texaco, Inc., Gulf Oil Exploration and Production Co., 51 IBLA 332 (Dec. 29, 1980) 87 I.D. 648

Neither the standard lease terms nor the applicable regulation, 30 CFR 221.21(c), require the payment of compensatory royalty for drainage from Government lands, where it can be established that a prudent operator would not drill an offsetting well.

Where a lessee, after due notice, fails to submit evidence that a requested offset well was unneeded, and also fails to timely complete the well, compensatory royalty is properly assessed, regardless whether the well which is eventually drilled is "a paying well."

Before a lessee may plead impossibility of performance as a bar to fulfillment of a contractual requirement, the lessee must show that no alternate method of

OIL AND GAS LEASES--Continued

DRAINAGE--Continued

compliance is possible. Where possible alternatives exist, a lessee is not excused from a contractual obligation merely because one alternative is not feasible.

Compensatory royalties for failure to complete a protective well are properly assessed after a reasonable time from notice of drainage by the lessor until an offset well has been completed.

Hole Grace Freeyrshi, 63 IBLA 240 (Apr. 19, 1982) 89 I.D. 208

DRILLING

An application for permit to drill for oil and gas in a "potash enclave" in a designated "Potash Area" is properly denied where the applicant fails to show that its application comes within either of the two exceptions to the policy in favor of potash development enunciated in an order of the Secretary dated Oct. 7, 1975, 40 FR 51086 (Nov. 5, 1975).

Rose Enterprises Production Co., 48 IBLA 11 (May 27, 1980)

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold or for the lease under an approved unit agreement on the last day of the lease term with a bona fide intent to complete a producing well.

Energy Trading Inc., 50 IBLA 9 (Sept. 5, 1980)

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold or, for the lease under an approved unit agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Energy Trading, Inc., 55 IBLA 167 (June 9, 1981)

Neither the standard lease terms nor the applicable regulation, 30 CFR 221.21(c), require the payment of compensatory royalty for drainage from Government lands, where it can be established that a prudent operator would not drill an offsetting well.

Hole Grace Freeyrshi, 63 IBLA 240 (Apr. 19, 1982) 89 I.D. 208

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved communitization agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

OIL AND GAS LEASES--Continued

DRILLING--Continued

To qualify for a 2-year extension of an oil and gas lease, pursuant to 43 CFR 3107.2-3, it must be shown that "actual drilling operations" were diligently prosecuted on the last day of the lease term, with reference made to subsequent circumstances.

Failure to secure another rig when the first rig is unable to reach potentially productive formations within 60 days after cessation of "actual drilling operations" does not constitute diligent drilling operations even where the lessee uses the first rig on neighboring leases under a prudent drilling program.

Christian E. Hurst, 78 IBLA 172 (Dec. 30, 1983)

Under sec. 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1982), leases may only be issued with the consent of the surface management agency and subject to such conditions as it may impose to ensure adequate utilization of the land for the primary purposes for which it is being administered. A decision denying an application for permit to drill will be affirmed where the surface management agency has objected on the grounds that the proposed well site is within a no-surface-occupancy area stipulated to by the lessee.

Diamond Shamrock Exploration Co., 83 IBLA 318 (Oct. 31, 1984)

Where lessee's approved application to drill is conditioned upon agreement to recontour the drill site cut into a 65% slope "as much as possible to the original form," the obligation to comply is contractual, and the lessee will not be excused from compliance because of its objection that the value of the land does not justify the cost of recontouring, or on the basis that it believes the fill material will erode away, but BLM does not agree. In the circumstances, BLM's requirement to recontour to a 35% slope to partially fill the cut is not unreasonable.

Fuel Resources Development Co., 84 IBLA 17 (Nov. 26, 1984)

EXPIRATION

Under recent amendments to 43 CFR 3105.2-3 (published at 48 FR 33670 (July 22, 1983)), a communitization agreement affecting a Federal oil and gas lease may be approved retroactively and serve to extend a Federal lease, even when the agreement is not submitted to the Department until after the expiration date of the Federal lease, so long as the communitization agreement has been executed prior to the expiration date.

A lease may be extended beyond its primary term under 43 CFR 3107.9-1 (1982) only where the lessee has been notified that the Department has made an initial determination that drainage is occurring and the lessee has informed the Department, prior to the lease expiration date, of his willingness to tender compensatory royalty in accordance with its determination or has actually tendered such royalty in response to an assessment before the lease expiration date.

Bruce Anderson, 80 IBLA 286 (May 4, 1984) 91 I.D. 203

OIL AND GAS LEASES--Continued

EXPIRATION--Continued

An oil and gas lease expires upon the running of its primary term unless eligible for extension as provided by 43 CFR Subpart 3701. While a request for suspension of a lease may be retroactively approved after the lease has expired, no suspension application may be approved where the application itself is not filed until after the expiration date of the lease, unless it can be found that actions of the Department have constituted a de facto suspension of the lease during its term.

William C. Kirkwood, 81 IBLA 204 (June 1, 1984)

EXTENSIONS

A request for extension of a lease terminated by operation of law must be denied. A lease in its extended term because of production can be held only so long as oil and gas in paying quantities is produced.

Robert Hawkins, 45 IBLA 105 (Jan. 17, 1980)

A State Office properly holds that a noncompetitive oil and gas lease expires at the end of its primary term when there is no cognizable activity on the leased lands as of that date under 30 U.S.C. § 226(e) (1976), and the unit or cooperative provisions of 30 U.S.C. § 226(j) (1976) have not operated to extend the lease.

Dale Cake, 45 IBLA 183 (Jan. 30, 1980)

Noncompetitive oil and gas leases extended beyond their primary term pursuant to 43 CFR 3107.4-3 expire by operation of law at the end of the extension unless one of the statutory grounds for extension is established.

Duncan Miller, 46 IBLA 285 (Mar. 27, 1980)

The lessee of an oil and gas lease, issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1976) on or before the regular anniversary date of the lease. Failure to submit the rental timely results in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1976). Where the lessee shows that his failure to pay rental timely is justifiable, he pays the required rental within 20 days after the due date, excluding the normal business days the office is closed due to snowstorms, and he otherwise complies with statutory and regulatory requirements, he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1976).

Western Reserves Oil Co., 46 IBLA 295 (Mar. 31, 1980)

Where a unit agreement specifies that a determination as to whether a well completed prior to the effective date of the agreement is capable of producing unitized substances in paying quantities will be deferred until an initial participating area is established as the result of completion of a well for production in paying quantities under the unit agreement, wells completed prior to the effective date of the agreement and capable of production in paying quantities will not extend a unitized lease upon which no such well exists.

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

pursued on the leasehold or for the lease under an approved unit agreement on the last day of the lease term with a bona fide intent to complete a producing well.

Energy Trading Inc., 50 IBLA 9 (Sept. 5, 1980)

An oil and gas lease, which is in its extended term because of production, terminates when production ceases unless pursuant to 30 U.S.C. § 226(f) (1976): (1) reworking or drilling operations are begun within 60 days after cessation and are continued with reasonable diligence until production resumes; (2) the Secretary has ordered or consented to suspension of operations or production; or (3) for lands on which there is a well capable of production, the lessee places the well in production within 60 days of receipt of notice to do so.

Michael P. Grace, 50 IBLA 150 (Sept. 26, 1980)

A State Office properly holds that a noncompetitive oil and gas lease expires at the end of its primary term when there is no cognizable activity on the leased lands as of that date under 30 U.S.C. § 226(e) (1976), and the unit or cooperative provisions of 30 U.S.C. § 226(j) have not operated to extend the lease.

Pacific Transmission Supply Co. and Raymond Chorner, 53 IBLA 204 (Mar. 18, 1981)

Where a unit agreement specifies that a determination whether a well completed prior to the effective date of the agreement is capable of producing in paying quantities will be dererred until completion of a well capable of producing in paying quantities under the unit agreement, wells completed prior to the effective date of the agreement and capable of production in paying quantities will not extend a unitized lease upon which no such well exists.

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold or, for the lease under an approved unit agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Energy Trading, Inc., 55 IBLA 167 (June 9, 1981)

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976) and 43 CFR 3107.2-3, the evidence must show that actual drilling operations were being diligently pursued on the leasehold or for the lease under an approved cooperative or unit agreement on the last day of the lease term. Where no communitization agreement associating leased lands with a producing well on other lands is filed for approval with Geological Survey prior to the end of the primary term of the lease, and where Survey, therefore, has no opportunity to approve such an agreement prior to this time, the lease does not qualify for an extension under 43 CFR 3107.2-3.

Devon Corp., 57 IBLA 131 (Aug. 25, 1981)

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

Where the record shows that, at the end of the primary term of a noncompetitive oil and gas lease, there is no active production of oil or gas in paying quantities from the lease area and no well capable of such production, the lease terminates automatically by operation of law as of the expiration date of the lease, in the absence of allegations by the lessees that there was such production or a well capable of such production.

Assuming, arguendo, that an oil and gas lease area contained a well capable of production of oil or gas in paying quantities on its expiration date, the lease terminates automatically as of this date if the lessee fails to comply with a 60-day notice from Geological Survey to put this well into production. An alleged filing of information showing production 2 years after the expiration of the 60-day notice period would not resuscitate the lease.

Where an oil and gas lease has already terminated by operation of law, the subsequent issuance by Geological Survey of a 60-day notice to produce does not renew the lease.

Edward H. Coltharp, Dale F. Killian, 58 IBLA 234 (Oct. 6, 1981)

The lessee of an oil and gas lease issued after Sept. 2, 1960, that has reached the end of its primary term must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1976) on or before the regular anniversary date of the lease. Failure to submit the rental timely results in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1976).

Gulf Oil Corp., 63 IBLA 296 (Apr. 23, 1982)

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved communitization agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Upon a determination that an oil and gas lease terminated because no drilling operations were being performed on the leased lands, or for the lease under an approved communitization agreement, on the last day of the lease term, the lessee of record and its de facto assignee are entitled to a hearing on issues of fact, where they have alleged that the well was actually spudded prior to midnight on the relevant date.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

Where the parties to a unit agreement forward to Geological Survey documents evidencing their intention to terminate the unit but such documents are not mailed until the expiration date of one of the leases in the unit, such lease is not entitled to the 2-year extension provided by 30 U.S.C. § 226(j) (1976) for leases in effect at the termination of an approved unit plan.

Aquarius Resources Corp., 64 IBLA 153 (May 24, 1982)

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

Production of oil or gas pursuant to an approved communitization agreement is regarded as production for each lease committed to the agreement. A lease does not qualify for extension by reason of production at the end of its primary term where a communitization agreement associating the leased lands with a producing well on other lands is not filed with Geological Survey until after expiration of the lease.

Marathon Oil Co., 68 IBLA 191 (Nov. 9, 1982)

Where BLM holds that a noncompetitive oil and gas lease has expired because drilling operations were not diligently pursued after the end of its primary term and on appeal the operator presents evidence raising an issue of fact regarding drilling operations, the case will be remanded for a factual determination of whether the lease is entitled to a 2-year extension under 43 CFR 3107.2-3.

Christian F. Burger, 68 IBLA 356 (Nov. 22, 1982)

Where the record shows that, at the end of the primary term of an oil and gas lease, there is no production of oil or gas in paying quantities from the lease area, and no well capable of such production, the lease expires at the end of its term in the absence of diligent drilling operations initiated prior to expiration or a suspension of the lease.

Fuel Resources Development Co., 69 IBLA 39 (Nov. 29, 1982)

Where an oil and gas lease is extended beyond its expiration date because of diligent drilling operations, it nevertheless terminates by operation of law upon failure to pay annual rental for the 11th year on or before the anniversary date of the lease.

Getty Oil Co., 72 IBLA 39 (Apr. 6, 1983)

Where the record shows that, at the end of the primary term of an oil and gas lease, there is no production of oil or gas in paying quantities from the lease area, and no well capable of such production, the lease expires at the end of its term in the absence of diligent drilling operations initiated prior to expiration or a suspension of the lease.

Barrel Drilling Co., 74 IBLA 228 (July 19, 1983)

In the absence of actual production of oil and gas in paying quantities, a lease that has concluded its primary term and is enjoying a 2-year extension by reason of actual drilling operations (43 CFR 3107.2-3) will not expire if there exists on the lease a well capable of producing oil or gas in paying quantities and BLM has failed to serve notice on the lessee by registered or certified mail to place such well in producing status within a reasonable time.

Hancock Enterprises, 74 IBLA 292 (July 27, 1983)

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976) and 43 CFR 3107.2-3, the evidence must show that actual drilling operations were being diligently pursued on the leasehold or for the lease under an approved cooperative or unit agreement on the last day of the lease. Where on appeal such

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

evidence is provided, the decision holding that the lease has expired will be reversed.

Husky Oil Co., 76 IBLA 380 (Oct. 25, 1983)

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved cooperative or unit agreement, on the last day of the lease term, with a bona fide intent to complete a producing well. Where the lessee asserts that actual drilling operations were being diligently pursued for the lease in that a well was being tested and evaluated on the last day of the lease term, yet the record of daily activities for the well shows that it was shut in pending evaluation for 2 months prior to and 2 months following the expiration date, and the lessee provides no evidence to support its allegation, the decision holding the lease to have expired will be affirmed.

JWD III, Inc., 77 IBLA 164 (Nov. 17, 1983)

To qualify for a 2-year extension of an oil and gas lease, pursuant to 43 CFR 3107.2-3, it must be shown that "actual drilling operations" were diligently prosecuted on the last day of the lease term, with reference made to subsequent circumstances.

Failure to secure another rig when the first rig is unable to reach potentially productive formations within 60 days after cessation of "actual drilling operations" does not constitute diligent drilling operations even where the lessee uses the first rig on neighboring leases under a prudent drilling program.

Christian F. Burger, 78 IBLA 172 (Dec. 30, 1983)

The partial commitment of lands within an oil and gas lease to a unit agreement segregates the lands in the lease into separate leases embracing those lands committed to the unit and those lands not unitized. The lease committed to the unit continues in effect for as long as committed provided that production is obtained within the unit prior to expiration of the term of the lease. Upon commitment and segregation of the nonproducing portion of a producing oil and gas lease prior to expiration of its primary term or its extended term (other than by production), production on the nonunitized portion of the lease will not serve to extend the unitized portion.

Conoco, Inc., 80 IBLA 161 (Apr. 11, 1984) 91 I.D. 181

Under recent amendments to 43 CFR 3105.2-3 (published at 48 FR 33670 (July 22, 1983)), a communitization agreement affecting a Federal oil and gas lease may be approved retroactively and serve to extend a Federal lease, even when the agreement is not submitted to the Department until after the expiration date of the Federal lease, so long as the communitization agreement has been executed prior to the expiration date.

A lease may be extended beyond its primary term under 43 CFR 3107.9-1 (1982) only where the lessee has been notified that the Department has made an initial determination that drainage is occurring and the lessee has informed the Department, prior to the lease expiration date, of his willingness to tender compensatory royalty in accordance with its determination or has

OIL AND GAS LEASES--Continued

EXTENSIONS--Continued

actually tendered such royalty in response to an assessment before the lease expiration date.

Bruce Anderson, 80 IBLA 286 (May 4, 1984) 91 I.D. 203

A finding that an oil and gas lease has expired for failure of one of several lessees of record to execute a joinder to a unit agreement for a producing unit will be set aside, in the absence of intervening rights in the leasehold, where a substantial allegation is made that an assignment of record was intended by the parties to convey all the interest of that lessee to an assignee who timely executed a joinder to the unit agreement.

Monsanto Co., 82 IBLA 108 (July 24, 1984)

FAVORABLE PETROLEUM GEOLOGICAL PROVINCES

Under sec. 1008 of the Alaska National Interest Lands Conservation Act, the identification of areas in Alaska for possible designation as favorable petroleum geological provinces may be reasonably based on the known geologic provinces or sedimentary basins notwithstanding the large areas of land encompassed by such provinces or basins.

Where the designation of the Cape Lisburne Favorable Petroleum Geological Province (FPGP) is attacked as not being supported by the direct evidence criteria announced in the Dec. 4, 1981, Federal Register notice, that designation will be upheld where, on appeal, the rationale for that designation is supplied indicating that direct evidence supports the designation of the entire Arctic Slope Province as an FPGP and that the Cape Lisburne area is the only part of that larger area available for leasing, since both the other parts of the Arctic Slope Province--the National Petroleum Reserve--Alaska and the area north of 68 degrees N. latitude and east of the western boundary of the National Petroleum Reserve--Alaska--are excluded from leasing under sec. 1008 of the Alaska National Interest Lands Conservation Act.

Aggaura Oil, Inc., Kenneth J. Gaib, 77 IBLA 181 (Nov. 18, 1983)

FIRST-QUALIFIED APPLICANT

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, and the right of the next drawee to receive first consideration attaches ex instante.

Zenith S. Merritt, 46 IBLA 24 (Feb. 20, 1980)

An oil and gas lease offer filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied either by corporate qualification papers or by any reference to a serial number where such information might be found, as required by 43 CFR 3102.4-1. Such omissions cannot be cured after the drawing.

Cheyenne Resources, Inc., 46 IBLA 277 (Mar. 27, 1980) 87 I.D. 110

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to an apparently valid previously filed offer, and where it subsequently issues a second conflicting lease for the same lands to the senior offeror, its decision cancelling the lease issued to the senior offeror will be vacated, as the statute governing oil and gas leasing of non-KGS lands dictates that the person first making application for a lease (the senior offeror) is qualified to hold it. Where the junior offeror and his successors in interest have not been joined to BLM's proceedings nor named as parties on appeal, the matter will be remanded to BLM with instructions to allow them to show cause why the leases issued pursuant to the junior offer should not be cancelled insofar as they conflict with the senior, legally superior offer.

Even though created by a lease issued to a junior noncompetitive over-the-counter oil and gas lease offer in derogation of the superior rights to the same land of a senior offeror, oil and gas lease rights based on the junior offer may not be cancelled where they have been acquired by a bona fide purchaser, and, where assignees of such lease rights have not had the opportunity to show that they acquired and hold these rights as bona fide purchasers, the matter will be remanded to BLM to allow them to so show, and to allow the senior offeror to show to the contrary.

George P. Holter, Jr., 47 IBLA 396 (May 22, 1980)

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant. A first-drawn drawing entry card oil and gas lease offer signed by an agent but which is not accompanied by the statements required by regulation must be rejected because the offeror is not the first-qualified applicant.

Viking Resources Corp., 48 IBLA 330 (July 3, 1980)

When land has previously been included in a lease that has been canceled, it is available for subsequent leasing only in accordance with the provisions of the simultaneous filing system provided under 43 CFR 3112.

David A. Provines, 50 IBLA 271 (Oct. 6, 1980)

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such waiver to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

and the successful drawee is required to make a showing as to sole party in interest under 43 CFR 3102.7.

Donald W. Coyer, Fred L. Engle, d.b.a. Resource Service Co., Inc., (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondent) (On Judicial Remand), 50 IBLA 306 (Oct. 14, 1980)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such waiver to the client, and without any contractural consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and the successful drawee is required to make a showing as to sole party in interest under 43 CFR 3102.7.

The fact that an entitlement to share in the proceeds from the sale of a lease is contingent upon the lease being sold does not mean that this entitlement is not an "interest," as an "interest" includes any claim to a share in profits which may be derived from the lease. Where an agreement creating such an entitlement exists when an offer is filed, its existence must be disclosed on pain of rejection of the offer.

D. E. Weedon, Jr., et al., 51 IBLA 378 (Dec. 31, 1980)

When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the first year's advance rental, that rental must be received by the proper office within the prescribed 15 days. Where the offeror has failed to submit a signed check for the advance rental within the time allowed, he is properly disqualified to receive the lease.

William H. Davis, 52 IBLA 125 (Jan. 13, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement where the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b), and the offeror is

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

required to disclose this interest at the time of filing under 43 CFR 3102.7

Estate of Glen R. Coy, Resource Service Co., Inc., 52 IBLA 182 (Jan. 26, 1981) 88 I.D. 236

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

Phillip A. Kulik, 53 IBLA 57 (Feb. 27, 1981)

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

Juan Martin, 71 IBLA 211 (Mar. 15, 1983)

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant therefor. An extension of time may be granted to supply necessary evidence of joinder in a unit agreement prior to lease issuance and a lease offer will not be rejected in favor of a junior offeror where an extension is timely requested and the requested evidence is provided in good faith and without unreasonable delay thereafter.

Barbara J. Wiersberger, Thomas H. Connelly, 53 IBLA 112 (Mar. 4, 1981) 88 I.D. 347

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, no excuse may be considered, no discretion exercised, no grace period invoked, and the right of the next drawee to receive first consideration attaches ipso instante.

Robert E. Bergman and Evan T. Bergman, 53 IBLA 122 (Mar. 5, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

An undated DEC lease offer is defective and must be rejected.

Hope Petroleum Corp. et al., 54 IBLA 194 (Apr. 23, 1981) 88 I.D. 479

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

Inexco Oil Co. et al., 54 IBLA 260 (Apr. 28, 1981)

Wilbur G. Demoss et al., 54 IBLA 271 (Apr. 28, 1981)

Robert E. Bolknap et al., 55 IBLA 200 (June 16, 1981)

Resource Service Co., Inc., Grace K. Greco, 55 IBLA 343 (June 26, 1981)

Woods Petroleum Corp. et al., 55 IBLA 348 (June 26, 1981)

Richard E. McDonald, Resource Service Co., Inc., 56 IBLA 12 (June 30, 1981)

Where an applicant fails to file five copies of a noncompetitive over-the-counter lease offer as required by the regulations in 43 CFR 3111.1-1(a) the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, the offer must be rejected. However, when the additional required copy of the lease offer is filed with the notice of appeal, the offer may be reinstated and allowed to earn priority from the time of the filing of the additional copy with the BLM.

Curtis Wheeler, 55 IBLA 65 (May 29, 1981)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit the advance rental within 15 days after notice, as prescribed by 43 CFR 3112.6-1, disqualification is automatic, notwithstanding the fact that at the time of the notice the Secretary had suspended the Bureau of Land Management's authority to issue noncompetitive oil and gas leases until further notice. However, if the first-drawn applicant files a notice of appeal within that time period, the time period is suspended and following affirmation of Bureau of Land Management's decision, the first-drawn applicant is properly given the

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

entire time period from receipt of the Board's decision within which to submit the rental.

Robert A. Shryock, Jas. O. Briggs, Jr., 55 IBLA 74 (June 1, 1981)

It is proper for the Bureau of Land Management to reject an oil and gas lease offer filed over the counter for land formerly included in a lease which expired at the end of its term or terminated automatically for nonpayment of rental because under 43 CFR 3112.1-1 such land is subject to the filing of new lease offers only in accordance with simultaneous filing procedures.

Curtis Wheeler, 56 IBLA 58 (July 10, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest (which, by its own terms, does not apply to the service agreement) with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7.

Alex Sachse, Resource Service Co., Inc., 56 IBLA 116 (July 16, 1981)

Nancy L. Stewart, Resource Service Co., Inc., 56 IBLA 122 (July 16, 1981)

Jack Zuckerman et al., 56 IBLA 193 (July 22, 1981)

Robert Sepanko, Mary L. Hollebon, Resource Service Co., Inc., 58 IBLA 340 (Oct. 19, 1981)

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant. Where a corporate applicant fails to submit with its over-the-counter lease offer a list of corporate officials as required by 43 CFR 3102.2-5, its offer receives no priority until the defect is cured.

Trans-Texas Energy, Inc., 56 IBLA 211 (July 22, 1981)

Trans-Texas Energy, Inc., 57 IBLA 32 (Aug. 6, 1981)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to an apparently valid previously filed offer, and rejects the previously filed offer as to lands encompassed in the lease issued to the junior offeror asserting that the junior offeror's assignee is a bona fide purchaser, the decision will be vacated as the statute governing oil and gas leasing of non-KGS lands dictates that the person first making application for a lease (the senior offeror) is qualified to hold it. Where the junior offeror and his successor in interest have not been joined to BLM's proceedings or named as parties on appeal, the matter will be remanded to BLM with instructions to allow them to show cause why the leases issued pursuant to the junior offer should not be canceled and to show that they acquired their interests as bona fide purchasers.

A. P. Matchett, 56 IBLA 231 (July 22, 1981)

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant. Where an oil and gas lease has issued to a corporate applicant whose offer lacked priority because of noncompliance with 43 CFR 3102.2-5, requiring the filing of a list of corporate officials, such lease is properly canceled where another offer was filed for the same lands before the applicant cured the defect in its own offer.

Trans-Texas Energy, Inc., 56 IBLA 295 (July 28, 1981)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to give the service an interest in the lease, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7 (1979).

Floyd O. Lochner, 56 IBLA 271 (July 28, 1981)

Where an oil and gas lease offeror fails to respond within a prescribed period of time to an order to submit specific information necessary to determine whether offeror is qualified, the offer is properly rejected.

Judith Gail Bell, 57 IBLA 139 (Aug. 25, 1981)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

An application drawn first in a simultaneous drawing which is filed by a partnership but which is not accompanied by statements required by the pertinent regulation or which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

It is not permitted to file a simultaneous noncompetitive lease application bearing both the names of an association and of an individual. Where an individual intends to submit an application on behalf of the partnership, he should list its name alone on the application and sign the card as its authorized agent.

A partnership's defective simultaneous noncompetitive oil and gas lease application is not curable by submission of required evidence of qualifications after the drawing.

Stephen A. Pitt, L & P Investments, 57 IBLA 365 (Sept. 8, 1981)

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to a valid previously filed offer, where it subsequently issues a second conflicting lease for the same lands to the senior offeror, and where the junior lease has not been assigned to a bona fide purchaser, BLM's decision canceling the lease issued to the senior offeror will be vacated, because the statute governing oil and gas leasing of non-KGS lands dictates that the qualified person first making application for a lease (the senior offeror) is entitled to receive any lease which is issued.

York Associates, Ltd., 58 IBLA 25 (Sept. 16, 1981)

Where an over-the-counter noncompetitive oil and gas lease offer is filed by a corporation unaccompanied by a statement of its qualifications or a reference by serial number to the record in which it has been filed, and such defect is remedied prior to the filing of any junior offer, such offer may be considered with priority as of the date the curative information is filed.

Century Oil and Gas Corp., 58 IBLA 227 (Sept. 30, 1981)

A simultaneous noncompetitive oil and gas lease application which is not dated is properly rejected.

Jerry R. Smith, 58 IBLA 232 (Oct. 6, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f) are not answered by checking appropriate boxes in the application as the instructions require.

A first-drawn application that is defective because of noncompliance with 43 CFR 3112.2 cannot be cured by submission of additional information after the drawing.

Herman Rainbow, 58 IBLA 279 (Oct. 8, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

Joan S. Bequike, 59 IBLA 130 (Oct. 26, 1981)

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1(a) or the instructions on the application itself where questions (d) through (f), dealing with other parties in interest and multiple filings, are left unanswered.

William C. Douglas, 59 IBLA 226 (Oct. 28, 1981)

Where an offeror fails to submit a list of corporate officers with his noncompetitive over-the-counter lease offer, as required by 43 CFR 3102.2-5(a)(3), the lease offer is properly rejected. However, when the required evidence of corporate qualifications is submitted with the notice of appeal, the offer may be reinstated and allowed to earn priority from the time of submission of the evidence of qualifications.

Horn Silver Mines Co., Inc., 60 IBLA 107 (Nov. 20, 1981)

Where a decision of a BLM state office requires a priority applicant for an oil and gas lease being issued through the simultaneous filing system to file supplemental information within a specified period of time, and the information is filed after this period has run, then delay in filing may not be waived pursuant to 43 CFR 1821.2-2(j), because the rights of applicants drawn with a subsidiary priority have intervened.

F. Peter Zoch, 60 IBLA 150 (Nov. 24, 1981)

An entitlement to share in the proceeds from the sale of a lease or part thereof, contingent upon the lease being sold, is an "interest," as an "interest" includes any claim to a share in profits which may be derived from the lease. Where an agreement creating such an entitlement exists when an offer is filed, its existence must be disclosed on pain of rejection of the offer.

Rosita Trujillo, 60 IBLA 316 (Dec. 18, 1981)

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened. The Department is authorized to accept only the offer of the first-qualified applicant, one who has fully complied with all the regulations.

Jeff Co., 61 IBLA 74 (Dec. 31, 1981)

John F. Jacobs, 66 IBLA 219 (Aug. 16, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

Cimarron Corp., 61 IBLA 90 (Dec. 31, 1981)

Redwood Empire Land and Royalty Co., 62 IBLA 296 (Mar. 16, 1982)

Redwood Empire Land & Royalty Co., 64 IBLA 267 (June 2, 1982)

Under 43 CFR 3103.3-4, a partnership offering to lease must submit "with its offer" a current statement of qualifications to hold a Federal oil and gas lease. If the partnership opts to place its statement of qualifications on file with BLM for future reference, in lieu of resubmitting a statement for each lease offer, the statement on file must be kept current by the offeror or else the serial number assigned to the statement for reference "shall not be used," according to 43 CFR 3102.2-1(c). BLM acts contrary to regulation when it allows a partnership that has made an over-the-counter offer to submit its updated statement of qualifications after the date of filing of the offer, where another offer of prima facie validity had intervened.

Bill Mathis et al., 61 IBLA 131 (Jan. 15, 1982)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit, within 15 days after notice, payment of the advance rental identifying the lease account to which it is to be applied as prescribed by 43 CFR 3112.4-1 (1979), disqualification is automatic, and the right of the next drawee to receive first consideration attaches.

Elmer J. Parker, 61 IBLA 248 (Jan. 28, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where a corporate applicant in a noncompetitive simultaneous drawing does not have on record in its corporate qualifications file a complete list of its corporate officers and the identification of those officers who are authorized to act on behalf of the corporation as required by 43 CFR 3102.2-5(a)(3), and does not submit such a list with its application, the application is properly rejected.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

An oil and gas lease offer filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied either by evidence of corporate qualifications required by the regulations currently in effect or by any reference to a serial number where such information might be found, as required by 43 CFR 3102.2-5. Such omission cannot be cured after the drawing.

Sandan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

A noncompetitive oil and gas lease application filed in the name of a corporation in a simultaneous drawing is properly rejected where it is not accompanied by a complete list of corporate officers, pursuant to 43 CFR 3102.2-5(a)(3), and where the corporate qualifications file referenced in the application was incomplete. Such a deficiency cannot be cured after the drawing.

Adobe Oil & Gas Corp., 63 IBLA 106 (Mar. 31, 1982)

Wilco Properties, Inc., 66 IBLA 215 (Nov. 10, 1982)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

Where a BLM state office decision requires supplemental filings within a specified period of time by a priority applicant for an oil and gas lease to be issued through the simultaneous filing system, in order to avoid subsequent BLM action to reject the lease offer, the rights of applicants drawn with subsidiary priority do not vest unless and until BLM takes action to reject the offer. Where the filings are subsequently received before the rights of applicants drawn with a subsidiary priority have intervened, the delay in filing may be waived pursuant to 43 CFR 1821.2-2(g).

Where an applicant with first priority dies after filing an oil and gas lease application, but prior to issuance of the lease, his personal representative, heirs, or devisees are entitled to the lease provided there is filed an offer to lease in compliance with 43 CFR 3102.8.

Estate of Isidor Deener, 63 IBLA 217 (Apr. 13, 1982)

Where a noncompetitive over-the-counter lease offer for unsurveyed acquired lands fails to provide a land description from the deed or other acquisition document, or by courses and distances, and fails to include a map indicating the desired lands, as required by 43 CFR 3101.2-3(b), the offer is properly rejected. However, when the additional required information is filed with the notice of appeal, the offer may be reinstated and given priority from the time of the filing of such information.

Bryan O. Blevins, 63 IBLA 304 (Apr. 26, 1982)

An oil and gas lease application filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied by a list of corporate officers as required by 43 CFR 3102.2-5(a) or by a reference to a BLM serial number indicating where such information can be found. Such an omission cannot be cured after the drawing.

Hickory Creek Oil Co., 63 IBLA 313 (Apr. 27, 1982)

Rockies Energy Corp., 66 IBLA 313 (Aug. 24, 1982)

Adobe Oil & Gas Corp., 73 IBLA 263 (June 7, 1983)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

A defective application for an oil and gas lease submitted pursuant to the simultaneous filing procedure for noncompetitive oil and gas leasing is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of second and third drawn qualified applicants have intervened.

Ispel Energy Corp., 64 IBLA 92 (May 12, 1982)

An oil and gas lease application filed by a corporation in a simultaneous filing is properly rejected where it is not accompanied either by corporate qualification papers, as required by 43 CFR 3102.2-5, or by any reference to a serial number indicating where such information can be found, as permitted by 43 CFR 3102.2-1(c). Such omissions cannot be cured after the drawing.

Cluff Oil, Inc., 64 IBLA 156 (May 25, 1982)

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Curtis Wheeler, 64 IBLA 239 (May 28, 1982)

Paiute Oil & Mining Corp., 67 IBLA 17 (Sept. 3, 1982)

Paiute Oil & Mining Corp., 69 IBLA 172 (Dec. 14, 1982)

James H. W. Young, 69 IBLA 387 (Jan. 4, 1983)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b) (1979).

Michigan Wisconsin Pipeline Co., et al., 64 IBLA 247 (May 28, 1982)

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease offer which must be disclosed under 43 CFR 3102.7 (1979).

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to give the service an interest in the lease, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interests under 43 CFR 3102.7 (1979).

Gordon J. Lindsay, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

Where, under 43 CFR 3102.2-5, evidence of a corporation's qualifications to hold an oil and gas lease must be submitted simultaneously with the lease offer or reference be made to the BLM serial number where the material has earlier been filed, and where such information is not submitted with the offer, the offer is deficient, the filing ineffective, and no priority attaches. However, where the applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3102.2-5 is satisfied, an effective filing occurs, and priority attaches on the date the deficiency is cured.

A noncompetitive oil and gas lease may only be issued to the first-qualified offeror. Where a corporate applicant fails to submit with its over-the-counter lease offer a list of corporate officials as required by 43 CFR 3102.2-5, its offer receives no priority until the defect is cured. Where an oil and gas lease has issued to a corporate offeror whose offer lacked priority originally because of noncompliance with 43 CFR 3102.2-5, such lease is properly canceled only where another offer was filed for the same land before the applicant cured the defect in its offer.

Peter D. Van Der Jagt, 65 IBLA 56 (June 23, 1982)

An application drawn first in a simultaneous drawing which is filed in the name of a partnership but which is not accompanied by statements required by the pertinent regulations and which does not refer to the file serial number of the record where the statements have previously been filed is defective and must be rejected.

A partnership's defective simultaneous noncompetitive oil and gas lease application is not curable by submission of required evidence of qualifications after the drawing.

Pirindel Investment Research, 65 IBLA 111 (June 24, 1982)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms were not received by BLM within 30 days from the receipt of notice.

Warren R. Haas, 66 IBLA 107 (Aug. 4, 1982)

An oil and gas lease offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

Leo R. Sas, 67 IBLA 36 (Sept. 8, 1982)

Irvin Wall, 68 IBLA 299 (Nov. 19, 1982)

James C. Stevenson, 77 IBLA 150 (Nov. 15, 1983)

Bellwether Exploration Co., 78 IBLA 188 (Jan. 4, 1984)

Mardam Exploration, Inc., 79 IBLA 259 (Mar. 6, 1984)

Charles E. Shaw, 81 IBLA 347 (June 25, 1984)

A junior over-the-counter noncompetitive oil and gas lease offer is properly rejected where the lands have been leased to a senior offeror and the junior offeror incorrectly alleges that the senior offeror had not identified the proper county in describing the land.

Irvin Wall, 68 IBLA 243 (Nov. 16, 1982)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, a junior offer is properly rejected to the extent that it includes land described in a senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

Irvin Wall, 68 IBLA 308 (Nov. 19, 1982)

Irvin Wall, 68 IBLA 311 (Nov. 19, 1982)

Irvin Wall, 69 IBLA 175 (Dec. 14, 1982)

Irvin Wall, 70 IBLA 183 (Jan. 20, 1983) 90 I.D. 3

Irvin Wall, 76 IBLA 186 (Oct. 3, 1983)

An oil and gas lease application, Form 3112-1 (Sept. 1981), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered and applicant's failure to check these items on the form cannot be cured where the rights of the second-drawn applicant have intervened.

Leonard Stegman, 68 IBLA 364 (Nov. 22, 1982)

A defective application for noncompetitive oil and gas lease submitted pursuant to the simultaneous filing procedure is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of the second and third qualified applicants have intervened.

A first-drawn application in a simultaneous filing procedure drawing is a noncompetitive offer to lease for oil and gas and does not create a property right in the offeror.

Fay F. Tyree, 68 IBLA 381 (Nov. 23, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where, on a noncompetitive over-the-counter lease offer, a corporate applicant refers to a corporate qualifications file which lists all officers of the corporation, compliance with 43 CFR 3102.2-5 has been accomplished even if the file fails to show that some of the listed officers hold more than one corporate office.

Frandy, Inc., 69 IBLA 26 (Nov. 26, 1982)

A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant, and cancellation is mandatory where an oil and gas lease is issued to a party other than the first-qualified applicant in violation of a statute or regulation of the Department.

Where a listing of corporate officers is required by regulation as part of the corporate qualifications file maintained by an offeror for an over-the-counter oil and gas lease, the list is deemed complete in the absence of any mention of a corporate treasurer if the corporate president serves in a dual capacity as treasurer and the president's identity is disclosed on the list.

Paul M. Temple, 69 IBLA 54 (Nov. 29, 1982)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

Where an applicant for a noncompetitive oil and gas lease in the simultaneous filing program fails to submit the first year's advance rental within 30 days from receipt of notice to do so, as required by 43 CFR 3112.4-1(a), his application is properly rejected under 43 CFR 3112.6-1(d).

B. B. Fraech, 69 IBLA 66 (Nov. 30, 1982)

A noncompetitive oil and gas lease offer is properly rejected in favor of a senior offer that would qualify regardless of whether it was adjudicated on the basis of the rules applicable at the time it was filed or at the time the lease was issued.

Irvin Wall, 69 IBLA 154 (Dec. 13, 1982)

An application drawn first in a simultaneous drawing which is filed in the name of a partnership but which is not accompanied by evidence of qualifications required by the pertinent regulations and which does not refer to the serial number of the record where the statements have previously been filed with and accepted by the Bureau of Land Management is defective and must be rejected.

KVK Partnership, 69 IBLA 199 (Dec. 15, 1982)

Where a listing of corporate officers is required by regulation as part of the corporate qualifications file maintained by the offeror for an over-the-counter oil and gas lease, the list is deemed complete in the absence of any mention of a corporate treasurer or secretary if these offices are held by other corporate officers serving in a dual capacity and the identity of these corporate officers is disclosed by the list.

Paul E. Temple, 69 IBLA 275 (Dec. 21, 1982)

An oil and gas lease application filed by a partnership in a simultaneous filing is properly rejected where it is not accompanied either by partnership qualification papers, as required by 43 CFR 3102.2-4, or by any reference to a serial number indicating where such information can be found, as permitted by 43 CFR 3102.2-1(c).

James W. Lacy, 69 IBLA 285 (Dec. 21, 1982)

A noncompetitive oil and gas lease application filed in the name of a corporation in a simultaneous drawing is properly rejected where it is not accompanied by a complete list of corporate officers, pursuant to 43 CFR 3102.2-5(a)(3) (1981), and where the corporate qualifications file referenced in the application was incomplete. Such a deficiency cannot be cured after the drawing.

Oxy Petroleum, Inc., 69 IBLA 357 (Jan. 3, 1983)

An applicant receiving priority in a drawing of simultaneously filed oil and gas lease applications who fails to submit payment of the proper amount of advance rental within 30 days after receipt of a notice that payment is due, as prescribed by 43 CFR 3112.4-1(a), is automatically disqualified to receive a lease.

Dorelys M. Delano, 69 IBLA 360 (Jan. 3, 1983)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

A noncompetitive over-the-counter oil and gas lease offer need not be rejected merely because the applicant failed to initial an attachment to the application.

Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, a junior offer is properly rejected to the extent that it includes land described in the senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

Where a lease improperly issued to a senior offeror is canceled, the offer of the applicant having next priority is entitled to consideration.

Irvin Wall, 69 IBLA 371 (Jan. 3, 1983)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

Thomas E. Lewis, 70 IBLA 69 (Jan. 11, 1983)

Pioneer Fairmont #1, Ltd., 76 IBLA 337 (Oct. 20, 1983)

Vernie Lysengen, 78 IBLA 1 (Dec. 12, 1983)

Harold J. Norsoph, 78 IBLA 150 (Dec. 29, 1983)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and first year's rental were submitted to the wrong BLM office and were not thereafter received by the proper BLM office within 30 days from the receipt of notice of priority.

Jerry W. Wolf, 70 IBLA 131 (Jan. 14, 1983)

An oil and gas lease offer is properly rejected under 43 CFR 3111.1-1(a) where the offeror signs one copy of the offer form but fails to sign the other four copies.

D. M. Yates, 70 IBLA 134 (Jan. 14, 1983)

Where an applicant fails to file five copies of a noncompetitive lease offer as required by the regulations in 43 CFR 3111.1-1(a), the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, is fatal to the oil and gas offer.

Robert G. Lynn, 70 IBLA 141 (Jan. 17, 1983)

Robert G. Lynn (On Reconsideration), 73 IBLA 288 (June 7, 1983)

An oil and gas lease application filed in the name of a corporation in a simultaneous drawing is properly rejected where it is not accompanied by a complete list of corporate officers, pursuant to 43 CFR 3102.2-5(a)(3) (1981), and where the corporate qualifications file referenced in the application was incomplete. Such a deficiency cannot be cured after the drawing.

Fuel Exploration, Inc., 70 IBLA 361 (Feb. 3, 1983)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

Where a noncompetitive oil and gas lease has erroneously been issued to a party other than the first-qualified applicant, cancellation is mandatory.

Bernard Kosik, 70 IBLA 373 (Feb. 4, 1983)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1 (1979), disqualification to receive a lease is automatic.

Beverly J. Macdowell, Dorothy Langley, 71 IBLA 21 (Feb. 15, 1983)

Where an oil and gas lease offeror signs an offer form in ink, photocopies four exact reproductions of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the five documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-1(a), and it is improper to reject that offer because the four photocopies were not personally signed.

Fayette Oil & Gas Corp., 71 IBLA 79 (Feb. 22, 1983)

A first-drawn drawing entry card in a simultaneous filing held prior to May 23, 1980, was a noncompetitive offer to lease oil and gas and did not create a property right in the offeror. No rights to a lease survive the withdrawal of such offer.

Stanley Ustan, 71 IBLA 116 (Mar. 2, 1983)

A junior over-the-counter noncompetitive oil and gas lease offer is properly rejected where the lands have been leased to a senior offeror and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

Irvin Wall, 71 IBLA 209 (Mar. 15, 1983)

Bob G. Howell, 75 IBLA 113 (Aug. 12, 1983)

John P. LaRue, 78 IBLA 239 (Jan. 10, 1984)

Beth Sittke, Trustee, 84 IBLA 197 (Dec. 24, 1984)

A noncompetitive over-the-counter oil and gas lease offer need not be rejected merely because the applicant failed to initial an attachment to the application.

Because a noncompetitive oil and gas lease may be issued only to the first-qualified applicant, a junior offer is properly rejected to the extent that it includes land described in a senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

Irvin Wall, 71 IBLA 349 (Mar. 28, 1983)

Where, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn applicant fails to submit his first year's advance rental payment within 30 days after receipt of notice, as prescribed by 43 CFR 3112.4-1(a), his application must be rejected.

Richard W. Kulis, 72 IBLA 251 (Apr. 27, 1983)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

Where a lease agreement is mailed to a first-qualified applicant at his last address of record by certified mail, delivery to that address is adequate regardless of whether it was actually received by the applicant or not. A tender of lease agreement by the applicant more than 30 days subsequent to the date of delivery is properly rejected.

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

Hampton P. Stewart, 72 IBLA 358 (May 2, 1983)

Where a first-priority oil and gas lease applicant fails to submit, within 30 days of receipt of notice, the signed offer, and rental, and, where the offer is signed by an attorney-in-fact, a copy of his/her power of attorney or reference to the serial number under which such authorization is filed, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, and the rights of the next priority applicant attach immediately. However, a BLM decision issued prior to the expiration of the 30-day period, which rejects an offer for failure to provide the power of attorney or reference to a serial number, is premature and must be set aside where the applicant subsequently provides that information within the 30-day period.

Northwest Exploration Co., 73 IBLA 123 (May 23, 1983)

A defective application for a noncompetitive oil and gas lease submitted pursuant to the simultaneous filing procedure is not curable by submission of required evidence of qualifications after the drawing, for the reason that the rights of the second and third qualified applicants have intervened.

A first-drawn application in a simultaneous filing procedure drawing is a noncompetitive application to lease for oil and gas and does not create a property right in the applicant.

Warren W. Wissley, 73 IBLA 234 (May 31, 1983)

A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant. A defect is not curable to the extent that the rights of third parties have intervened. Accordingly, the lease must be offered to the first-qualified applicant who has complied with the Department's regulations which were operative and controlling at the time.

Tyrex Oil Co., 73 IBLA 281 (June 1, 1983)

Where the first-drawn applicant for a noncompetitive oil and gas lease in the simultaneous filing program fails to submit the first year's advance rental within 30 days from receipt of notice to do so, as required by 43 CFR 3112.4-1(a), his application is properly rejected under 43 CFR 3112.6-1(d).

Carl A. Peterson, 73 IBLA 347 (June 10, 1983)

An offeror is not disqualified where a written agreement creating other parties in interest in an oil and gas lease offer, filed in support of an offer pursuant to 43 CFR 3102.2-7 (1981), is signed by the offeror through an agent.

S.O.C. Oil Co., 73 IBLA 350 (June 14, 1983)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

Where an oil and gas lease application is given first priority in the simultaneous filing procedure, and the application was filed in accordance with the regulation, 43 CFR 3102.5, it is proper for the Bureau of Land Management to issue the oil and gas lease to the applicant whose application was drawn with first priority. Bare assertions by the second-priority applicant of irregularities by the first-priority applicant do not rise to the level that would require an investigation to verify compliance.

Jonathan Kutner, 73 IBLA 372 (June 15, 1983)

An offer by the first-drawn applicant of a simultaneous filing procedure drawing is not curable by submission of the required material after the period for such submission has expired, for the reason that the rights of the second- and third-drawn applicants have intervened.

United Ventures, 74 IBLA 31 (June 24, 1983)

When, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn offeror is notified to submit the first year's advance rental and executed lease agreements, those submissions must be received by the proper office within the prescribed 30 days. Automatic disqualification, stemming from untimely filings, will not be avoided by allegations that submissions were timely mailed but thereafter damaged by the postal service and returned to appellant.

Mary Jane Associates, 74 IBLA 43 (June 27, 1983)

An oil and gas lease application filed by a partnership in a simultaneous filing is properly rejected where said application is not accompanied either by the qualification papers required by 43 CFR 3102.2-4 (1981) or by any reference to a serial number indicating where the requisite information can be found. Such omissions cannot be cured after the drawing.

LSMJ Exploration Group, 74 IBLA 185 (July 18, 1983)

LBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

Where an applicant has withdrawn his first filed simultaneous oil and gas lease application because it contained a fatal flaw, and thereafter files a correct application, it is improper for the Bureau of Land Management to reject the second application as to parcels for which it received first priority for the reasons that the applicant made multiple filings.

John H. Trigg, 74 IBLA 246 (July 19, 1983)

A simultaneous oil and gas lease application which was filed in the name of a trust, but was not accompanied by the statements required by 43 CFR 3102.2-3 (1981) and which did not refer to a file reference number was properly rejected.

Robert T. P. Metcalf (Trust), 74 IBLA 252 (July 22, 1983)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

Where, under 43 CFR 3102.2-5 (1981), evidence of a corporation's qualifications to hold an oil and gas lease must be submitted simultaneously with the lease offer or reference be made to the BLM serial number where the material has earlier been filed, and where such information is neither submitted with the offer nor referenced thereon by serial number, the offer is deficient, the filing ineffective, and no priority attaches. However, where the applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3102.2-5 (1981) is satisfied, an effective filing occurs, and priority attaches on the date the deficiency is cured.

A noncompetitive oil and gas lease may only be issued to the first-qualified offeror. Where a corporate applicant fails to submit with its over-the-counter lease offer evidence of corporate qualifications as required by 43 CFR 3102.2-5 (1981), or a reference by BLM serial number to a file in which such information has been filed, its offer receives no priority until the defect is cured.

Inexco Oil Co., 74 IBLA 260 (July 22, 1983)

Where BLM erroneously issues a noncompetitive over-the-counter oil and gas lease to a junior offeror, BLM's decision canceling that lease will be affirmed, since the law requires that the qualified person *first* making application for a lease (the senior offeror) is entitled to receive any lease which is issued.

A. W. Rutter, Jr., 74 IBLA 345 (July 28, 1983)

Statements required of other parties in interest in connection with a lease offer under 43 CFR 3102.2-7(b) (1981) must include a statement affirming the party's compliance with the acreage limitations of 43 CFR 3101.1-5 and 3101.2-4. With respect to an over-the-counter lease offer, where such a statement is not filed timely within 15 days of filing the lease offer as required by regulation, but is filed prior to final rejection of the lease offer, the offer may be reinstated only with priority as of the time the required information is filed.

An over-the-counter oil and gas lease offer which is executed by two offerors will not be rejected for failure to provide a copy of an agreement with other parties in interest under 43 CFR 3102.2-7(b) (1981) where both offerors have properly certified that they are the sole parties in interest.

Joe M. Johnson, J. Ross Mahoney, Resources Investment Corp., 74 IBLA 383 (July 29, 1983)

BLM may properly reject a simultaneous oil and gas lease application filed by a partnership or a corporation where it is not accompanied by evidence of partnership qualifications, in the case of a partnership, in accordance with 43 CFR 3102.2-4 (1981), or by evidence of corporate qualifications, in the case of a corporation, in accordance with 43 CFR 3102.2-5 (1981), or by any reference to a serial number indicating where such information can be found, in accordance with 43 CFR 3102.2-1(c) (1981). Reference to a serial number on a document attached to the application will not suffice to comply with 43 CFR 3102.2-1(c) (1981).

Cretaceous Partnership, RBE, Inc., 75 IBLA 203 (Aug. 22, 1983)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

Rejection of an oil and gas lease offer will be set aside where the offeror files his offer, rental, and, where appropriate, power of attorney or serial number reference thereto, within the 30-day period provided by regulation 43 CFR 3112.6-1(b)(2), even though the offer, rental, and appropriate power of attorney materials were not received together by BLM.

Amoco Production Co., 75 IBLA 344 (Aug. 31, 1983)

When, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn offeror is notified that he/she is to submit the first year's advance rental and executed lease agreements, those submissions must be received by the proper office within the prescribed 30 days. Automatic disqualification, stemming from untimely filings, will not be avoided by reliance on the assurance of the Postal Service that mailings entrusted to it would be delivered on the due date.

The 1980 amendment of 43 CFR 3112.4-1 did not create an ambiguity which excused an applicant from filing the necessary lease offer documents within 30 days from the date of receipt. The reasons for the 1980 amendments stated by the Secretary in the Federal Register at the time of proposal and final printing amplify the stated intent of the regulations to provide that the sanction for failure to file within the 30-day period is the rejection of an applicant's offer.

Eagle Basin Partnership, 76 IBLA 241 (Oct. 17, 1983)

A simultaneous oil and gas lease offer is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

James A. Scanapico, 76 IBLA 290 (Oct. 18, 1983)

It was improper to disqualify a first-drawn applicant in the simultaneous oil and gas leasing program because his agent's check in a previous drawing was returned as uncollectible, since under the applicable regulations the check in question should not have been deposited by the Bureau of Land Management.

Charles Anderson, 76 IBLA 402 (Oct. 27, 1983)

BLM must reject a first-drawn simultaneous oil and gas lease application where the applicant fails to submit the executed lease agreement and first year's rental within 30 days of notice to do so, pursuant to 43 CFR 3112.4-1(a), in spite of any negligence on the part of the Postal Service which delayed return of the lease agreement and rental payment.

Jay P. Angle, 77 IBLA 242 (Nov. 29, 1983)

An oil and gas lease offer is properly rejected under provision of 43 CFR 3111.1-1(a) where the offeror signs only two copies of five submitted lease offer forms.

Glen R. Cassarino, 78 IBLA 242 (Jan. 10, 1984)
91 I.D. 9

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

Failure of an applicant to date a simultaneous oil and gas lease application in accordance with 43 CFR 3112.2-1(c) (1982) does not require rejection of the application.

Billie L. Emrick, 78 IBLA 358 (Jan. 27, 1984)

Harvey Howard Trott, 79 IBLA 146 (Feb. 23, 1984)

Where an acquired lands oil and gas lease offeror signs an offer form in ink, photocopies exact reproductions of the offer form, including the signature, with the intent that the photocopied signature be his signature, and submits the documents as the offer, that offer fulfills the signature requirement of 43 CFR 3111.1-2(a) (1981), and it is improper to reject that offer because the photocopies were not personally signed.

James L. Camblos III, Christine C. Camblos, 78 IBLA 369 (Jan. 30, 1984)

An applicant receiving priority in a drawing of simultaneously filed oil and gas lease applications who fails to submit the payment of the proper amount of advance rental within 30 days after receipt of a notice that payment is due, as prescribed by 43 CFR 3112.4-1(a), is automatically disqualified to receive a lease.

D. W. Jones, 79 IBLA 295 (Mar. 20, 1984)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms are not received by the proper BLM office within 30 days from receipt of notice of rental due.

P. A. Rapp, 80 IBLA 133 (Apr. 6, 1984)

An applicant cannot receive any priority based on an application deemed to be unacceptable, even though the application is included in the selection process and selected with priority.

Howell Roberts Spear, 80 IBLA 150 (Apr. 6, 1984)

Where, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn applicant fails to submit his first year's advance rental payment within 30 days after receipt of notice, as prescribed by 43 CFR 3112.4-1(a) (1982), his lease offer must be rejected.

S. N. Partners, 80 IBLA 153 (Apr. 9, 1984)

In Lowry v. Watt, 684 F.2d 957 (D.C. Cir. 1982), and Coyer v. Watt, 720 F.2d 626 (10th Cir. 1983), the amendment and disclaimer of Fred L. Engle, d.b.a. Resource Service Co. was held to be effective to waive the exclusive agency provision that formed part of the company's contract with its clients. The waiver being effective, neither the company nor Engle possessed an interest in a client's offer at the time of a drawing of simultaneously filed oil and gas lease offers so as to invalidate the offer.

Michigan Wisconsin Pipeline Co. (On Reconsideration), Geosearch, Inc., John A. Kocbergen, 80 IBLA 317 (May 7, 1984)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

Where, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn applicant fails to submit his executed lease agreement and first year's advance rental payment within 30 days after receipt of notice to do so, as prescribed by 43 CFR 3112.6-1(a), his lease application must be rejected.

Fred William Berger, 81 IBLA 344 (June 25, 1984)

If an oil and gas lease is to be issued for a particular tract, it must be issued to the first-qualified applicant. An application filed pursuant to the simultaneous filing procedure and selected with first priority is a noncompetitive application to lease for oil and gas and does not create a property right in the applicant but is merely a hope or expectation. The Secretary of the Interior may, in his discretion, reject any application to lease for oil and gas. An application, however, may not be rejected on a basis other than that permitted by law.

The first-qualified applicant for an oil and gas lease acquires no vested right to have a lease issued to him but only a right to be preferred over other applicants if a lease is to be issued and his application may be rejected if it is determined that a previously terminated lease including the lands sought for leasing should be reinstated under sec. 401 of the Federal Oil and Gas Royalty Management Act, P.L. 97-451, 96 Stat. 2447, which amended sec. 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1982).

Nola Grace Ptasynski, 82 IBLA 48 (July 11, 1984)

In a simultaneous oil and gas lease drawing, the first-qualified applicant drawn with first priority is entitled to receive the lease. An appeal is properly dismissed where the appellant fails to point out the grounds on which the decision appealed from is in error, and the allegations in his statement of reasons are irrelevant and immaterial.

Chickasaw Oil & Gas, Inc., 82 IBLA 59 (July 11, 1984)

BLM may not properly reject a simultaneous oil and gas lease application where the application is signed on behalf of the applicant and the signature includes the title of the applicant as "partner" of a particular partnership, designated as another party in interest, since it is possible to determine the identity of the applicant and the word referring to title should have been treated as surplusage.

Ann M. Davis et al., 82 IBLA 151 (July 30, 1984)

An over-the-counter, noncompetitive oil and gas lease offer must be rejected when the record discloses that the land applied for has properly been leased to a senior offeror.

Weston B. Andrews, 83 IBLA 338 (Nov. 5, 1984)

BLM must cancel a noncompetitive oil and gas lease erroneously issued to a party other than the first-qualified offeror, where the lease was issued while that offeror's prior lease offer was pending on appeal before the Board and the offeror was ultimately determined to be qualified to receive a lease.

American Mineral Leasing, Inc., 83 IBLA 372 (Nov. 15, 1984)

OIL AND GAS LEASES--Continued

FIRST-QUALIFIED APPLICANT--Continued

An unsigned check tendered within the 30-day notice period provided by 43 CFR 3112.6-1(a) (1982) is not acceptable for rental payment. BLM must reject an oil and gas lease offer when a properly executed check submitted for rental payment to replace an unsigned check is received after the expiration of the 30-day period.

Stephen M. Thompson, 84 IBLA 146 (Dec. 12, 1984)

FUTURE AND FRACTIONAL INTEREST LEASES

Under 43 CFR 3130.2-1, rental for noncompetitive oil and gas leases for acquired lands in which the United States owns an undivided fractional interest is payable at the same rate as provided for full acreage leases and not prorated.

Wilfred Plomis, 45 IBLA 230 (Feb. 4, 1980)

An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest, filed before Sept. 30, 1976, must have been accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which was defective for failure to comply with this mandatory regulation must be rejected where it was filed in the simultaneous drawing procedure.

Irma Spear, 52 IBLA 360 (Feb. 19, 1981)

Where a competitive, fractional interest, oil and gas lease is issued with conflicting and confusing rental provisions recited in the lease terms and in an attachment to the lease, a deficient rental payment by the lessee in reasonable reliance on the section providing for rental based upon the pro rata fractional interest of the United States will be considered justified so as to qualify the terminated lease for reinstatement.

Texas Oil and Gas Corp., 58 IBLA 175 (Sept. 28, 1981)
88 I.D. 879

Where the Government owns a 50 percent mineral interest in certain acquired lands and subsequently obtains the remaining 50 percent mineral interest in those lands at a time in which the original interest is not under lease, the Government may not thereafter issue a fractional interest lease for these lands.

Wilfred Plomis, 62 IBLA 162 (Mar. 8, 1982)

Where the Government owns a 50 percent mineral interest in certain acquired lands and has issued an oil and gas lease for that fractional interest, and it then obtains the remaining 50 percent at a time when the original acquired fractional interest is still under lease, it is error to issue a second oil and gas lease to another party for the newly vested fractional interest, and the second lease is properly canceled upon recognition of the error.

Where the Government owns a 50 percent mineral interest in certain acquired lands and it subsequently obtains the remaining 50 percent mineral interest at a time when the originally acquired interest is subject to a federal oil and gas lease, the recently acquired fractional interest is not automatically included in

OIL AND GAS LEASES--Continued

FUTURE AND FRACTIONAL INTEREST LEASES--Continued

the existing oil and gas lease of the original fractional interest.

SOCO 1980 Acreage Program, 68 IBLA 132 (Oct. 28, 1982)

A noncompetitive oil and gas lease offer for an undivided one-half interest in acquired land must be rejected where the land has been determined to be within the known geologic structure of a producing oil or gas field, even when leasing might be considered in the public interest because the offeror is the owner of the other one-half interest.

Worth D. Ware, Gayl L. Ware, 74 IBLA 256 (July 22, 1983)

KNOWN GEOLOGIC STRUCTURE

Land within a known geologic structure of a producing oil or gas field can only be leased competitively under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226(b) (1976), and a noncompetitive offer for such lands must be rejected.

L. A. Walstrom, Jr., 46 IBLA 389 (Apr. 10, 1980)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

It is not the policy of this Department to redefine a known geologic structure until all sands or formations therein have been exhausted or proved barren.

Known geologic structures are of two kinds: undefined and defined. The essential difference between these structures is the formality and detail of the defined procedure which does not permit the necessary day-to-day determinations needed by the Bureau of Land Management in its current administration of leases and lease applications.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Vernon and Rita Benson, 48 IBLA 64 (May 29, 1980)

A determination by the Geological Survey that lands are within an undefined known geologic structure will not be disturbed in the absence of a clear showing that the determination was improperly made.

Where the Geological Survey has determined that any part of the lands described in a noncompetitive oil and gas lease is within an undefined known geologic structure, the lessee is required to pay increased rental in accordance with 43 CFR 3103.3-2(b)(1).

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE--Continued

CO2-In-Action, Inc., 50 IBLA 54 (Sept. 15, 1980)

Ambra Oil and Gas Co., 58 IBLA 67 (Sept. 22, 1981)

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not, in fact, contain valuable deposits of oil or gas. It is not the policy of this Department to redefine a known geologic structure until all sands or formations therein have been exhausted or proven barren.

Where the Geological Survey has determined that any part of the lands described in a noncompetitive oil and gas lease is within an undefined known geologic structure, the lessee is required to pay increased rental in accordance with 43 CFR 3103.3-2(b)(1).

SID, 50 IBLA 262 (Sept. 30, 1980)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The fact that the noncompetitive offeror followed all of the applicable rules and regulations in making the offer does not vitiate this conclusion.

Pauline C. Lebsack, 50 IBLA 361 (Oct. 16, 1980)

Where, on appeal, an oil and gas lessee submits evidence disputing a decision of the Geological Survey that the land embraced by his lease is not on a known geologic structure of a producing oil or gas field, and there is no basis in the record to support the Geological Survey's conclusion, a decision increasing the annual rental should be set aside and the case remanded for consideration by BLM of appellant's contentions.

Robert L. Haynie et al., 51 IBLA 1 (Oct. 28, 1980)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

It is not the policy of this Department to redefine a known geologic structure until all sands or formations therein have been exhausted or proved barren.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE--Continued

field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

A noncompetitive oil and gas offer to lease must be rejected where either before or after the filing of the offer and prior to the time of the issuance of the lease the land is determined to be within the known geologic structure of a producing oil or gas field.

James Hunlow, Sr., 51 IBLA 19 (Oct. 28, 1980)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

An applicant for an oil and gas lease who challenges a determination by the Geological Survey that lands are situated within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error and the determination will not be disturbed in the absence of a clear and definite showing of error.

Ervin Wheeler, Toni Shugart, Kathy Coffee, 51 IBLA 66 (Oct. 31, 1980)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, during the pendency thereof, the land is determined to be within the known geologic structure of a producing oil or gas field. The fact that the noncompetitive offeror followed all of the applicable rules and regulations in making his offer does not vitiate this conclusion.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Donnie R. Clouse, 51 IBLA 221 (Dec. 10, 1980)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The drawing of an offer for a noncompetitive oil and gas lease creates no vested rights in the offeror; it only establishes the priority of filing. The offeror is not justified in relying on the expected issuance of a lease.

Richard J. DiBarco, 53 IBLA 130 (Mar. 5, 1981)

Kenneth L. Hanlin, 70 IBLA 115 (Jan. 13, 1983)

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE--Continued

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field.

William R. Turner, 54 IBLA 111 (Apr. 15, 1981)

R. R. Braun, 60 IBLA 246 (Dec. 4, 1981)

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Jack J. Bender, 54 IBLA 375 (May 19, 1981) 88 I.D. 550

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear showing that the determination was improperly made, nor will the applicable rental be reduced without such showing.

Roy L. McKay, 57 IBLA 401 (Sept. 14, 1981)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, during the pendency thereof, the land is determined to be within the known geologic structure of a producing oil or gas field. Neither the fact that the noncompetitive offeror followed all of the applicable rules and regulations in making its offer nor the fact that the Bureau of Land Management delayed in getting a report from Geological Survey regarding the known geologic structure determination vitiates this conclusion.

George Reddy & Associates, 59 IBLA 359 (Nov. 9, 1981)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE--Continued

accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Robert G. Lynn, 60 IBLA 117 (Nov. 24, 1981)

Where, on appeal, an oil and gas lessee submits evidence disputing a decision of BLM that a portion of the land embraced by his lease is on a known geologic structure of a producing oil or gas field, and there is no basis in the record to support BLM's determination, the decision will be set aside and the case remanded for consideration by BLM of appellant's contentions.

Hepburn T. Armstrong, 60 IBLA 140 (Nov. 24, 1981)

BLM has satisfied its burden of giving notice of the inclusion of leased lands in a KGS and of the concomitant increase in annual rental to $2 per acre or fraction thereof when it notifies the lessees of record, regardless of its failure to notify the holder of operating rights under the lease.

Robert L. Wright, Shell Oil Co., 60 IBLA 142 (Nov. 24, 1981)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

An applicant for an oil and gas lease who challenges a determination by the Geological Survey that lands are situated within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error, and the determination will not be disturbed in the absence of a clear and definite showing of error.

Juanita M. Mayer, 60 IBLA 391 (Dec. 23, 1981)

Where an applicant for a noncompetitive oil and gas lease submits probative evidence opposing the determination by the Geological Survey that certain lands are within the known geologic structure, a hearing will be ordered so that a complete record may be developed.

Daniel A. Engelhardt, 61 IBLA 65 (Dec. 31, 1981)

OIL AND GAS LEASES--Continued

KNOWN GEOLCGIC STRUCTURE--Continued

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as with absolute accuracy showing the extent, in each instance, of the geologic structure producing oil and gas.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Robert G. Lynn, 61 IBLA 153 (Jan. 19, 1982)

Acquired lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, while the offer is pending, the land is determined to be within a known geologic structure.

R. L. Mulholland, 61 IBLA 175 (Jan. 26, 1982)

Elcogas, Inc., 68 IBLA 130 (Oct. 28, 1982)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 Part CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

An applicant for an oil and gas lease who challenges a determination by the Geological Survey that lands are situated within the known geologic structure (KGS) of a producing oil or gas field has the burden of showing that the determination is in error and the determination will not be disturbed in the absence of a clear and definite showing of error. Where appellant provides technical data to support his contention and the record contains only a conclusory determination that the land is within a KGS, the Board may call for further substantiation of the basis for the KGS finding in light of appellant's data.

Bruce Anderson, 63 IBLA 111 (Apr. 2, 1982)

A noncompetitive oil and gas lease application must be rejected where at any time prior to the issuance of the lease the land is determined to be within the known geologic structure of a producing oil or gas field.

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear and definite showing that the determination was improperly made.

Lida R. Drumheller, 63 IBLA 290 (Apr. 22, 1982)

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE--Continued

A determination by Geological Survey that lands are within a known geologic structure (KGS) of a producing oil or gas field will be reversed where appellant has demonstrated, by a clear and definite showing of error, that a permeability pinchout occurs in the lands designated as KGS and the pinchout is so situated as to overcome the presumption that lands included in appellant's oil and gas lease offer are productive.

James Huslow, Sr. (On Reconsideration), 65 IBLA 352 (July 16, 1982)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Robert L. Lyon, 66 IBLA 141 (Aug. 10, 1982)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitve oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Angelina Holly Corp., 70 IBLA 294 (Jan. 27, 1983)

A noncompetitive oil and gas lease offer must be rejected where, at any time prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

Peter Zaparello, 71 IBLA 39 (Feb. 16, 1983)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Minerals Management Service that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Bob F. Abernathy, 71 IBLA 149 (Mar. 9, 1983)

Bob G. Howell, 71 IBLA 253 (Mar. 21, 1983)

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE--Continued

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The offeror is not justified in relying on the expected issuance of a lease.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Harry S. Hills, 71 IBLA 302 (Mar. 22, 1983)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The drawing of an application for a noncompetitive oil and gas lease creates no vested rights in the applicant; it only establishes the priority to be accorded conflicting applications.

A known geologic structure is technically the trap, whether structural or stratigraphic, in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive.

Hepburn T. Armstrong, 72 IBLA 329 (Apr. 29, 1983)

A determination by the Department concerning known geologic structure of an oil and gas field will not be disturbed in the absence of proof the determination is erroneous, nor will the rental be reduced without such proof.

TXO Production Corp., 73 IBLA 33 (May 9, 1983)

Where the lessee under a noncompetitive oil and gas lease, which is canceled to the extent it includes land which had been determined to be within a known geologic structure prior to issuance of the lease, submits probative evidence contravening the determination by the Geological Survey, a hearing will be ordered so that a complete record may be developed. Only evidence pertaining to the period prior to lease issuance will be admissible.

Celeste C. Grynberg, 74 IBLA 180 (July 18, 1983)

Where a portion of a noncompetitive lease offer is classified within a known geologic structure pending litigation of rejection of the offer for other reasons, that portion of the offer to lease affected by the classification must be rejected despite a judgment finding the offer to be otherwise proper. Land within a known geologic structure may be leased only after competitive bidding under provisions of 43 CFR Subpart 3120.

The drawing of an offer for a noncompetitive oil and gas lease creates no vested right in the offeror but establishes only the priority of filing of the offer.

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE--Continued

The offeror may not, therefore, rely upon the expected issuance of a lease.

Frederick W. Lower, 76 IBLA 195 (Oct. 6, 1983)

Under 30 U.S.C. § 226(b) (Supp. V 1981), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within such a structure, a noncompetitive lease offer for such lands must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination that the land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

R. C. Altrogge, 78 IBLA 24 (Dec. 12, 1983)

Under 30 U.S.C. § 226(b) (Supp. V 1981), lands within the known geological structure of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within such a structure prior to issuance of a lease, a noncompetitive lease offer for such lands must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination that certain lands are within the known geological structure of a producing oil or gas field has the burden of showing that the determination is in error. Absent any argument of fact or evidence suggesting such error, the determination will be upheld.

Stephen R. Haglund, 79 IBLA 252 (Mar. 5, 1984)

A known geologic structure is a trap, either structural or stratigraphic in nature, in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, and which includes all acreage that is presumptively productive.

Land within a known geologic structure of a producing oil or gas field may only be leased after competitive bidding.

An applicant for a noncompetitive acquired lands oil and gas lease who challenges a determination by BLM that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Reed International, 80 IBLA 145 (Apr. 6, 1984)

Where the Minerals Management Service determines part of a noncompetitive oil and gas lease issued in 1971 to be within an undefined known geologic structure, a decision to increase rental to $2 per acre is erroneous where the record shows the lease is committed to an approved unit plan with a well capable of production, with a general provision for allocation of production but all the lease acreage is outside the participating area. An increase of rental rate is not appropriate for such a lease where the terms of the lease specifically direct that the rental rate remain at $0.50 per acre.

Dyco Petroleum Corp., 81 IBLA 65 (May 22, 1984)

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE--Continued

Where the Minerals Management Service determines part of noncompetitive oil and gas leases issued in 1971 and 1972 to be within an undefined known geologic structure, a decision to increase rental for all acreage to $2 per acre is erroneous where the record shows the lease is committed to an approved unit plan with a well capable of production and a general provision for allocation of production. Where the terms of the leases specifically direct that the rental rate remain at $0.50 per acre for acreage outside a participating area, an increased rental rate is not appropriate for that acreage.

Pioneer Partners, 82 IBLA 101 (July 24, 1984)

Where BLM rejects a noncompetitive oil and gas lease offer because of a determination that the land is within the known geologic structure of a producing oil or gas field and fails to support the decision in the record, the decision will be set aside and the case remanded to substantiate the basis of the KGS determination in light of the information tendered by the offeror on appeal.

Thomas Connell, 82 IBLA 132 (July 27, 1984)

Under 30 U.S.C. § 226(b) (1982), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within such a structure after a simultaneous oil and gas lease drawing but prior to issuance of a lease, a simultaneous oil and gas lease application for such lands must be rejected. The applicant has no vested rights to issuance of a lease.

Where a simultaneous oil and gas lease applicant, whose application has been rejected because it covers land within a known geologic structure, submits probative evidence contravening the determination that the land is presumptively productive of oil and gas, which is not fully rebutted, but where, nonetheless, questions of fact remain unresolved by the record, a hearing is appropriate to establish a sufficient record to permit decision.

Lloyd Chemical Sales, Inc., 82 IBLA 182 (Aug. 13, 1984)

Where BLM has determined that any part of the lands described in a noncompetitive oil and gas lease is within an undefined known geologic structure, the lessee is required to pay increased rental in accordance with 43 CFR 3103.3-2(b)(1) (1982).

Livingston & Courdin Exploration, Inc., 82 IBLA 336 (Sept. 12, 1984)

Lands classified as within a known geologic structure of a producing oil and gas field (KGS) at any time prior to lease issuance must be leased competitively. The simultaneous oil and gas lease offer for such lands must be rejected even though the KGS determination probably would not have been applied to the lands but for the delay in lease issuance caused by the Secretary's suspension of the simultaneous oil and gas leasing program. Furthermore, applicant's rights are not impaired in such a case because the drawing merely establishes the priority of filing an offer, it does not vest in the lease applicant the right to an oil and gas lease.

The Secretary has the power to prescribe proper and necessary rules and regulations to accomplish the purpose of the Mineral Leasing Act, and pursuant to this and other authority, the Secretary has the power to create, and operate, or to suspend the simultaneous

OIL AND GAS LEASES--Continued

KNOWN GEOLOGIC STRUCTURE--Continued

oil and gas leasing program which was designed to implement the noncompetitive leasing provisions of the Act.

Joseph A. Talladira, 83 IBLA 256 (Oct. 23, 1984)

Lands within a known geologic structure of a producing oil or gas field may only be leased by competitive bidding pursuant to 43 CFR 3120. A noncompetitive oil and gas lease offer filed before the lands were determined to be within a known geologic structure but not accepted by the United States on the date of determination is properly rejected.

George A. Donnelly, Jr., 83 IBLA 352 (Nov. 14, 1984)

One who challenges a determination by the Bureau of Land Management that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Where the Bureau of Land Management has determined that any part of the lands described in a noncompetitive oil and gas lease is within an undefined addition to a known geologic structure, the lessee is required to pay increased rental of $2 per acre for the entire lease.

Eagle Exploration Co., 83 IBLA 354 (Nov. 15, 1984)

Under 30 U.S.C. § 226(b) (1982), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within such a structure, a noncompetitive lease offer for such lands must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination that the land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Leonard Luning, 83 IBLA 376 (Nov. 16, 1984)

Pursuant to 30 U.S.C. § 226(b) (1982), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where the lands are determined to be within a known geologic structure prior to issuance of a lease, a simultaneous oil and gas lease offer for such lands must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination that certain lands are within the known geologic structure of a producing oil or gas field has the burden of establishing that the determination is in error. The determination will not be disturbed in the absence of a showing of error by a preponderance of evidence.

Irma R. Spear, 84 IBLA 92 (Dec. 6, 1984)

LANDS SUBJECT TO

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Leasing Act of 1920, as amended. Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

Carol Lee Hatch, 45 IBLA 4 (Jan. 8, 1980)

John R. Anderson, 46 IBLA 123 (Feb. 29, 1980)

Ida Lee Anderson, 46 IBLA 385 (Apr. 10, 1980)

An oil and gas lease offer for minerals reserved to the United States is properly rejected where the Secretary of the Interior in a notice published in the Federal Register has declared that such minerals will not be subject to leasing.

David A. Provinse, 45 IBLA 8 (Jan. 8, 1980)

It is proper for the authorized officer of the Bureau of Land Management to reject an offer for an oil and gas lease for lands, the title of which is in controversy.

Land included in an outstanding oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing and an offer filed for such land must be rejected.

David A. Provinse, 45 IBLA 111 (Jan. 23, 1980)

Lands within a proposed addition to the National Desert Wildlife Range are not subject to noncompetitive oil and gas leasing because the proposed withdrawal, if effective, would preclude oil and gas leasing, the same as the existing withdrawal.

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

Tucker & Snyder Exploration, Inc., 45 IBLA 248 (Feb. 4, 1980)

Lands situated within the boundaries of incorporated cities, towns or villages are excluded from oil and gas leasing under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976).

Ed Pendleton, 45 IBLA 398 (Feb. 13, 1980)

L. A. Wolstrom, Jr., 46 IBLA 389 (Apr. 10, 1980)

The Bureau of Land Management properly rejects an oil and gas lease offer for land patented in 1874 under the placer mining laws.

Republic Oil and Mining Co., 46 IBLA 120 (Feb. 29, 1980)

Where an oil and gas lease has inadvertently been issued for land, part of which was the subject of a forest exchange application, the cancellation of that part of the lease will be reversed if the exchange application did not include the mineral estate and has

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

bees withdrawn by the proponent, and no other obstacle or objection to the lease exists.

Kerr-McGee Corp., 46 IBLA 156 (Mar. 19, 1980)

Acquired lands situated within the boundaries of incorporated cities, towns, or villages are excluded from oil and gas leasing under sec. 3 of the Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. § 352 (1976).

Whitney M. Harvan, 46 IBLA 290 (Mar. 31, 1980)

The Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), expressly precludes leasing in national parks and national monuments. Therefore, the Department of the Interior has no authority to issue an oil and gas lease for lands in the Death Valley National Monument and an offer to lease land within the monument must be rejected.

Fred E., Anna E., and Kristine A. Cerminaro, 46 IBLA 301 (Mar. 31, 1980)

Fred E. Cerminaro, 52 IBLA 116 (Jan. 13, 1981)

Oil and gas lease offers embracing lands withdrawn specifically from oil and gas leasing and by Public Land Order No. 674, of Oct. 7, 1950, reserved for an agency of the Department of Defense, are properly rejected. Lands declared surplus are not subject to leasing by this Department.

An oil and gas lease offer filed for land which has been previously withdrawn from mineral leasing may be properly rejected since it will not be validated by any future modification or revocation of the order of withdrawal. It is immaterial whether the lands are presently being, or have ever been, used for the purpose for which they were withdrawn.

Edward C. Sherardson, 47 IBLA 223 (May 13, 1980)

It is proper for the authorized officer of the Bureau of Land Management to reject an offer for an oil and gas lease for lands, the title of which is in controversy.

Elgin L. E. Johnson, Marilyn Johnson, 47 IBLA 366 (May 21, 1980)

A noncompetitive oil and gas lease offer for lands patented under a railroad land grant must be rejected because the United States does not own the mineral deposits in the lands.

Diane D. Kelt, 48 IBLA 118 (May 30, 1980)

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Pursuant to the regulation, land within the Lake Ilo National Wildlife Refuge is not subject to oil and gas leasing unless the lands are subject to drainage.

David A. Provance, 49 IBLA 134 (July 28, 1980)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Where an application for withdrawal, published in the Federal Register and noted on the State Office records, sets aside certain lands for geothermal resources leasing, and specifically precludes the operation of the remainder of the mineral leasing laws, it is proper to suspend an oil and gas lease offer for such segregated lands, pending action on the withdrawal application. After the withdrawal application has been cancelled without favorable action on the withdrawal request, the oil and gas offer may be considered on its merits.

Trent J. Parker, 49 IBLA 209 (Aug. 11, 1980)

Under sec. 17(j) of the Mineral Leasing Act, the Secretary of the Interior may authorize the subsurface storage of oil and gas in lands leased or subject to leasing under the Act. Any lease on which storage is authorized shall be extended at least for the period of storage and so long thereafter as oil or gas not previously produced is produced in paying quantities. A storage agreement which recognizes an existing lease and only reserves to the United States all of the United States interest in minerals in the lands does not terminate the rights of the existing lessee to drill for and produce oil and gas. An oil and gas lease offer submitted subsequently by a third party for the lands subject to the lease is properly rejected since the United States does not hold the mineral interest sought.

American Natural Gas Production Co., 49 IBLA 230 (Aug. 12, 1980)

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in oil and gas leases which expired and have not subsequently been posted by BLM as available for simultaneous noncompetitive offers.

Jack E. Lee, 49 IBLA 358 (Aug. 29, 1980)

Robert C. Bond, 62 IBLA 391 (Mar. 24, 1982)

Lands under reservoir rights-of-way may be leased only under the authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). However, the language of the 1930 Act is construed to mean that it applies only to land actually within the limits of the right-of-way and that the lands in legal subdivisions, exclusive of the reservoir right-of-way may be leased under the Mineral Leasing Act of 1920, provided there are no justifiable reasons for refusing to lease them.

B. C. Beveridge, 50 IBLA 173 (Sept. 30, 1980)

Where an application for withdrawal, published in the Federal Register and noted on the State Office records, sets aside certain lands for airport purposes and specifically precludes the operation of the remainder of the mineral leasing laws, it is proper under the regulations to suspend an oil and gas lease offer for such segregated lands, pending action on the withdrawal application. After the withdrawal application has been cancelled without favorable action on the withdrawal request, the oil and gas offer may be considered on its merits.

Donald Epperson, 50 IBLA 267 (Sept. 30, 1980)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

When land has previously been included in a lease that has been canceled, it is available for subsequent leasing only in accordance with the provisions of the simultaneous filing system provided under 43 CFR 3112.

David A. Provinse, 50 IBLA 271 (Oct. 6, 1980)

It is proper for the Bureau of Land Management to reject and over-the-counter offer for an oil and gas lease of land formerly included in a lease which expired by operation of law at the end of its primary term, because under 43 CFR 3112.1-1 land in an expired lease is subject to the filing of new lease offers only in accordance with simultaneous filing procedures.

Martha M. Pindgins, 50 IBLA 359 (Oct. 16, 1980)

Where the Secretary of the Interior has specifically determined by formal publication of a memorandum that lands in a certain section of a national forest are to be withheld from leasing, he has exercised his plenary discretion to refuse to issue leases, and subsequent offers for affected lands are properly rejected.

Where lands are withheld from leasing or have not been made subject to the operation of mineral leasing laws, applications must be rejected and cannot be held pending possible future availability of the lands. 43 CFR 2091.1.

James H. Learned et al., 50 IBLA 416 (Oct. 24, 1980)

A noncompetitive oil and gas offer to lease must be rejected where either before or after the filing of the offer and prior to the time of the issuance of the lease the land is determined to be within the known geologic structure of a producing oil or gas field.

James Muslow, Sr., 51 IBLA 19 (Oct. 28, 1980)

Where an application for withdrawal proposes to withdraw certain lands from the operation of the mineral leasing and mining laws to prevent interference with the use of the land for airport purposes, the Bureau of Land Management should suspend action on oil and gas lease offers filed subsequent to the withdrawal application pending final action on the proposed withdrawal.

Trent J. Parker, 51 IBLA 178 (Dec. 2, 1980)

In general, unless the Mineral Leasing Act or a withdrawal or reservation specifically provides otherwise, lands withdrawn or reserved for a specific purpose are available for leasing under the Mineral Leasing Act, if the issuance of a lease will not be inconsistent with or materially interfere with the purposes for which the land is withdrawn or reserved.

Chevron U.S.A., Inc., 52 IBLA 278 (Feb. 6, 1981)

Where land is conveyed pursuant to the Stock Raising Homestead Act, 43 U.S.C. § 299 (1976), reserving to the United States all minerals therein, and thereafter the land is reconveyed to the United States, it is error for BLM to reject an offer to lease for oil and gas on the basis that the United States does not own the minerals therein.

A decision to reject a noncompetitive oil and gas lease offer on the grounds that the United States does not own the oil and gas interest will be vacated where the record shows that the subject lands were patented by the State of Utah after passage of secs. 5575x and 5575x1, Ch. 107, Laws of Utah (May 12, 1919), requiring the State to reserve all coal and minerals in lands thereafter conveyed, but where the record is silent as to whether an application to purchase had been approved by the State of Utah prior to passage of secs. 5575x and 5575x1 on May 12, 1919.

Douglas H. Willson et al., 52 IBLA 390 (Feb. 24, 1981)

Where oil and gas deposits in lands acquired by the United States and devoted to use for military purposes become "surplus property" under the Federal Property and Administrative Services Act, such deposits may be leased only under the provisions of that Act, and are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

Edward C. Shepardson, 53 IBLA 79 (Mar. 2, 1981)

Jerald A. Waters, 70 IBLA 387 (Jan. 31, 1984)

"Public land laws." Under 43 CFR 2091.2-3 (1979), a state exchange application segregated the selected public lands from appropriation under the public land laws, including the mining laws. The term "public land laws" is ordinarily used to refer to statutes governing the alienation of public land, and generally is distinguished from both "mining laws," referring to statutes governing the mining of hard minerals on public lands, and "mineral leasing laws," a term used to designate that group of statutes governing the leasing of public lands for oil, gas, and other selected minerals. Udall v. Tallman, 380 U.S. 1, 19 (1965).

Dale K. Armstrong, 53 IBLA 153 (Mar. 12, 1981)

Pursuant to 43 CFR 3112.1-1, all lands which are not within a known geologic structure of a producing oil and gas field and are covered by canceled or relinquished leases, leases which terminated for nonpayment of rental or leases which expired by operation of law at the end of their primary or extended terms, are subject to leasing only in accordance with the simultaneous filing system. The Bureau of Land Management has no discretion under the regulations to accept over-the-counter offers for such lands.

John W. Frederick, 53 IBLA 258 (Mar. 19, 1981)

Curtis Wheeler, 54 IBLA 227 (Apr. 27, 1981)

James C. Haggard, 55 IBLA 36 (May 28, 1981)

Public domain land withdrawn or reserved is presumed to be available for oil and gas leasing unless the withdrawal or reservation specifically provides otherwise.

Esdras K. Hartley, 54 IBLA 38 (Apr. 9, 1981)
88 I.D. 437

Western Interstate Energy, Inc., 71 IBLA 19 (Feb. 15, 1983)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Lands acquired for the specific purpose of creating a sanctuary for, and the protection of, wildlife in the vicinity of the Lake Zahl National Wildlife Refuge fall within that prohibition.

Lee B. Williamson, 54 IBLA 326 (Apr. 30, 1981)

Lands situated within the boundaries of incorporated cities, towns, or villages are excluded from oil and gas leasing under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. §§ 181-263 (1976).

Nova L. Dodger, 54 IBLA 340 (May 7, 1981)

Where the Bureau of Land Management (BLM) has offered lands for competitive oil and gas lease sale, and on appeal the high bidder presents evidence which raises a question concerning the leasability by BLM of certain of those lands because of possible conflicting ownership problems between the United States and the Choctaw, Chickasaw, and Cherokee Indian Nations, the sale shall be voided and the high bidder's bonus bid deposit returned.

Sanson Resource Co., 55 IBLA 51 (May 29, 1981)

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

Robert H. Covington et al., 55 IBLA 232 (June 22, 1981) 88 I.D. 601

Dome Petroleum Corp. et al., 57 IBLA 310 (Aug. 31, 1981)

Kenneth Navarro, 64 IBLA 357 (June 15, 1982)

Land included within an outstanding oil and gas lease is not available for leasing and an oil and gas offer filed for such land must be rejected. Even where the record is unclear whether the conflicting outstanding lease in question has been extended by drilling or whether it has expired at the end of its term, the land is still not available for the filing of new over-the-counter offers until it first has been posted by BLM as open to the filing of simultaneous offers.

Curtis D. Wheeler, 55 IBLA 278 (June 25, 1981)

It is proper for the Bureau of Land Management to reject an oil and gas lease offer filed over the counter for land formerly included in a lease which expired at the end of its term or terminated automatically for nonpayment of rental because under 43 CFR 3112.1-1 such land is subject to the filing of new lease offers only in accordance with simultaneous filing procedures.

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Land included in an outstanding oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing and an offer filed for such land must be rejected.

Curtis Wheeler, 56 IBLA 58 (July 10, 1981)

Noncompetitive oil and gas offers to lease lands within National Petroleum Reserve-Alaska are properly rejected.

Andrew B. Kelly et al., 57 IBLA 71 (Aug. 20, 1981)

A noncompetitive oil and gas lease offer for acquired land within the boundaries of the Fort Laramie National Historic Site administered by the National Park Service is properly rejected since the Mineral Leasing Act for Acquired Lands specifically excludes lands within national parks or monuments from its terms.

Ed Pendleton, 57 IBLA 146 (Aug. 25, 1981)

An oil and gas lease offer for lands in a reservoir right-of-way from other than the owner of the right-of-way is properly rejected pursuant to the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976), and 43 CFR 3100.0-3(d)(1) which limit the right to lease deposits of oil and gas in and under rights-of-way to the owner of the right-of-way or his assignees.

BDH Interests, 57 IBLA 163 (Aug. 27, 1981)

The effect of a notation on a document stating that in a conveyance to the State of Wyoming "all petroleum" was reserved to the United States is overcome by evidence of more authoritative records establishing that petroleum was not reserved, and that such a reservation would have been contrary to the statute which conditioned the conveyance under the prevailing circumstances, so that an oil and gas lease offer for the purported reserved petroleum was properly rejected.

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in oil and gas leases which expired and have not subsequently been posted by BLM as available for simultaneous noncompetitive offers.

Charles H. Whitlock, 57 IBLA 252 (Aug. 28, 1981)

A regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted only precludes leasing lands withdrawn for the protection of all species of wildlife within a particular area.

Where oil and gas lease offers are filed for lands the ownership of which is unresolved, such offers are subject to rejection for that reason.

Endres K. Hartley, Impel Energy Corp., 57 IBLA 319 (Sept. 1, 1981)

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OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Where a noncompetitive oil and gas lease offer is rejected because the oil and gas interest in the land sought is not owned by the United States, but the record does not support such a finding, the case will be remanded for reexamination of whether the land in question is available for oil and gas leasing.

Douglas H. Willson et al., 58 IBLA 115 (Sept. 24, 1981)

Lands the title to which has been conveyed to the United States pursuant to a private exchange authorized by sec. 8 of the Taylor Grazing Act do not become available for oil and gas leasing upon acceptance of title on behalf of the United States, but only when an order is issued opening the lands to such disposition.

Isdras K. Hartley, 58 IBLA 329 (Oct. 16, 1981)

Under sec. 17(j) of the Mineral Leasing Act the Secretary of the Interior may authorize the subsurface storage of oil and gas in lands leased or subject to leasing under the Act. Where an oil and gas lease applicant applies for lands underlain by such a storage area he may properly be required to execute a stipulation for the protection of the storage area.

M. Robert Paglee, 59 IBLA 192 (Oct. 27, 1981)

Pursuant to 43 CFR 3112.1-1, all lands which are not within a known geologic structure of a producing oil and gas field and are covered by canceled or relinquished leases, leases which terminated for nonpayment of rental or leases which expired by operation of law at the end of their primary or extended terms, are subject to leasing only in accordance with the simultaneous filing system.

Edna L. Williams, 59 IBLA 196 (Oct. 27, 1981)

Lands situated within the borders of incorporated cities and towns are excluded from leasing by the express terms of sec. 1 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976).

Potts Stephenson Exploration Co., 60 IBLA 397 (Dec. 28, 1981)

The general prohibition against oil and gas leasing in wildlife refuge lands contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976). Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

Nugget Oil Corp., 61 IBLA 43 (Dec. 31, 1981)

Under 43 CFR 3112.1-1 (1979), lands covered by leases which expire by operation of law at the end of their primary term shall be subject to the filing of new lease offers in accordance with simultaneous leasing procedures. Thereafter, the lands become subject to over-the-counter offers only if no offers to lease all or any portion of the lands in the expired, canceled, relinquished, or terminated leases are received during the simultaneous filing period.

James W. Phillips, 61 IBLA 294 (Feb. 3, 1983)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982) 89 I.D. 82

F. C. Winkler, 71 IBLA 328 (Mar. 23, 1983)

The fact that oil and gas leases may have been wrongly issued in the past for lands which were not available for leasing does not militate in favor of reenacting the wrong for the sake of consistency or to avoid discriminatory treatment of a subsequent offeror.

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

The Bureau of Land Management properly rejects an oil and gas lease offer for lands which have been patented with no mineral reservation to the United States.

W. E. Haley, 62 IBLA 294 (Mar. 16, 1982)

Amoco Production Co., 77 IBLA 27 (Oct. 31, 1983)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the land applied for is not withdrawn under the Mineral Leasing Act. BLM properly rejects an oil and gas lease offer as to (1) lands within an Indian reservation, (2) lands where the oil and gas rights are not in Federal ownership, and (3) lands subject to a pending transfer to the State of Arizona.

Joe Lyon, Jr., 63 IBLA 53 (Mar. 30, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

James H. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

CAP Co., 73 IBLA 203 (May 27, 1983)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area.

If lands sought to be leased for oil and gas are not in a wildlife refuge withdrawn pursuant to 43 CFR 3101.3-3, the Secretary may exercise his discretion about leasing such lands, and the recommendation by the Fish and Wildlife Service that the lands not be leased is not conclusive, and where the case does not dispose of the questions of withdrawal or of leasing under the

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Secretary's discretion, the decision is vacated and remanded for further findings.

Bernard A. Holman, 64 IBLA 13 (May 4, 1982)

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since terminated, and BLM failed to post such lands to its list of lands available for simultaneous oil and gas lease applications.

Paul S. Couper, 64 IBLA 146 (May 24, 1982)

Conoco, Inc., 75 IBLA 83 (Aug. 10, 1983)

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Curtis Wheeler, 64 IBLA 239 (May 28, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

Where a unit agreement approved by the Department provides that where a leased tract committed to the unit agreement is relinquished, unless the tract is included in a new lease within 6 months thereafter, the fee owner of the tract is deemed to have waived the right to lease such lands within a participating area in the unit and to have agreed, in consideration of compensation provided by the unit agreement, that operations under the unit agreement in the participating area shall not be affected by the relinquishment. The United States is considered to be the "fee owner" of unleased public domain in the context of the unit agreement.

Delco Development Co., 66 IBLA 134 (Aug. 10, 1982)

An over-the-counter oil and gas lease offer for acquired lands will be rejected when the lands requested in the offer were formerly included in a canceled or relinquished lease, a lease which automatically terminated for nonpayment of rental or a lease which expired by operation of law at the end of its primary term, because such lands may be leased only

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

in accordance with the simultaneous filing procedures of 43 CFR Subpart 3112.

Lowell J. Simons, 66 IBLA 338 (Aug. 26, 1982)

It is proper for the Bureau of Land Management to reject an over-the-counter offer for an oil and gas lease of land formerly included in a lease which expired by operation of law, because under 43 CFR 3112.1-1 such land is subject to leasing only under the simultaneous filing system, 43 CFR Subpart 3112.

Todd S. Welch, 66 IBLA 350 (Aug. 26, 1982)

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Paiute Oil & Mining Corp., 67 IBLA 17 (Sept. 3, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

Under Departmental regulation 43 CFR 3101.1-4(d), an oil and gas lease offer for land within a protracted survey must include only entire sections of land except where only a portion of a protracted section is available for lease, in which event the offeror must describe all of the land available within that section. An oil and gas lease offer may not be construed as an offer for all available lands within a protracted section where the offer describes the section as expressly excluding land within a specifically numbered mineral survey which remains available for leasing, and such an offer must be rejected.

Departmental regulation 43 CFR 3101.1-4(d) does not permit the splitting of protracted sections between two offers, even if they are filed at the same time.

Hrubetz Oil Co., 67 IBLA 109 (Sept. 15, 1982)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

BLM may properly reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the land sought is either patented with no reservation of oil and gas to the United States, acquired or withdrawn from mineral leasing.

Golden Eagle Petroleum, 67 IBLA 112 (Sept. 15, 1982)

Land included in an outstanding oil and gas lease is not available for leasing and an oil and gas lease offer filed for such land must be rejected whether or not the outstanding lease was properly issued as to that land.

James H. Chudnow, 67 IBLA 143 (Sept. 16, 1982)

An oil and gas offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

An oil and gas offer embracing land in the bed of a navigable river, which is State land, is properly rejected.

Lee E. McDonald, 68 IBLA 272 (Nov. 17, 1982)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest, even though the lands applied for are not withdrawn from operation of the Mineral Leasing Act. An oil and gas lease offer is properly rejected where the lands sought are within the Lake Mead National Recreation Area, and the National Park Service has declined, under 43 CFR 3566.3, to give consent to issuance of the lease.

De Ann T. Gaeth, 69 IBLA 79 (Nov. 30, 1982)

Frances Kunkel, 69 IBLA 205 (Dec. 16, 1982)

It is proper to file an oil and gas lease offer for less than 640 acres of land where none of the land adjacent to the parcels described in the application is available for leasing.

Dayton P. Hale, 69 IBLA 167 (Dec. 13, 1982)

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

Paiute Oil & Mining Corp., 69 IBLA 172 (Dec. 14, 1982)

Land included within an outstanding oil and gas lease, whether void, voidable, or valid, is not available for leasing, and an application filed for such land must be rejected. Even if the outstanding lease were canceled, the land would not be available for over-the-counter leasing, since land within a canceled

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

lease may be leased again only in compliance with the drawing procedure established by 43 CFR 3112.

Irvin Hall, 69 IBLA 321 (Dec. 28, 1982)

In general, unless the Mineral Leasing Act or a withdrawal or reservation specifically provides otherwise, lands withdrawn or reserved for a specific purpose are available for leasing under the Mineral Leasing Act, if the issuance of a lease will not be inconsistent with or materially interfere with the purposes for which the land is withdrawn or reserved. Where oil and gas lease offers embrace lands withdrawn or reserved for an agency of the Department of Defense, the lands may only be leased after consultation with the Department of Defense.

Douglas E. Smith, 69 IBLA 343 (Dec. 28, 1982)

Land included in an existing oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing, and an offer filed for such land must be rejected.

Lands formerly included in an oil and gas lease which expired at the end of its primary or extended term, or terminated automatically for nonpayment of rental, are subject to the filing of new lease applications only in accordance with the simultaneous filing procedures found in 43 CFR Subpart 3112.

James H. W. Tseng, 69 IBLA 387 (Jan. 4, 1983)

An oil and gas lease offer is properly rejected where it describes lands declared to be held in trust for the Canoncito Band of Navajo Indians.

James H. Chudnow, 70 IBLA 139 (Jan. 14, 1983)

Where lease offers include lands which are in national parks and Indian reservations, or which are otherwise unavailable for leasing, the acreage described is chargeable to the offeror until such time as BLM makes its determination of the status and availability of the land and rejects the offers as to the lands not available.

Jerry M. Pritchard, 70 IBLA 154 (Jan. 18, 1983)

It is improper to issue an oil and gas lease for less than 640 acres where there is land available for leasing adjacent to the parcel described in the offer. Land included in an offer which has not become an issued lease is available for filing of another offer until a lease is signed by an authorized officer of BLM.

Where lease offers include lands which are in national parks and Indian reservations, or which are otherwise unavailable for leasing, the acreage described is chargeable to the offeror until such time as BLM makes its determination of the status and availability of the land and rejects the offers as to the lands not available.

Irvin Hall, 70 IBLA 183 (Jan. 20, 1983) 90 I.D. 3

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

An over-the-counter offer for an oil and gas lease on lands within a game range or on coordination lands may not be summarily rejected under 43 CFR 3101.3-3(a) applicable to wildlife refuge lands. Subsecs. 3101.3-3(b) and (c) require that BLM confer with representatives of the U.S. Fish and Wildlife Service at a minimum before an offer can be rejected.

D. E. Yates, 70 IBLA 240 (Jan. 25, 1983)

A determination pursuant to 43 CFR 3101.3-3(c) not to subject coordination lands to oil and gas leasing is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976). Pursuant to the regulation, an agreement has been reached that land within the Sun River Winter Elk Range, Montana, will not be subject to noncompetitive oil and gas leasing.

Chester L. Pringle, 70 IBLA 254 (Jan. 25, 1983)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-98, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

Dorothy Langley, 70 IBLA 324 (Jan. 31, 1983)

Lands formerly included in a competitive oil and gas lease which expired at the end of its primary or extended term, and which were then classified as not within the boundaries of a known geologic structure, are subject to the filing of noncompetitive lease applications only in accordance with the simultaneous filing procedures in 43 CFR Subpart 3112. An over-the-counter offer for an oil and gas lease of such lands must be rejected.

Sam P. Jones, 71 IBLA 42 (Feb. 17, 1983)

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since terminated, and BLM failed to post such lands to its list of lands available for simultaneous oil and gas lease applications.

Land included in an outstanding oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing and an offer filed for such land must be rejected.

Stanley Ustan, 71 IBLA 116 (Mar. 2, 1983)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. Where an offer is rejected on the basis of that regulation, but the case record provides no evidence of such a withdrawal, the decision to reject will be set aside and the case remanded for investigation into the nature of the creation of the refuge.

D. E. Yates, 71 IBLA 126 (Mar. 7, 1983)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

D. E. Yates, 74 IBLA 23 (June 24, 1983)

Land which has specifically been withdrawn from mineral leasing is not available for disposition under the Mineral Leasing Act and an offer for that land must be rejected.

Bachelk Production, Inc., 71 IBLA 374 (Mar. 29, 1983)

Paul C. Koblean, 75 IBLA 171 (Aug. 19, 1983)

The general prohibition against oil and gas leasing in wildlife refuge lands contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976). Pursuant to the regulation, land within the Columbia National Wildlife Refuge is not subject to noncompetitive oil and gas leasing.

Altex Oil Corp., 73 IBLA 73 (May 17, 1983)

A noncompetitive oil and gas lease offer is properly rejected where, as of the date the offer was filed, the land which is the subject of such offer has been withdrawn and has not yet officially been opened to applications under the mineral leasing laws pursuant to the terms of the public land order that revoked the prior withdrawal.

Robert W. Piatt, 73 IBLA 244 (June 2, 1983)

BLM may properly reject an oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the minerals reserved in the patent of the land have been withdrawn from disposition under the mineral leasing laws.

Tom Notestine, 73 IBLA 268 (June 7, 1983)

An asphalt prospecting permit application which was pending at the time of the passage of the Combined Hydrocarbon Leasing Act of 1981, 95 Stat. 1070 (1981), must be rejected because that Act amended the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (Supp. V 1981), to include a definition for "oil" that encompasses asphalt. One seeking to extract hydrocarbons from asphalt after Nov. 16, 1981, in an area other than a "special tar sand area" must file a noncompetitive oil and gas lease offer. The holder of an oil and gas lease issued on or after Nov. 16, 1981, may develop all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons).

Cooper Petroleum, Inc., 73 IBLA 295 (June 7, 1983)

An oil and gas lease offer is properly rejected where the lands sought are within the Lake Mead National Recreation Area, and the National Park Service has declined, under 43 CFR 3566.3, to give consent to issuance of the lease.

S. Dawson, 73 IBLA 301 (June 7, 1983)

Chevron U.S.A., Inc., 74 IBLA 92 (June 30, 1983)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

A decision rejecting an oil and gas lease offer will be affirmed where the lands described have been reconveyed to the United States in a land exchange to be administered by the Bureau of Land Management but the lands have not been opened to mineral leasing by an order noted on the public land records.

Tom Hotesting, 73 IBLA 320 (June 7, 1983)

BLM may not summarily reject a noncompetitive oil and gas lease offer under 43 CFR 3101.3-3(a), which prohibits noncompetitive leasing within wildlife refuge lands, where the evidence on appeal establishes that the lands are coordination lands, which may be subject to leasing under 43 CFR 3101.3-3(c).

A regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted only precludes noncompetitive leasing of lands withdrawn for the protection of all species of wildlife within a particular area.

The Bureau of Land Management properly rejects a noncompetitive oil and gas lease offer for lands which have been patented with no mineral reservation to the United States.

BLM properly rejects a noncompetitive oil and gas lease offer under 43 CFR 3101.3-3(a) for land within the Columbia National Wildlife Refuge, which was withdrawn for the protection of all species of wildlife.

D. M. Yates, 73 IBLA 353 (June 14, 1983)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. Where an offer is rejected on the basis of that regulation, but the offeror contends that such a withdrawal does not cover the lands in question and the Board is unable to establish that the subject lands are embraced in such a withdrawal, the decision to reject will be set aside and the case remanded.

D. M. Yates, 74 IBLA 8 (June 24, 1983)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. This regulation is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976).

D. M. Yates, 74 IBLA 159 (July 12, 1983)

An oil and gas lease offer is properly rejected where the lands sought are within the Lake Mead National Recreation Area, and regulation 43 CFR 3501.3 requires consent of the Regional Director, National Park Service, for a lease in this area, and such consent is refused.

Edward Seggerson, Jr. (On Reconsideration), 74 IBLA 267 (July 25, 1983)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Where appellants aver, without offering proof to show the basis of their averment, that lands which were the subject of appellants' oil and gas lease offer were acquired by the United States, Bureau of Land Management correctly rejected the offer to lease lands shown on Government records not to be in United States ownership.

James M. Chudnow, John L. Messinger, 75 IBLA 69 (Aug. 10, 1983)

A BLM decision rejecting a noncompetitive oil and gas lease offer for acquired lands, because the mineral estate was reserved by the grantor when the land was conveyed to the United States, will be affirmed on appeal where the offeror, who asserts that the mineral estate has vested in the United States under the Michigan Dormant Minerals Act, fails to submit any evidence in support thereof.

Space Investors, 75 IBLA 183 (Aug. 22, 1983)

Acquired lands situated within the boundaries of incorporated cities, towns, or villages are excluded from oil and gas leasing under the Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. § 352 (1976).

C. H. Nicholson, 75 IBLA 234 (Aug. 23, 1983)

Instruction Memorandum (IM) 83-237 (Jan. 7, 1983) provides that BLM's policy is to issue no leases in BLM administered Wilderness Study Areas (WSAs). A subsequent clarification to this policy provides that BLM may continue to lease portions of WSAs that are immediately adjacent to producing oil and gas fields or areas that are prospectively valuable. IM 83-237, Change 2 (Mar. 7, 1983).

Phyllis H. Odell, 75 IBLA 313 (Aug. 30, 1983)

Provisions of 43 CFR 3101.5-2(c) require the Bureau of Land Management to confer with representatives of the Fish and Wildlife Service and the state game commission concerned before rejecting oil and gas lease offers in cases involving offers for coordination lands. Where an agreement concerning leasing of coordination lands has been made, lands within an affected area which are not specifically excepted from oil and gas leasing remain subject to lease offers.

Bob G. Howell, 75 IBLA 328 (Aug. 30, 1983)

Where an over-the-counter oil and gas lease offer is filed for lands in a protracted survey and the offeror subsequently files a relinquishment describing certain lands in the offer as being no longer available because of being withdrawn from mineral leasing, but erroneously includes lands in his relinquishment such that the remaining lands in his offer do not describe all the available lands in a section, the offer is properly rejected.

Donald Epperson, 76 IBLA 4 (Sept. 6, 1983)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Lands situated within the borders of incorporated cities and towns are excluded from leasing by the express terms of sec. 1 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (Supp. V 1981).

The Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates. This authority is properly invoked to cancel a lease erroneously issued for land which is the subject of a prior contract of sale and which has thus been withdrawn from mineral leasing under the terms of the Public Land Sales Act of 1964, 43 U.S.C. §§ 1421-1427 (1976).

D. H. Yates, 76 IBLA 208 (Oct. 11, 1983)

Where public domain land is reserved for a particular use by another agency, BLM should properly consider the recommendations of the surface managing agency regarding lease issuance, but this does not relieve BLM of the need to determine independently whether a lease may issue in the public interest.

Petroquest, Inc., 76 IBLA 327 (Oct. 19, 1983)

The Secretary of the Interior may, in his discretion, reject an offer to lease public lands for oil and gas deposits upon a proper determination that the leasing would not be in the public interest.

David A. Provinse, 76 IBLA 340 (Oct. 20, 1983)

Where a noncompetitive oil and gas lease offer is rejected because the oil and gas interest in the land sought is not owned by the United States and the offeror presents significant evidence showing that such interest in part may be owned by the United States, the case will be remanded for the submission of additional evidence and reexamination of whether the land in question is available for oil and gas leasing.

Douglas A. Pugh, 77 IBLA 126 (Nov. 15, 1983)

BLM may properly reject a noncompetitive oil and gas lease offer for acquired lands to the extent it includes acquired military lands which were subject to a Secretarial moratorium on noncompetitive oil and gas leasing.

Bruce Anderson, 77 IBLA 376 (Dec. 7, 1983)

Where an oil and gas lease offer is rejected based on the conclusion that the land sought evolved from the bed of the Yellowstone River subsequent to North Dakota-Montana statehood in 1889 and, therefore, is state land, and, on appeal, the offeror contends that the land is public land and submits evidence which tends to show the existence of islands in the river prior to statehood that the offeror asserts persisted and, through accretion, merged with the river bank, the decision rejecting the offer may be set aside and the case remanded for consideration of the new evidence.

David A. Provinse, 78 IBLA 85 (Dec. 16, 1983)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since canceled, and therefore should have been leased pursuant to the simultaneous oil and gas leasing system, in accordance with 43 CFR 3112.1-1.

Mike Guffey, 78 IBLA 139 (Dec. 29, 1983)

BLM must cancel a noncompetitive oil and gas lease of acquired lands where it is determined after lease issuance that the lands are situated within the boundaries of an incorporated city. Such lands are not subject to oil and gas leasing under sec. 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (Supp. V 1981).

Robert Lyon, 78 IBLA 232 (Jan. 9, 1984)

43 CFR 3112.1-1 provides that all lands which are not within a known geological structure and are covered by a lease which expires by operation of law are subject to leasing only in accordance with 43 CFR Subpart 3112.

Joe B. Johnson, 78 IBLA 382 (Jan. 31, 1984)

BLM must reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976), to the extent that the land has been patented with no mineral reservation to the United States and in its entirety where the land cannot be embraced within a 6-mile square area or an area not exceeding six surveyed sections in length and width and the first year's advance rental is deficient by more than 10 percent.

James M. Chudnow, John L. Messinger, 79 IBLA 1 (Feb. 2, 1984)

Generally, unless the mineral leasing laws or a withdrawal or reservation order specifically provides otherwise, the lands withdrawn or reserved for a specific purpose are available for leasing under the mineral leasing laws, if issuance of a mineral lease would not be inconsistent with or interfere with the purpose for which the lands are withdrawn or reserved.

TXO Production Corp., 79 IBLA 81 (Feb. 16, 1984)

Acquired lands situated within the boundaries of incorporated cities, towns, or villages are excluded from leasing under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 352 (1976).

Jerry Waters, 79 IBLA 198 (Feb. 28, 1984)

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in an oil and gas lease which terminated. Such land can only be made available for leasing again through a simultaneous offering pursuant to 43 CFR Subpart 3112.

Helen G. Haggard, 79 IBLA 320 (Mar. 21, 1984)

A. E. Shows, 82 IBLA 86 (July 17, 1984)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

The 1984 Continuing Resolution (98 Stat. 151) provides, at sec. 137, that no funds shall be used to process or grant oil and gas lease applications or offers on any Federal lands, outside Alaska, that are units of the National Wildlife Refuge System, except where there are valid existing rights or where the lands are subject to drainage, unless and until the Secretary of the Interior promulgates revisions to the existing regulations so as to explicitly authorize the leasing of such lands; holds a public hearing with respect to such revision; and prepares an environmental impact statement with respect thereto. All action upon affected oil and gas lease applications or offers filed before Nov. 14, 1983, is properly suspended until completion of the necessary steps.

Hingeline Overthrust Oil & Gas, Inc., 80 IBLA 4 (Mar. 27, 1984)

BLM properly rejects a noncompetitive oil and gas lease offer under 43 CFR 3101.3-3(a) (1982) for land within the Columbia National Wildlife Refuge, which was withdrawn for the protection of all species of wildlife.

D. M. Yates, 80 IBLA 140 (Apr. 6, 1984)

D. M. Yates, 82 IBLA 389 (Sept. 13, 1984)

BLM may, in its discretion, reject any offer to lease Federal lands for oil and gas upon a determination supported by facts of record that leasing would not be in the public interest, e.g., where leasing might adversely affect the Yuma clapper rail, a federally listed endangered species.

Where BLM rejects an oil and gas lease offer, in order to protect a federally listed endangered species, the record should ordinarily reflect consideration of whether leasing subject to protective stipulations, including no surface occupancy, would not adequately serve the public interest. Where the record indicates that BLM failed to consider alternatives to no leasing, the case will be remanded to BLM for such an assessment.

BLM may properly reject an oil and gas lease offer in order to protect a federally listed endangered species pending the availability of further studies of the effect of oil and gas exploration and development on a resident population of that species.

Chevron U.S.A., Inc., 80 IBLA 324 (May 8, 1984)

Where a subdivision which is available for oil and gas leasing in one township would normally be adjacent to land similarly available in another township, a holding that a lease offer for one such subdivision which does not include the other is violative of the "640-acre rule" will be vacated upon a showing that the two townships are offset and the subdivisions concerned are not actually adjacent.

Irvin Hall (On Reconsideration), 80 IBLA 339 (May 10, 1984)

Land within the Columbia National Wildlife Refuge, established by Public Land Order No. 243, qualifies as "wildlife refuge land" and, thus, is subject to the prohibition on oil and gas leasing under 43 CFR 3101.5-1(b) (1983). A noncompetitive oil and gas lease for such land is properly rejected pursuant to the regulation.

D. M. Yates, 81 IBLA 160 (May 31, 1984)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Lands underlying the navigable waters of the State of Michigan passed to the State at the time of its admission to statehood. After passage of the lands to the State, the ownership of the said lands became a matter of State law. In the State of Michigan the title and rights with respect to inland waterways are governed by the same rules of law, regardless of the size of the waterway. Under Michigan law, the riparian and littoral proprietors own to the middle of both navigable and nonnavigable lakes and rivers. By application of Michigan law, when the Federal Government is the owner of the riparian or littoral lands, the Federal Government also is the owner of the appurtenant bottom lands by acquisition from the State of Michigan, and the oil and gas contained in such appurtenant lands are owned by the United States.

Sam P. Jones, 81 IBLA 300 (June 13, 1984)

BLM has no authority under the Mineral Leasing Act as amended by the Combined Hydrocarbon Leasing Act of 1981, 30 U.S.C. § 226(b) (1982), to issue a noncompetitive oil and gas lease for land within a designated tar sand area. A noncompetitive lease improvidently issued after the enactment of the amendment in violation of its requirements is properly canceled upon discovery of the error.

Dorothy Langley, 81 IBLA 349 (June 25, 1984)

It is a general rule that a meander line is not a line of boundary but one designed to point out the sinuosity of the bank or shore and as a means of ascertaining the quantity of the land in the fractional lot, the boundary line being the waterline itself. The "Basart exception" to this rule is that if, at the time a homestead entry is made, a large body of land previously formed by accretion existed between the meander line and the waters of the stream, then the meander line will be treated as the boundary line of the grant, and the patent will be construed to convey only the lands within the meander line. In determining the applicability of the "Basart exception," consideration must also be given to equitable factors, including unjust enrichment.

Eldin L. R. Johnson, Marilyn Johnson, 82 IBLA 135 (July 27, 1984)

BLM may properly reject an over-the-counter noncompetitive oil and gas lease offer for acquired military lands which were subject to a Secretarial moratorium on noncompetitive oil and gas leasing at the time that the offer was filed, even where the Secretary has thereafter rescinded the moratorium, but has provided that the land will be leased under the simultaneous oil and gas leasing system.

Barrick Exploration Co., 82 IBLA 172 (Aug. 7, 1984)

"Reserved," "set apart," "withdrawn." Lands which are "reserved" and "set apart" for the protection and preservation of wildlife pursuant to the Migratory Bird Conservation Act of 1929, as amended, are "withdrawn" for the protection of all species of wildlife within the meaning of 43 CFR 3101.3-3(a)(1).

Richard F. Price, Jr., 82 IBLA 257 (Aug. 29, 1984)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Acquired lands situated within the boundaries of incorporated cities, towns, or villages are excluded from mineral leasing by sec. 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1982).

Jerald A. Waters, 82 IBLA 334 (Sept. 12, 1984)

Where an oil and gas lease has been issued for lands which have been withdrawn from the public domain by Executive Order for Indian purposes, the lease must be canceled. The Secretary of the Interior has the authority to cancel any oil and gas lease which is issued contrary to law.

Navajo Tribe of Indians, 82 IBLA 387 (Sept. 13, 1984)

The Board will set aside a BLM decision rejecting a noncompetitive oil and gas lease offer pursuant to 43 CFR 3101.3-3(a)(1) (1982) to the extent it includes land in a national wildlife refuge, not subject to drainage, where there is nothing in the record to indicate that the refuge was for the protection of all species of wildlife. However, the Board will instruct BLM to withhold action on the offer where Congress has suspended all action on oil and gas lease offers for lands within wildlife refuges filed prior to Nov. 14, 1983, until the completion of certain necessary steps by the Department.

Bechalk Production, Inc., 84 IBLA 47 (Nov. 27, 1984)

NONCOMPETITIVE LEASES

If acquired lands sought for oil and gas leasing have been surveyed under the rectangular system of public land surveys, and their description can be conformed to that system, the lands must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner.

Where an offer for a noncompetitive oil and gas lease for acquired lands contains a defective description of the lands sought and prior to lease issuance a second offer is filed correctly describing the same lands, the lease must be cancelled to the extent of the conflict in the two offers.

Sam P. Jones, 45 IBLA 208 (Jan. 30, 1980)

Noncompetitive oil and gas leases extended beyond their primary term pursuant to 43 CFR 3107.4-3 expire by operation of law at the end of the extension unless one of the statutory grounds for extension is established.

Duncan Miller, 46 IBLA 285 (Mar. 27, 1980)

Land within a known geologic structure of a producing oil or gas field can only be leased competitively under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226(b) (1976), and a noncompetitive offer for such lands must be rejected.

L. A. Halstrom, Jr., 46 IBLA 389 (Apr. 10, 1980)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to an apparently valid previously filed offer, and where it subsequently issues a second conflicting lease for the same lands to the senior offeror, its decision cancelling the lease issued to the senior offeror will be vacated, as the statute governing oil and gas leasing of non-KGS lands dictates that the person first making application for a lease (the senior offeror) is qualified to hold it. Where the junior offeror and his successors in interest have not been joined to BLM's proceedings nor named as parties on appeal, the matter will be remanded to BLM with instructions to allow them to show cause why the leases issued pursuant to the junior offer should not be cancelled insofar as they conflict with the senior, legally superior offer.

Even though created by a lease issued to a junior noncompetitive over-the-counter oil and gas lease offer in derogation of the superior rights to the same land of a senior offeror, oil and gas lease rights based on the junior offer may not be cancelled where they have been acquired by a bona fide purchaser, and, where assignees of such lease rights have not had the opportunity to show that they acquired and hold these rights as bona fide purchasers, the matter will be remanded to BLM to allow them to so show, and to allow the senior offeror to show to the contrary.

George P. Wolter, Jr., 47 IBLA 396 (May 22, 1980)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

It is not the policy of this Department to redefine a known geologic structure until all sands or formations therein have been exhausted or proved barren.

Known geologic structures are of two kinds: undefined and defined. The essential difference between these structures is the formality and detail of the defined procedure which does not permit the necessary day-to-day determinations needed by the Bureau of Land Management in its current administration of leases and lease applications.

Vernon and Rita Benson, 48 IBLA 64 (May 29, 1980)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease for an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days of receipt of notice that such payment is due.

Earl F. Hartley, 49 IBLA 140 (July 30, 1980)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The fact that the noncompetitive offeror followed all of the applicable rules and regulations in making the offer does not vitiate this conclusion.

Pauline C. Lebsack, 50 IBLA 361 (Oct. 16, 1980)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

It is not the policy of this Department to redefine a known geologic structure until all sands or formations therein have been exhausted or proved barren.

James Muslow, Sr., 51 IBLA 19 (Oct. 28, 1980)

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

Ervin Wheeler, Toni Shugart, Kathy Coffee, 51 IBLA 66 (Oct. 31, 1980)

Juanita M. Mayer, 60 IBLA 391 (Dec. 23, 1981)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, during the pendency thereof, the land is determined to be within the known geologic structure of a producing oil or gas field. The fact that the noncompetitive offeror followed all of the applicable rules and regulations in making his offer does not vitiate this conclusion.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Donnie R. Clouse, 51 IBLA 221 (Dec. 10, 1980)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Where an oil and gas lease offeror makes reference by serial number in its offer to its corporate qualifications which were previously filed in another Bureau of Land Management State Office and such qualifications were on file in that office on the date of the lease offer, the offer may not be rejected because at the time of consideration of the offer the qualifications had been removed from active status without the offeror's knowledge.

ABI-NEX Oil & Exploration, Inc., 53 IBLA 37 (Feb. 26, 1981)

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant therefor. An extension of time may be granted to supply necessary evidence of joinder in a unit agreement prior to lease issuance and a lease offer will not be rejected in favor of a junior offeror where an extension is timely requested and the requested evidence is provided in good faith and without unreasonable delay thereafter.

Barbara J. Wiernberger, Thomas H. Connelly, 53 IBLA 112 (Mar. 4, 1981) 88 I.D. 347

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The drawing of an offer for a noncompetitive oil and gas lease creates no vested rights in the offeror; it only establishes the priority of filing. The offeror is not justified in relying on the expected issuance of a lease.

Richard J. DiNarco, 53 IBLA 130 (Mar. 5, 1981)

Kenneth L. Maplin, 70 IBLA 115 (Jan. 13, 1983)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field.

William H. Turner, 54 IBLA 111 (Apr. 15, 1981)

P. H. Braun, 60 IBLA 246 (Dec. 4, 1981)

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant. Where a corporate applicant fails to submit with its over-the-counter lease offer a list of corporate officials as required by 43 CFR 3102.2-5, its offer receives no priority until the defect is cured.

Trans-Texas Energy, Inc., 56 IBLA 211 (July 22, 1981)

Trans-Texas Energy, Inc., 57 IBLA 32 (Aug. 6, 1981)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to an apparently valid previously filed offer, and rejects the previously filed offer as to lands encompassed in the lease issued to the junior offeror asserting that the junior offeror's assignee is a bona fide purchaser, the decision will be vacated as the statute governing oil and gas leasing of non-KGS lands dictates that the person first making application for a lease (the senior offeror) is qualified to hold it. Where the junior offeror and his successor in interest have not been joined to BLM's proceedings or named as parties on appeal, the matter will be remanded to BLM with instructions to allow them to show cause why the leases issued pursuant to the junior offer should not be canceled and to show that they acquired their interests as bona fide purchasers.

A. D. Batchelt, 56 IBLA 231 (July 22, 1981)

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant. Where an oil and gas lease has issued to a corporate applicant whose offer lacked priority because of noncompliance with 43 CFR 3102.2-5, requiring the filing of a list of corporate officials, such lease is properly canceled where another offer was filed for the same lands before the applicant cured the defect in its own offer.

Trans-Texas Energy, Inc., 56 IBLA 295 (July 28, 1981)

Where, following adjudication of her simultaneous noncompetitive oil and gas lease application, an applicant fails to submit advance first-year rental along with paperwork for the lease agreement within 30 days from her receipt of notice to do so, as required by 43 CFR 3112.4-1(a), her application is properly rejected under 43 CFR 3112.6-1(d).

Theresa Vibilian, 57 IBLA 354 (Sept. 8, 1981)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

Roy L. McKay, 57 IBLA 401 (Sept. 14, 1981)

Robert G. Lynn, 60 IBLA 117 (Nov. 24, 1981)

Where BLM issues an oil and gas lease to an offeror whose noncompetitive over-the-counter offer is junior to a valid previously filed offer, where it subsequently issues a second conflicting lease for the same lands to the senior offeror, and where the junior lease has not been assigned to a bona fide purchaser, BLM's decision canceling the lease issued to the senior offeror will be vacated, because the statute governing oil and gas leasing of non-KGS lands dictates that the qualified person first making application for a lease

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

(the senior offeror) is entitled to receive any lease which is issued.

York Associates, Ltd., 58 IBLA 25 (Sept. 16, 1981)

Where a noncompetitive oil and gas lease offer is rejected because the oil and gas interest in the land sought is not owned by the United States, but the record does not support such a finding, the case will be remanded for reexamination of whether the land in question is available for oil and gas leasing.

Douglas B. Willson et al., 58 IBLA 115 (Sept. 24, 1981)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, during the pendency thereof, the land is determined to be within the known geologic structure of a producing oil or gas field. Neither the fact that the noncompetitive offeror followed all of the applicable rules and regulations in making its offer nor the fact that the Bureau of Land Management delayed in getting a report from Geological Survey regarding the known geologic structure determination vitiates this conclusion.

George Reddy & Associates, 59 IBLA 359 (Nov. 9, 1981)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where on a simultaneous oil and gas lease application a corporate applicant references a corporate qualifications file which is incomplete, the application is defective, the corporation has not established its qualifications as required by 43 CFR 3102.2-5, and pursuant to 43 CFR 3112.6-1(b), BLM properly rejects the application.

Cimarron Corp., 61 IBLA 90 (Dec. 31, 1981)

Redwood Empire Land and Royalty Co., 62 IBLA 296 (Mar. 16, 1982)

Ingel Energy Corp., 64 IBLA 92 (May 12, 1982)

Redwood Empire Land & Royalty Co., 64 IBLA 267 (June 2, 1982)

Under 43 CFR 3103.3-4, a partnership offering to lease must submit "with its offer" a current statement of qualifications to hold a Federal oil and gas lease. If the partnership opts to place its statement of qualifications on file with BLM for future reference, in lieu of resubmitting a statement for each lease offer, the statement on file must be kept current by the offeror or else the serial number assigned to the statement for reference "shall not be used," according to 43 CFR 3102.2-1(c). BLM acts contrary to regulation when it allows a partnership that has made an over-the-counter offer to submit its updated statement of qualifications after the date of filing of the offer, where another offer of prima facie validity had intervened.

Bill Mathis et al., 61 IBLA 131 (Jan. 15, 1982)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as with absolute accuracy showing the extent, in each instance, of the geologic structure producing oil and gas.

Robert G. Lynn, 61 IBLA 153 (Jan. 19, 1982)

Acquired lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR Part 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where, while the offer is pending, the land is determined to be within a known geologic structure.

H. L. Hulholland, 61 IBLA 175 (Jan. 26, 1982)

Elcoex, Inc., 68 IBLA 130 (Oct. 28, 1982)

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where a corporate applicant in a noncompetitive simultaneous drawing does not have on record in its corporate qualifications file a complete list of its corporate officers and the identification of those officers who are authorized to act on behalf of the corporation as required by 43 CFR 3102.2-5(a)(3), and does not submit such a list with its application, the application is properly rejected.

Alter Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

Under 43 CFR 3112.1-1 (1979), lands covered by leases which expire by operation of law at the end of their primary term shall be subject to the filing of new lease offers in accordance with simultaneous leasing procedures. Thereafter, the lands become subject to over-the-counter offers only if no offers to lease all or any portion of the lands in the expired, canceled, relinquished, or terminated leases are received during the simultaneous filing period.

James W. Phillips, 61 IBLA 294 (Feb. 3, 1983)

It is improper for the Bureau of Land Management to reject a noncompetitive oil and gas lease offer for acquired lands where the offer is an "exact reproduction" of the approved offer form except that it is on white, rather than yellow, paper and it bears a notation stating that it is a reproduction.

Texas Oil and Gas Corp., 61 IBLA 312 (Feb. 4, 1982)

An over-the-counter noncompetitive oil and gas lease offer for acquired lands is properly rejected where no such lands exist as described. The filing upon appeal of an unsigned, undated public domain offer form bearing a corrected land description constitutes neither an offer nor an amendment, and thus it cannot be accepted by BLM for either purpose.

Fayette I. Bristol, 62 IBLA 317 (Mar. 22, 1982)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 Part CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

Bruce Anderson, 63 IBLA 111 (Apr. 2, 1982)

A stipulation properly implementing an amendment to sec. 1 of the Mineral Leasing Act, 30 U.S.C. § 181 (1976), by P.L. 97-78, Nov. 16, 1981, which requires the lessee to submit a plan of operation for nonconventional development methods, may be imposed by BLM at any time prior to BLM's formal acceptance of a noncompetitive lease offer.

Havoco of America, Ltd., 63 IBLA 284 (Apr. 22, 1982)

An oil and gas lease application filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied by a list of corporate officers as required by 43 CFR 3102.2-5(a) or by a reference to a BLM serial number indicating where such information can be found. Such an omission cannot be cured after the drawing.

Hickory Creek Oil Co., 63 IBLA 313 (Apr. 27, 1982)

Rockies Energy Corp., 66 IBLA 313 (Aug. 24, 1982)

Adobe Oil & Gas Corp., 73 IBLA 263 (June 7, 1983)

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since terminated, and BLM failed to post such lands to its list of lands available for simultaneous oil and gas lease applications.

Paul S. Courey, 64 IBLA 146 (May 24, 1982)

Stanley Oster, 71 IBLA 116 (Mar. 2, 1983)

Conoco, Inc., 75 IBLA 83 (Aug. 10, 1983)

An offer to lease oil and gas deposits under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1976), is properly rejected where the land applied for is not shown to be acquired land of the United States.

Laurent Reginbal, 64 IBLA 170 (May 26, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 175 (May 26, 1982)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation at the time of filing, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 285 (June 4, 1982)

Security Resources Corp., 70 IBLA 319 (Jan. 31, 1983)

Where an applicant for a noncompetitive oil and gas lease fails to submit the first year's advance rental within 30 days from receipt of notice to do so, as required by 43 CFR 3112.4-1(a), and there is insufficient evidence that the bank's failure to honor a check submitted timely to BLM in payment of the rental was due to bank error, the application is properly rejected.

Kathy L. Phillips, 64 IBLA 388 (June 17, 1982)

A noncompetitive oil and gas lease may only be issued to the first-qualified offeror. Where a corporate applicant fails to submit with its over-the-counter lease offer a list of corporate officials as required by 43 CFR 3102.2-5, its offer receives no priority until the defect is cured. Where an oil and gas lease has issued to a corporate offeror whose offer lacked priority originally because of noncompliance with 43 CFR 3102.2-5, such lease is properly canceled only where another offer was filed for the same land before the applicant cured the defect in its offer.

Peter D. Van Dyk Jayt, 65 IBLA 56 (June 23, 1982)

A determination by Geological Survey that lands are within a known geologic structure (KGS) of a producing oil or gas field will be reversed where appellant has demonstrated, by a clear and definite showing of error, that a permeability pinchout occurs in the lands designated as KGS and the pinchout is so situated as to overcome the presumption that lands included in appellant's oil and gas lease offer are productive.

James Bugley, Sr. (On Reconsideration), 65 IBLA 352 (July 16, 1982)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms were not received by BLM within 30 days from the receipt of notice.

Warren R. Haas, 66 IBLA 107 (Aug. 4, 1982)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

of a producing oil or gas field has the burden of showing that the determination is in error.

Robert L. Lyon, 66 IBLA 141 (Aug. 10, 1982)

Under 43 CFR 3112.4-1(a), a prospective lessee (i.e., one whose simultaneous noncompetitive application has been selected and approved by BLM) must either affix a "personal handwritten signature" on the offer to lease form and stipulations, or the prospective lessee's agent must do so. A rubber-stamped facsimile signature is not a "personal handwritten signature," and, where the prospective lessee affixes such a facsimile signature, the application is properly rejected under 43 CFR 3112.6-1(d).

Mary I. Akata, 66 IBLA 160 (Aug. 11, 1982) 89 I.D. 407

Where the Department, through a duly promulgated regulation, has increased a rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease applications were drawn with first priority before the regulation became effective.

Peter K. Walstrom, 66 IBLA 269 (Aug. 17, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of additional stipulations, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulations. Where there is no evidence that an offeror had actual knowledge of the stipulations at the time of filing, the offeror is not bound to accept the lease with the added stipulations.

John D. La Rue, 66 IBLA 347 (Aug. 26, 1982)

An oil and gas lease offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

Leo P. Sas, 67 IBLA 36 (Sept. 8, 1982)

Irvin Wall, 68 IBLA 299 (Nov. 19, 1982)

James C. Stevenson, 77 IBLA 150 (Nov. 15, 1983)

Bellwether Exploration Co., 78 IBLA 188 (Jan. 4, 1984)

Nordan Exploration, Inc., 79 IBLA 259 (Mar. 6, 1984)

Charles E. Shaw, 81 IBLA 347 (June 25, 1984)

BLM may properly reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the land sought is either patented with no reservation of oil and gas to the United States, acquired or withdrawn from mineral leasing.

Golden Eagle Petroleum, 67 IBLA 112 (Sept. 15, 1982)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. However, the offeror's consent to the additional stipulation will be assumed, and the lease presumed to be validly issued, unless the offeror objects to the stipulation within 30 days of its receipt. Any deficiency in the notice procedure for the stipulation is cured when the offeror fails to object timely to imposition of the new stipulation.

Energy Energy (On Reconsideration), 67 IBLA 260 (Sept. 27, 1982)

Harry K. Veal, 73 IBLA 86 (May 18, 1983)

William A. Stevenson, Altex Oil Corp., Imperial Resources, Inc., Donald W. Stevenson, Overthrust Partnership, 73 IBLA 305 (June 7, 1983)

Where a noncompetitive regular offer for an oil and gas lease contains minor defects, the resultant lease shall not be canceled upon the request of a subsequent offeror who filed after the lease had been issued to the first-qualified applicant.

Irvin Wall, 67 IBLA 301 (Sept. 30, 1982)

An oil and gas offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

Lee E. McDonald, 68 IBLA 272 (Nov. 17, 1982)

A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant, and cancellation is mandatory where an oil and gas lease is issued to a party other than the first-qualified applicant in violation of a statute or regulation of the Department.

Paul N. Temple, 69 IBLA 54 (Nov. 29, 1982)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

Thomas E. Lewis, 70 IBLA 69 (Jan. 11, 1983)

Haspton P. Stewart, 72 IBLA 358 (May 2, 1983)

Pioneer Fairmont #1, Ltd., 76 IBLA 337 (Oct. 20, 1983)

Vernie Lysengen, 78 IBLA 1 (Dec. 12, 1983)

Harold J. Norsoph, 78 IBLA 150 (Dec. 29, 1983)

A simultaneous oil and gas lease application is properly rejected where the rent is not paid within 30 days of notice to do so as required by 43 CFR 3112.4-1(a) because applicant's draft for the payment, although timely tendered, is dishonored by the drawee.

Kenneth E. Lewis, 70 IBLA 112 (Jan. 13, 1983)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in an oil and gas lease which terminated. Such lands are available for subsequent leasing only in accordance with the provisions of the simultaneous filing system provided under 43 CFR 3112.

Lowell J. Simons, 70 IBLA 128 (Jan. 14, 1983)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and first year's rental were submitted to the wrong BLM office and were not thereafter received by the proper BLM office within 30 days from the receipt of notice of priority.

Jokky N. Wolf, 70 IBLA 131 (Jan. 14, 1983)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitve oil and gas lease who challenges a determination by the Geological Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Angelina Holly Corp., 70 IBLA 294 (Jan. 27, 1983)

Under 30 U.S.C. § 226(b) (1976) land within the known geologic structure of a producing oil or gas field may only be leased by competitive bidding, and where land is determined to be within such a structure while a noncompetitive lease offer is pending, the offer must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Minerals Management Service that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Bob F. Abernathy, 71 IBLA 149 (Mar. 9, 1983)

Bob G. Howell, 71 IBLA 253 (Mar. 21, 1983)

A noncompetitive over-the-counter oil and gas lease issued with stipulations of which the offeror has had no prior notice, either actual or constructive, constitutes, in legal effect, a counter offer which will not preclude offeror from withdrawing his offer within 30 days of receipt of the lease and stipulations.

Robert P. Schafer, 71 IBLA 191 (Mar. 14, 1983)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The offeror is not justified in relying on the expected issuance of a lease.

An applicant for a noncompetitive oil and gas lease who challenges a determination by the Geological

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Survey that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Harry S. Mills, 71 IBLA 302 (Mar. 22, 1983)

A noncompetitive over-the-counter oil and gas lease offer for unsurveyed acquired lands which is not accompanied by a map upon which the desired lands are clearly marked in accordance with 43 CFR 3101.2-3(b)(2) is properly rejected. However, when the map is filed with the notice of appeal, the offer may be reinstated and allowed to earn priority as of that date.

Wilburn H. Seals, 71 IBLA 315 (Mar. 22, 1983)

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The drawing of an application for a noncompetitive oil and gas lease creates no vested rights in the applicant; it only establishes the priority to be accorded conflicting applications.

Hepburn T. Armstrong, 72 IBLA 329 (Apr. 29, 1983)

A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant. A defect is not curable to the extent that the rights of third parties have intervened. Accordingly, the lease must be offered to the first-qualified applicant who has complied with the Department's regulations which were operative and controlling at the time.

Tyrex Oil Co., 73 IBLA 241 (June 1, 1983)

A noncompetitive oil and gas lease offer for an undivided one-half interest in acquired land must be rejected where the land has been determined to be within the known geologic structure of a producing oil or gas field, even when leasing might be considered in the public interest because the offeror is the owner of the other one-half interest.

Worth D. Wake, Gayl L. Wake, 74 IBLA 256 (July 22, 1983)

A noncompetitive oil and gas lease may only be issued to the first-qualified offeror. Where a corporate applicant fails to submit with its over-the-counter lease offer evidence of corporate qualifications as required by 43 CFR 3102.2-5 (1981), or a reference by BLM serial number to a file in which such information has been filed, its offer receives no priority until the defect is cured.

Inexco Oil Co., 74 IBLA 260 (July 22, 1983)

Where BLM erroneously issues a noncompetitive over-the-counter oil and gas lease to a junior offeror, BLM's decision canceling that lease will be affirmed, since the law requires that the qualified person first making application for a lease (the senior offeror) is entitled to receive any lease which is issued.

A. W. Butter, Jr., 74 IBLA 345 (July 28, 1983)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Where one or more applications for an oil and gas lease are received for a parcel pursuant to the simultaneous oil and gas leasing procedures and no lease issues as a result of such filings, 43 CFR 3112.7 requires that the lands be subject to leasing only in accordance with Subpart 3112.

Phyllis H. Odell, 75 IBLA 313 (Aug. 30, 1983)

Where a portion of a noncompetitive lease offer is classified within a known geologic structure pending litigation of rejection of the offer for other reasons, that portion of the offer to lease affected by the classification must be rejected despite a judgment finding the offer to be otherwise proper. Land within a known geologic structure may be leased only after competitive bidding under provisions of 43 CFR Subpart 3120.

The drawing of an offer for a noncompetitive oil and gas lease creates no vested right in the offeror but establishes only the priority of filing of the offer. The offeror may not, therefore, rely upon the expected issuance of a lease.

Frederick W. Lowey, 76 IBLA 195 (Oct. 6, 1983)

A simultaneous oil and gas lease offer is properly rejected where the executed lease forms and the first year's rental payment were not received by BLM within 30 days from the receipt of notice.

James A. Scanapico, 76 IBLA 290 (Oct. 18, 1983)

BLM may properly reject a noncompetitive oil and gas lease offer where an attorney-in-fact signed the offer and submitted the first year's rental and the power of attorney did not prohibit the attorney-in-fact from filing offers on behalf of other participants, as required by 43 CFR 3112.4-1(b).

Kirk Rhone, 76 IBLA 332 (Oct. 20, 1983)

Where a noncompetitive oil and gas lease offer is rejected because the oil and gas interest in the land sought is not owned by the United States and the offeror presents significant evidence showing that such interest in part may be owned by the United States, the case will be remanded for the submission of additional evidence and reexamination of whether the land in question is available for oil and gas leasing.

Douglas A. Pugh, 77 IBLA 126 (Nov. 15, 1983)

Where oil and gas leasing in Alaska was suspended by Secretarial policy at the time noncompetitive lease offers were pending and the land identified in those offers was thereafter formally withdrawn from mineral leasing for the protection of Alaskan Natives' selection rights, the Secretary of the Interior has not abused his discretion in delaying adjudication of the offers until after the status of the land is settled.

Aspera Oil, Inc., Kenneth J. Gain, 77 IBLA 181 (Nov. 18, 1983)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

Under 30 U.S.C. § 226(b) (Supp. V 1981), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within such a structure, a noncompetitive lease offer for such lands must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination that the land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

R. C. Altrogge, 78 IBLA 24 (Dec. 12, 1983)

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since canceled, and therefore should have been leased pursuant to the simultaneous oil and gas leasing system, in accordance with 43 CFR 3112.1-1.

Mike Guffey, 78 IBLA 139 (Dec. 29, 1983)

A defect in a noncompetitive oil and gas lease offer may, in the case of over-the-counter offers to lease, be curable. If the defect in the offer is cured, the offer obtains priority on the date it is correctly completed. However, while this rule has been applied in the past to permit offerors to rectify disqualifying errors and omissions after BLM has properly rejected them, the Board now finds that practice to be inappropriate and contrary to public policy and efficient administration. Henceforth, no "curative" submissions will be received by the Board of Land Appeals to reinstate lease offers which have correctly been rejected by BLM because of the deficiency.

Gian R. Cassarino, 78 IBLA 242 (Jan. 10, 1984)
91 I.D. 9

Under 30 U.S.C. § 226(b) (Supp. V 1981), lands within the known geological structure of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within such a structure prior to issuance of a lease, a noncompetitive lease offer for such lands must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination that certain lands are within the known geological structure of a producing oil or gas field has the burden of showing that the determination is in error. Absent any argument of fact or evidence suggesting such error, the determination will be upheld.

Stephen M. Maslund, 79 IBLA 252 (Mar. 5, 1984)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms are not received by the proper BLM office within 30 days from receipt of notice of rental due.

R. A. Rapp, 80 IBLA 133 (Apr. 6, 1984)

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

A known geologic structure is a trap, either structural or stratigraphic in nature, in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, and which includes all acreage that is presumptively productive.

Land within a known geologic structure of a producing oil or gas field may only be leased after competitive bidding.

An applicant for a noncompetitive acquired lands oil and gas lease who challenges a determination by BLM that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Reed International, 80 IBLA 145 (Apr. 6, 1984)

If an oil and gas lease is to be issued for a particular tract, it must be issued to the first-qualified applicant. An application filed pursuant to the simultaneous filing procedure and selected with first priority is a noncompetitive application to lease for oil and gas and does not create a property right in the applicant but is merely a hope or expectation. The Secretary of the Interior may, in his discretion, reject any application to lease for oil and gas. An application, however, may not be rejected on a basis other than that permitted by law.

Nola Grace Ptasynski, 82 IBLA 48 (July 11, 1984)

In a simultaneous oil and gas lease drawing, the first-qualified applicant drawn with first priority is entitled to receive the lease. An appeal is properly dismissed where the appellant fails to point out the grounds on which the decision appealed from is in error, and the allegations in his statement of reasons are irrelevant and immaterial.

Chickasaw Oil & Gas, Inc., 82 IBLA 59 (July 11, 1984)

Where BLM rejects a noncompetitive oil and gas lease offer because of a determination that the land is within the known geologic structure of a producing oil or gas field and fails to support the decision in the record, the decision will be set aside and the case remanded to substantiate the basis of the KGS determination in light of the information tendered by the offeror on appeal.

Thomas Connell, 82 IBLA 132 (July 27, 1984)

Under 30 U.S.C. § 226(b) (1982), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within such a structure after a simultaneous oil and gas lease drawing but prior to issuance of a lease, a simultaneous oil and gas lease application for such lands must be rejected. The applicant has no vested rights to issuance of a lease.

Lloyd Chemical Sales, Inc., 82 IBLA 182 (Aug. 13, 1984)

Lands classified as within a known geologic structure of a producing oil and gas field (KGS) at any time prior to lease issuance must be leased competitively. The simultaneous oil and gas lease offer for such lands must be rejected even though the KGS determination probably would not have been applied to the lands but for the delay in lease issuance caused by the Secretary's suspension of the simultaneous oil and gas leasing program. Furthermore, applicant's rights are

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

not impaired in such a case because the drawing merely establishes the priority of filing an offer, it does not vest in the lease applicant the right to an oil and gas lease.

The Secretary has the power to prescribe proper and necessary rules and regulations to accomplish the purpose of the Mineral Leasing Act, and pursuant to this and other authority, the Secretary has the power to create, and operate, or to suspend the simultaneous oil and gas leasing program which was designed to implement the noncompetitive leasing provisions of the Act.

Joseph A. Talladira, 83 IBLA 256 (Oct. 23, 1984)

Pursuant to sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, amending sec. 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1982), the royalty rate imposed on a reinstated oil and gas lease may not be less than 16-2/3 percent unless the Secretary finds that there are uneconomic or other circumstances which could cause undue hardship or premature termination of production, or if in the Secretary's judgment, it would be otherwise equitable to reduce the royalty rate. Where a lessee fails to provide credible evidence of such circumstances, a reduction in the royalty rate below 16-2/3 percent is not justified.

Sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982 provides the Secretary of the Interior with discretionary authority to reinstate terminated leases. Reinstated leases which were terminated for "inadvertent" failure to make timely rental payment shall be subject to the conditions contained in 30 U.S.C. § 188(e) (1982).

Gulf Oil Corp., 83 IBLA 289 (Oct. 25, 1984)

An over-the-counter, noncompetitive oil and gas lease offer must be rejected when the record discloses that the land applied for has properly been leased to a senior offeror.

Weston B. Andrews, 83 IBLA 338 (Nov. 5, 1984)

Lands within a known geologic structure of a producing oil or gas field may only be leased by competitive bidding pursuant to 43 CFR 3120. A noncompetitive oil and gas lease offer filed before the lands were determined to be within a known geologic structure but not accepted by the United States on the date of determination is properly rejected.

George A. Donnelly, Jr., 83 IBLA 352 (Nov. 14, 1984)

One who challenges a determination by the Bureau of Land Management that land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Eagle Exploration Co., 83 IBLA 354 (Nov. 15, 1984)

BLM must cancel a noncompetitive oil and gas lease erroneously issued to a party other than the first-qualified offeror, where the lease was issued while that offeror's prior lease offer was pending on appeal

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

before the Board and the offeror was ultimately determined to be qualified to receive a lease.

American Mineral Leasing, Inc., 83 IBLA 372 (Nov. 15, 1984)

Under 30 U.S.C. § 226(b) (1982), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within such a structure, a noncompetitive lease offer for such lands must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination that the land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

Leonard Luning, 83 IBLA 376 (Nov. 16, 1984)

Pursuant to 30 U.S.C. § 226(b) (1982), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where the lands are determined to be within a known geologic structure prior to issuance of a lease, a simultaneous oil and gas lease offer for such lands must be rejected.

An applicant for a noncompetitive oil and gas lease who challenges a determination that certain lands are within the known geologic structure of a producing oil or gas field has the burden of establishing that the determination is in error. The determination will not be disturbed in the absence of a showing of error by a preponderance of evidence.

Ira B. Spear, 84 IBLA 92 (Dec. 6, 1984)

The Surface Disturbance Notice (N-2) is not a stipulation; it is merely notice to the oil and gas lessee that prior to disturbing the surface of the leased lands, it should contact the surface managing agency. Such notice may be included in a noncompetitive oil and gas lease by BLM without the consent of the offeror.

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation relating to cultural resource protection, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where the offeror files a timely objection within 30 days of receipt of the lease, and seeks cancellation of the lease and return of the first year's rental, it is improper to deny such request.

Robert & Frances Kunkel, 84 IBLA 140 (Dec. 11, 1984)

A junior over-the-counter noncompetitive oil and gas lease offer is properly rejected where the lands have been leased to a senior offeror and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

Beth Sitire, Trustee, 84 IBLA 197 (Dec. 20, 1984)

OIL AND GAS LEASES--Continued

OPERATING AGREEMENTS

Determinations by Geological Survey delineating two communicating gas-bearing structures or sands and providing that unitization of leases producing gas from these sands is in the interest of conservation will be affirmed where the record shows that these determinations were reasonably based on facts of record.

A challenge to decisions by Geological Survey (1) that various outer continental shelf wells are producing from common reservoirs, i.e., that they are "competitive," and (2) that unitization of these wells is necessary in the interest of conservation, will not be sustained where there is a preponderance of substantial and persuasive evidence to support the Survey's findings.

Where Geological Survey has ordered all outer continental shelf lessees with producing wells in two delineated competitive reservoirs to comply with a plan to allocate production on the basis of percentage of original net acre-feet of gas sand, this order will be affirmed in the absence of a clear showing that another method of allocation is superior.

Tenneco Oil Co., Texaco, Inc., 57 IBLA 85 (Aug. 24, 1981)

A Federal oil and gas lease conveys to the lessee the exclusive right to develop the leased deposits. In view of the exclusivity of this grant, no one may lawfully install equipment for such development on a Federal leasehold unless he holds such authority by or through the lessee.

Another person claiming through or under a lessee has the same right to remove equipment as the lessee himself and must exercise it within the same time period the lessee would have had to do so.

Where an oil and gas lease limits the lessee's right to remove equipment placed on the lease to a certain period of time following the lease's termination, any equipment left on the leasehold after that period becomes the property of the lessor.

The Department is obligated to notify only the lessee of record about the termination of an oil and gas lease for cessation of production. If the lessee has created an interest in any other person, whether by assignment, agreement, or otherwise, such other person must look to the lessee of record to provide notice of the termination of the lease or for redress if such notice is not provided.

KernCo Drilling Co. et al., 71 IBLA 53 (Feb. 22, 1983)

OVERRIDING ROYALTIES

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

Rose Petroleum Corp. et al., 54 IBLA 194 (Apr. 23, 1981) 88 I.D. 479

Inexco Oil Co. et al., 54 IBLA 260 (Apr. 28, 1981)

Wilbur G. Desens et al., 54 IBLA 271 (Apr. 28, 1981)

OIL AND GAS LEASES--Continued

OVERRIDING ROYALTIES--Continued

Robert F. Belknap et al., 55 IBLA 200 (June 16, 1981)

Woods Petroleum Corp. et al., 55 IBLA 348 (June 26, 1981)

Jack Zuckerman et al., 56 IBLA 193 (July 22, 1981)

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM must sell such canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976) and 43 CFR 3102.1-2(b).

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Irvin Steacke et al., 62 IBLA 278 (Mar. 16, 1982)

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly canceled, as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease. BLM should, on remand, sell these canceled overriding royalty interests as provided in 30 U.S.C. § 184(h) (1976).

Michigan Wisconsin Pipeline Co. et al., 64 IBLA 247 (May 28, 1982)

An overriding royalty interest retained by a lessee after he has assigned the lease to a bona fide purchaser is voidable and subject to cancellation where it is revealed that the lessee's original lease offer failed to disclose the existence of another party in interest in the offer. Any overriding royalties which the lessee assigned to the other party in interest are also properly subject to cancellation as this party is not a bona fide purchaser thereof, having had actual knowledge of the defect in the lease.

Gordon J. Lindsey, Resource Service Co., Inc., 64 IBLA 279 (June 4, 1982)

PATENTED OR ENTERED LANDS

BLM may properly reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the land sought is either patented with no reservation of oil and gas to the United States, acquired or withdrawn from mineral leasing.

Golden Eagle Petroleum, 67 IBLA 112 (Sept. 15, 1982)

An oil and gas offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

Lee E. McDonald, 68 IBLA 272 (Nov. 17, 1982)

OIL AND GAS LEASES--Continued

PATENTED OR ENTERED LANDS--Continued

BLM may properly reject an oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the minerals reserved in the patent of the land have been withdrawn from disposition under the mineral leasing laws.

Tom Hostetler, 73 IBLA 268 (June 7, 1983)

The Bureau of Land Management properly rejects a noncompetitive oil and gas lease offer for lands which have been patented with no mineral reservation to the United States.

D. E. Yates, 73 IBLA 353 (June 14, 1983)

PRODUCTION

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

It is not the policy of this Department to redefine a known geologic structure until all sands or formations therein have been exhausted or proved barren.

Vernon and Rita Benson, 48 IBLA 64 (May 29, 1980)

James Muslow, Sr., 51 IBLA 19 (Oct. 28, 1980)

Where a unit agreement specifies that a determination as to whether a well completed prior to the effective date of the agreement is capable of producing unitized substances in paying quantities will be deferred until an initial participating area is established as the result of completion of a well for production in paying quantities under the unit agreement, wells completed prior to the effective date of the agreement and capable of production in paying quantities will not extend a unitized lease upon which no such well exists.

Energy Trading, Inc., 50 IBLA 9 (Sept. 5, 1980)

Where a unit agreement specifies that a determination whether a well completed prior to the effective date of the agreement is capable of producing in paying quantities will be deferred until completion of a well capable of producing in paying quantities under the unit agreement, wells completed prior to the effective date of the agreement and capable of production in paying quantities will not extend a unitized lease upon which no such well exists.

Energy Trading, Inc., 55 IBLA 167 (June 9, 1981)

OIL AND GAS LEASES--Continued

PRODUCTION--Continued

Determinations by Geological Survey delineating two communicating gas-bearing structures or sands and providing that unitization of leases producing gas from these sands is in the interest of conservation will be affirmed where the record shows that these determinations were reasonably based on facts of record.

A challenge to decisions by Geological Survey (1) that various outer continental shelf wells are producing from common reservoirs, i.e., that they are "competitive," and (2) that unitization of these wells is necessary in the interest of conservation, will not be sustained where there is a preponderance of substantial and persuasive evidence to support the Survey's findings.

Where Geological Survey has ordered all outer continental shelf lessees with producing wells in two delineated competitive reservoirs to comply with a plan to allocate production on the basis of percentage of original net acre-feet of gas sand, this order will be affirmed in the absence of a clear showing that another method of allocation is superior.

Tenneco Oil Co., Texaco, Inc., 57 IBLA 85 (Aug. 24, 1981)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as absolutely and accurately showing the extent in each instance of the geologic structure producing oil or gas.

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not in fact contain valuable deposits of oil or gas.

Roy L. McKay, 57 IBLA 401 (Sept. 14, 1981)

Robert G. Lynn, 60 IBLA 117 (Nov. 24, 1981)

A determination by the Geological Survey that certain lands are within the known geologic structure of a producing oil and gas field does not guarantee the productive quality of the lands included in the structure. The boundaries of a known geologic structure of a producing oil and gas field are defined for administrative purposes and cannot be taken as with absolute accuracy showing the extent, in each instance, of the geologic structure producing oil and gas.

Robert G. Lynn, 61 IBLA 153 (Jan. 19, 1982)

A determination by Geological Survey that lands are within a known geologic structure (KGS) of a producing oil or gas field will be reversed where appellant has demonstrated, by a clear and definite showing of error, that a permeability pinchout occurs in the lands designated as KGS and the pinchout is so situated as to overcome the presumption that lands included in appellant's oil and gas lease offer are productive.

James Muslow, Sr. (On Reconsideration), 65 IBLA 352 (July 16, 1982)

OIL AND GAS LEASES--Continued

REINSTATEMENT

When an oil and gas lessee submits the amount of rental stated in a bill rendered by an authorized officer and the amount is found to be in error resulting in a deficiency, generally such lease shall not have automatically terminated for failure to pay the annual rental timely and new offers to lease the lands must be rejected.

Lucinda E. Boggs, 45 IBLA 60 (Jan. 14, 1980)

Where an oil and gas lessee erroneously transmits a check for the annual rental to the wrong office of the Bureau of Land Management, which office receives the payment 14 days prior to the anniversary date but takes no action either to forward the check to the proper office or return it to the lessee until the anniversary date of the lease, a petition for reinstatement of the terminated lease will be granted when it is established that the negligence of BLM employees was an equally causative factor in the lessee's failure to timely pay the rental.

Richard L. Rosenthal, 45 IBLA 146 (Jan. 23, 1980)

The Department of the Interior has no authority to reinstate a terminated oil and gas lease where the full rental has not been paid within 20 days after the date of termination.

Tenneco Oil Co., 46 IBLA 33 (Feb. 20, 1980)

Under 30 U.S.C. § 188(c) (1976), the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of rental, unless rental payment is tendered at the proper office within 20 days after the due date.

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2).

Where the failure to pay rental on or before the anniversary date of a lease is attributable to a computer error in the mailing system, neither reasonable diligence nor justification is shown to support a petition for reinstatement.

Reliance on receipt of a courtesy notice from the Bureau of Land Management does not justify late payment and therefore permit reinstatement of an oil and gas lease terminated for failure to pay rental timely.

Melbourne Concept Profit Sharing Trust, Joseph F. Fiato, Carl Gerard, 46 IBLA 87 (Feb. 28, 1980)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied. Reasonable diligence ordinarily requires

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

Placing payment for annual rental for an oil and gas lease in a residential mailbox for posting by the Postal Service without later checking to insure that the payment was picked up does not constitute reasonable diligence, especially when the lessee's regular mail delivery is to a different address. Failure of the payment to then be timely made is not justified, even though the Postal Service admittedly was not making regular stops at that mailbox, because timely payment was still within the lessee's control through the exercise of reasonable diligence.

Harold W. Fullerton, 46 IBLA 116 (Feb. 29, 1980)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Philadelphia, Pennsylvania, 2 days before it is due in Cheyenne, Wyoming, does not constitute reasonable diligence.

In order for the failure to make timely payment of the rental justifiable, the failure must be caused by factors outside the lessee's control which were the proximate cause of the failure. Traveling away from home during the latter part of July when payment is due Aug. 1 will not justify late payment.

Harry Zaslow, 46 IBLA 217 (Mar. 27, 1980)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and in delivery of the mail. Mailing the rental in Dallas, Texas, 2 days before it is due across the country in Silver Spring, Maryland, does not constitute reasonable diligence.

Bob W. Scott, 46 IBLA 254 (Mar. 27, 1980)

Under 30 U.S.C. § 188(c) (1976), the Secretary of the Interior lacks authority to reinstate an oil and gas lease terminated by operation of law for failure to pay rental timely, unless rental payment is paid within 20 days of the due date.

Assuming arguendo, that the Department had authority otherwise to reinstate a terminated oil and gas lease under 30 U.S.C. § 188(c) (1976), where there has been late payment of rental, it could not do so where

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

reasonable diligence was not shown nor a justifiable excuse given for the failure to exercise such diligence. Generally, a lessee will not be deemed to have exercised reasonable diligence where payment is transmitted after the due date. No justifiable excuse arises where an assignee of the lease relies on the assignor for payment, where a lessee relies on receipt of a courtesy billing notice from the Bureau of Land Management, or where a lessee was uninformed of the rental payment requirements.

Alice M. Conte, Phyllis Lane Zehr, 46 IBLA 312 (Apr. 8, 1980)

Under 30 U.S.C. § 188(c) (1976) the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment unless payment is tendered at the proper office within 20 days after the due date.

Administrator of Estate of Valentine M. O'Grady, 47 IBLA 83 (Apr. 21, 1980)

James Valiulo, 50 IBLA 256 (Sept. 30, 1980)

Frank Bursua, 50 IBLA 259 (Sept. 30, 1980)

Harold E. Kurtz, Jr., 59 IBLA 387 (Nov. 10, 1981)

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental payment on the anniversary date of the lease does not constitute reasonable diligence.

Under 30 U.S.C. § 188(c) (1976) and 43 CFR 3108.2-1(c), the Department has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of annual rental unless rental payment has been made or tendered within 20 days of the due date.

Kenneth and Era Tveten, 47 IBLA 180 (May 7, 1980)

An oil and gas lease terminated automatically by operation of law for failure to pay rental timely when the rental check, although timely received by the appropriate BLM office, is not honored by the bank upon which it is drawn, when presented for payment.

An oil and gas lease terminated for nonpayment of rental may be reinstated under 30 U.S.C. § 188(c) (1976) only if the failure to pay was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. Where a lessee submits his rental check timely, but the check is nonnegotiable because insufficient funds are on deposit in the particular bank when the check is presented for payment, the lessee has not exercised reasonable diligence. Where the lessee provides no evidence that the rental check was dishonored through the fault of someone other than the lessee, there is no basis for reinstatement of the lease. In no case may the lease be reinstated where the rental payment is not tendered within 20 days following the anniversary date of the lease.

Deane A. Dunbar, 48 IBLA 7 (May 27, 1980)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

A lessee whose oil and gas leases terminated by operation of law for failure to pay rental timely may be found to have exercised "reasonable diligence" in mailing the rental payments on Oct. 29 when they were due on Nov. 1, and the leases should therefore be granted reinstatement.

Poi Energy, Inc., 48 IBLA 197 (June 9, 1980)

The Department is without authority to reinstate an oil and gas lease terminated automatically by operation of law for failure to pay annual rental timely where the lessee fails to submit the entire amount due within 20 days of the anniversary date of the lease, regardless of alleged extenuating circumstances which might otherwise constitute grounds for reinstatement.

David Fasken, 48 IBLA 258 (June 26, 1980)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the proper Bureau of Land Management State Office on or before the anniversary date.

There is no authority to reinstate an oil and gas lease automatically terminated by operation of law for failure to pay rental when due if the rental is not tendered or paid within 20 days after the anniversary date of the lease.

Stefan Dessko, 49 IBLA 14 (July 15, 1980)

Reasonable diligence normally requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Hollywood, California, 2 days before it is due in Cheyenne, Wyoming, does not constitute reasonable diligence.

Rose M. Kengel, 49 IBLA 106 (July 28, 1980)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the proper Bureau of Land Management State Office on or before the anniversary date.

A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable, i.e., due to events outside the lessee's control, or not due to a lack of reasonable diligence. Reasonable diligence generally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing rental payment the day it was due does not constitute reasonable diligence.

The postmark date of a rental payment for an oil and gas lease is generally deemed to be the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at a date earlier than indicated by the postmark.

Kenneth W. Hacek, 49 IBLA 153 (July 30, 1980)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. When rental payment for an oil and gas lease was mailed after the date it is due, there was no basis for reinstating the lease because of reasonable diligence.

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, generally it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. A lessee's ignorance of the law and regulations and reliance on the insurance business practice of a grace period is not a justifiable excuse.

John J. O'Loughlin, 50 IBLA 50 (Sept. 15, 1980)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Coral Springs, Florida, 2 days before it is due in Santa Fe, New Mexico, does not constitute reasonable diligence.

In order for the failure to make timely payment of the rental justifiable, the failure must be caused by factors outside the lessee's control which were the proximate cause of the failure. Traveling away from home during the latter part of September when payment is due October 1 will not justify late payment.

Melvin D. Guttman, 51 IBLA 53 (Oct. 31, 1980)

The applicable statute limits the authority of the Department of the Interior in reinstating leases only to those situations where it is shown that the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence. Reasonable diligence normally requires sending or delivering payment to the proper office sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. Late payment of the rental is justifiable only where failure to make timely payment is the result of causes beyond the control of the lessee, and simple inadvertence in mailing the payment to the wrong office does not justify failure to send timely payment to the proper office.

Monsanto Co., 51 IBLA 271 (Dec. 15, 1980)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Submission of a deficient payment, even though received in advance of the due date, does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. No justifiable excuse arises where a discrepancy as to total acreage exists between the parcel listing and lease, BLM notifies the lessee at his address of record of the correct amount and the notice is returned as not deliverable, and the lessee, relying on the advice of his leasing service and landman, submits the incorrect amount.

Virgil T. Hartquist, 51 IBLA 356 (Dec. 29, 1980)

An oil and gas lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised or that the lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

The burden of proving that reasonable diligence was exercised or the lack of diligence was justified rests on the lessee. Where a lessee states that he mailed the rental payment to the proper BLM office well in advance of the due date but presents no corroborating evidence of the attempted payment, an oil and gas lease reinstatement petition is properly denied.

Stan F. Waliszek, 52 IBLA 101 (Jan. 12, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark on the payment envelope will be assumed to indicate the date of mailing in the absence of evidence to the contrary. Payment due on Oct. 1, 1980, bearing a postmark date of Sept. 30, 1980, does not reflect reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Speculation as to errors in post office mail processing does not constitute such extenuating circumstances as to make untimely payment of annual rental justified.

Elizabeth A. Christensen, 52 IBLA 113 (Jan. 13, 1981)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. The date of receipt of the rental and not the date of mailing is controlling in determining whether rental on an oil and gas lease was timely paid. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing rental payments the afternoon of the day due does not constitute reasonable diligence.

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, generally it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. A lessee's ignorance of the law and regulations and reliance on the business practices of other Governmental agencies accepting a postmark as the date of delivery is not a justifiable excuse.

Overthrust Oil and Gas Corp., 52 IBLA 119 (Jan. 13, 1981) 88 I.D. 38

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not received by the Bureau of Land Management State Office on or before the anniversary date.

A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable, i.e., due to events outside the lessee's control, or not due to a lack of reasonable diligence.

Reasonable diligence generally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing rental payment 12 days after it was due does not constitute reasonable diligence.

Absence from the country on a business trip at the time payment is due on a lease does not justify late payment of the rental. Early payment or other arrangements could be made to ensure timely payment.

Dorothy C. Axelson, 52 IBLA 146 (Jan. 16, 1981)

An oil and gas lease, terminated by operation of law for failure to timely pay the annual rental, will not be reinstated where the lessee mailed the rental payment to the wrong Bureau of Land Management office, where that office returned the payment in sufficient time for lessee to make timely payment in the proper office, but where the lessee failed to do so.

Energetics, Inc., 52 IBLA 236 (Feb. 3, 1981)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows that the failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Silver Spring, Maryland, 2 days before it is due in Billings, Montana, does not constitute reasonable diligence.

Jeannette L. Fenwick, 52 IBLA 250 (Feb. 6, 1981)

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination. The erroneous acceptance of rental payment a year later cannot create such authority nor estop the the Government from regarding the lease as having terminated.

Jack J. Grynberg, 53 IBLA 165 (Mar. 12, 1981)

A lessee may be entitled to reinstatement of the lease if it is shown, among other things, that reasonable diligence was exercised in mailing the payment, or that the delay in remitting the rental is justifiable. Where a lessee is unable to make the requisite showing, a petition for reinstatement is properly denied.

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental payment 1 day before or on the anniversary date of the lease does not constitute reasonable diligence.

A late rental payment or an insufficient tender of rental may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Instances of simple forgetfulness, inadvertence, ignorance of the regulations, reliance on BLM courtesy notices, and similar occurrences do not excuse a failure to exercise due diligence.

Martin Mattler, 53 IBLA 323 (Mar. 26, 1981) 88 I.D. 420

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. When the lessee makes a sufficient showing that rental payment for an oil and gas lease was mailed 15 days before the date it is due, the lease will be reinstated because the late filing was not due to a lack of reasonable diligence.

Mary A. Barnett, 53 IBLA 328 (Mar. 26, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at an earlier date.

Margaret Lee Pirtle, 54 IBLA 113 (Apr. 16, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Transmittal of payment 14 days after the due date does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. No justifiable excuse arises where a lessee has been specifically notified of the due date and through inadvertence fails timely to make payment.

Ralph W. M. Keating, 55 IBLA 113 (June 3, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. The fact that a lessee's accountant, responsible for submitting the rental payment, is overburdened with work will not justify reinstatement.

International Resource Enterprises, Inc., 55 IBLA 386 (June 30, 1981)

A petition for reinstatement of an oil and gas lease which has expired by operation of law for failure to make timely payment of the annual rental will be denied where the petition is filed with the appropriate office more than 15 days after receipt of notification of termination of the lease.

Absence from the country at the time payment is due on a lease does not justify late payment of the rental. Early payment or other arrangements could be made to ensure timely payment.

Michael Morrisroe, Jr., 56 IBLA 49 (July 8, 1981)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Untimely payment of annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at an earlier date. Mailing the rental payment 1 day after the anniversary date of the lease does not constitute reasonable diligence.

Russell D. Brown, 56 IBLA 345 (Aug. 3, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark on the payment envelope will be assumed to indicate the date of mailing in the absence of evidence to the contrary. Payment due on Jan. 2, 1981, bearing a postmark date of the same day does not reflect reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Neither ignorance of the law nor a business or pleasure trip justifies late payment. Furthermore, where lessee presents no evidence to support a finding that the illness of an employee entrusted with making payment occurred at or near the anniversary date and with such causality to constitute sufficiently extenuating circumstances to justify late payment, lessee's petition for reinstatement must be denied.

Arnold L. Gilberg, 57 IBLA 46 (Aug. 17, 1981)

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

Shell Oil Co., 57 IBLA 63 (Aug. 17, 1981)

Where leases have been found by the Department to have terminated automatically by operation of law for lessee's failure to pay the annual rental, but private legislation is subsequently enacted providing that such leases shall be held not to have terminated and for payment by the lessee of "accrued" and "unpaid" rental by the lessee, a BLM decision that such renewal is due for the period from the date when the leases were treated as terminated to the date of the private enactment will be affirmed in the special circumstances obtaining in the case.

Fuel Resources Development Co., 57 IBLA 90 (Aug. 24, 1981)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

Where a competitive, fractional interest, oil and gas lease is issued with conflicting and confusing rental provisions recited in the lease terms and in an attachment to the lease, a deficient rental payment by the lessee in reasonable reliance on the section providing for rental based upon the pro rata fractional interest of the United States will be considered justified so as to qualify the terminated lease for reinstatement.

Texas Oil and Gas Corp., 58 IBLA 175 (Sept. 28, 1981) 88 I.D. 879

The postmark date of a rental payment for an oil and gas lease is generally deemed to be the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at a date earlier than indicated by the postmark.

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2).

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in New Jersey, 2 days before it is due in Reno, Nevada, does not constitute reasonable diligence.

Andrew H. Nelson, 58 IBLA 220 (Sept. 30, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. However, where the lessee has entrusted payment to an employee who is hospitalized because of an injury, and another employee who assumes the injured employee's responsibilities fails to make timely payment, the injury of the employee is not the proximate cause of the late payment.

Dome Petroleum Corp., 59 IBLA 370 (Nov. 9, 1981) 88 I.D. 1012

An oil and gas lease terminated by operation of law for failure to pay the advance rental on or before the anniversary date may be reinstated only upon a showing that the failure to pay on time was either justifiable or not due to lack of reasonable diligence. The fact that appellant's employee mistakenly sent the courtesy notice to a corporation which was the assignee for part of the lease does not justify late payment.

Petroleum Corp., 60 IBLA 21 (Nov. 16, 1981)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2).

In order for a failure to pay rental timely to be justifiable, the late payment must be caused by factors outside of lessee's control which were the proximate cause of the failure. Breakdowns in lessee's procedures for handling rental payments resulting from internal changes in lessee's operations do not establish justification for a late rental payment.

Southern Union Co., 60 IBLA 181 (Nov. 25, 1981)

Failure to pay the annual rental for an oil and gas lease on which there is no well capable of producing oil or gas in paying quantities on or before the anniversary date results in the automatic termination of the lease by operation of law. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A lease may be reinstated only if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Where the date marked on an envelope by a private postage meter conflicts with the postmark made by a United States post office, the United States postmark will be deemed the date of mailing in the absence of satisfactory corroborating evidence that the mailing occurred earlier.

Mailing a rental payment the afternoon of the day due does not constitute reasonable diligence.

Ray W. Young, 60 IBLA 224 (Nov. 30, 1981)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified by failure to receive a courtesy notice of rental due. Late payment is not justified by illness or other reasons, unless a lessee demonstrates that they were causative

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

factors for delay in immediate proximity to the anniversary date of the lease.

Ruth Eloise Brown, 60 IBLA 328 (Dec. 18, 1981)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Jean Szczepanski, 60 IBLA 375 (Dec. 22, 1981)

Sun Oil Co., 63 IBLA 26 (Mar. 26, 1982)

Richard C. Hubbard, 68 IBLA 170 (Nov. 4, 1982)

Burton/Hawks, Inc., 71 IBLA 336 (Mar. 28, 1983)

Alyson A. Allison, James H. Allison III, 72 IBLA 333 (Apr. 29, 1983)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at an earlier date. Mailing the rental payment 1 day before or on the anniversary date of the lease does not constitute reasonable diligence.

Helen T. Ayers, Roger Quintal, 61 IBLA 71 (Dec. 31, 1981)

The law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it; therefore, where the Bureau of Land Management served notice of an oil and gas lease rental increase on an office of a corporate lessee which the lessee claimed was not its address of record for the lease, the lessee cannot assert ignorance of the increase because reasonable care would dictate that the office receiving the notice inform the proper office.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Where a lessee asserts a lack of knowledge of a rental increase as justification for its failure to pay timely the full amount of the rental, the lease will not be reinstated if the record supports a finding that the lessee had knowledge of the increase approximately 6 weeks prior to the anniversary date of the lease.

Getty Oil Co., 61 IBLA 226 (Jan. 28, 1982) 89 I.D. 26

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in San Rafael, California, 2 days before it is due in Billings, Montana, does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his actions in paying the rental fee. The fact that lessee's employee, responsible for submitting the rental payment, was home 1 day with his ill wife and was overburdened with extraordinary business matters, does not justify reinstatement.

Thomas H. Wilson, 61 IBLA 287 (Feb. 2, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Neither ignorance of the law nor a business or pleasure trip justifies late payment.

James M. Chudnow, 62 IBLA 13 (Feb. 23, 1982)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified by lessee's inadvertent misplacement of office records during the changeover in his office location.

David E. Cooley, Jr., 62 IBLA 87 (Feb. 25, 1982)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as the holder of record of the lease, and not the potential assignee, may have the lease reinstated on the ground that due diligence was exercised or that late payment was justified.

Grace Petroleum Corp., 62 IBLA 180 (Mar. 8, 1982)

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, generally it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. A lessee's ignorance of BLM's correct address, resulting in the return to him of the incorrectly addressed payment envelopes, is not a justifiable excuse.

Martin Exploration Management Corp., 63 IBLA 287 (Apr. 22, 1982)

The lessee of an oil and gas lease issued after Sept. 2, 1960, that has reached the end of its primary term must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1976) on or before the regular anniversary date of the lease. Failure to submit the rental timely results in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1976).

The Secretary is without authority under existing law to reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due unless such rental is paid or tendered within 20 days thereafter.

The discretionary authority granted to the Secretary of the Interior by 30 U.S.C. § 188(d) (1976) to reinstate oil and gas leases terminated for failure to pay rental timely, which leases are eligible for extensions under 30 U.S.C. § 226(e) (1976) because drilling operations commenced prior to the end of the term of the lease and were being diligently prosecuted at that time, applies only to oil and gas leases issued before Sept. 2, 1960. An oil and gas lease issued after that date, which has terminated for failure to pay rental timely, can be reinstated only under the provisions of 30 U.S.C. § 188(c) (1976).

Gulf Oil Corp., 63 IBLA 296 (Apr. 23, 1982)

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after it is due does not meet the reasonable diligence requirement.

Under 30 U.S.C. § 188(c) (1976) the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment unless payment is tendered at the proper office within 20 days of the due date.

Apostolos Paliombeis, 64 IBLA 119 (May 19, 1982)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied. Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

Emerson L. Kunz, 64 IBLA 121 (May 19, 1982)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the Bureau of Land Management State Office on or before the anniversary date.

A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable, i.e., due to events outside the lessee's control, or not due to a lack of reasonable diligence. Reasonable diligence generally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing rental payment the day it was due does not constitute reasonable diligence.

I. W. Lovelady (Lessee), Liberty Oil & Gas Corp. (Appellant), 64 IBLA 123 (May 19, 1982)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified by failure to receive a courtesy notice of rental due or by a delay in receiving assignment forms which prevented shifting the responsibility for lease payment prior to the anniversary date.

Alaidex U.S.A., Inc., 64 IBLA 274 (June 2, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Depositing the

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

payment in the mail on the same date it is due does not constitute reasonable diligence.

Liberty Oil & Gas Corp., 64 IBLA 277 (June 3, 1982)

Under 30 U.S.C. § 188(c) (1976) and 43 CFR 3108.2-1(c), the Department has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of annual rental unless rental payment has been made or tendered within 20 days of the due date.

Jack J. Grynberg, 64 IBLA 354 (June 15, 1982)

An oil and gas lease terminated by operation of law for failure to pay timely the advance rentals can be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence. Reasonable diligence is not shown where a computer failure to make timely payment by Feb. 1 is discovered on or about Feb. 16; a check is not subsequently mailed until Feb. 25; and payment is not actually received by BLM until Mar. 1.

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

Trend Resources Ltd., 64 IBLA 383 (June 17, 1982)

Where the owner of a lease that has terminated pursuant to 30 U.S.C. § 188(b) (1976) for failure to make timely annual rentals fails to pay the full rent within 20 days of the lease anniversary date, a petition for reinstatement is properly denied.

The notice of termination referred to in 43 CFR 3108.2-1 is sent to an oil and gas lessee only if the full amount of the rental due has been paid or tendered within 20 days after the lease anniversary date.

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

Failure to pay rental timely for an oil and gas lease is neither justifiable nor not due to a lack of reasonable diligence where the rental is mailed 9 days after the lease anniversary date and the delay in mailing is caused by the fact that the envelope containing the rental apparently slipped from a group of letters appellant was taking to the post office for mailing.

Elizabeth A. Hanson, 65 IBLA 204 (June 29, 1982)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as the holder of record of the lease, and not the potential assignee, may have the lease reinstated on the

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

ground that due diligence was exercised or that late payment was justified.

Victory Land and Exploration Co., 65 IBLA 373 (July 20, 1982)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

Robert S. Hughes, Helen G. Hughes, 66 IBLA 304 (Aug. 24, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." Delivering the rental payment to BLM after it is due does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. The breakdown of a system for payment of lease rentals allegedly because of confusion attributed to a probate lawsuit is not a sufficiently extenuating circumstance outside the lessee's control to justify late payment.

Zions First National Bank, 67 IBLA 43 (Sept. 8, 1982)

A check which is negotiable by a party other than the Bureau of Land Management does not constitute timely payment of lease rental, even if received prior to the anniversary date of the lease.

Where the Bureau of Land Management returns on the fourth working day following receipt an oil and gas lease rental check which is not negotiable by it, it has acted with reasonable dispatch, and the lease terminates automatically by law when a substitute check is not received until after the anniversary date.

An oil and gas lease terminated automatically for untimely payment of rental may be reinstated upon proof that reasonable diligence was exercised. Mailing payment to the Bureau of Land Management after it is due does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. Inadvertently sending, prior to the anniversary date, a rental check which is not negotiable by the Bureau of Land Management is not a circumstance outside the control of the lessee and does not justify a subsequent late payment of rental.

Kristie B. Cobb, 67 IBLA 59 (Sept. 9, 1982)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the Bureau of Land Management State Office on or before the anniversary date.

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

A terminated oil and gas lease may be reinstated only if the failure to make timely payment was either justifiable, i.e., due to events outside the lessee's control, or not due to a lack of reasonable diligence. Reasonable diligence generally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing the rental after it was due does not constitute reasonable diligence. Late payment is not justified by the fact that the lessee did not receive a courtesy notice from the Bureau of the Land Management, or the fact that he received erroneous advice from BLM employees.

Peter R. Buehler, 67 IBLA 242 (Sept. 24, 1982)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified by inadvertence, reliance on courtesy billing notices, or reliance upon a purported assignee to make the payment.

Robert G. Armstrong et al., 67 IBLA 357 (Oct. 6, 1982)

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

BLM's cashing a late rental check and depositing it in its unearned account does not constitute acceptance of rental payment or a determination that a terminated oil and gas lease will be reinstated.

Rose L. Terrazi, 68 IBLA 21 (Oct. 19, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was justifiable. A late payment will not be excused where payment was transmitted after the due date and the lessee asserts that he was unaware of the appropriate due date.

Phasic Associates, 68 IBLA 92 (Oct. 22, 1982)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment the day it is due does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. The fact that appellant "commutes" to his place of business in California from his home in Illinois, does not justify late payment.

Donald L. Darrow, 69 IBLA 62 (Nov. 29, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Where a lessee misdirects a lease rental payment to the wrong Bureau of Land Management office and it arrives at the office on the anniversary date of the lease, there can be no finding of reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. An accidental deviation in a lessee's normal payment procedure which results in payment being misdirected to the wrong Bureau of Land Management office is not a circumstance outside the lessee's control.

Gulf Oil Corp., 69 IBLA 263 (Dec. 21, 1982)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to lack of reasonable diligence on the part of the lessee.

Reasonable diligence normally requires sending the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Late payment is not justified where an

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

employee of lessee did not understand the time constraints governing the time for payment.

Deck Oil Co., 70 IBLA 97 (Jan. 11, 1983)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that the failure to pay the rental timely was justifiable or not due to a lack of reasonable diligence. Where the lessee has notice of the proper office for making payment, the use of an incorrect address is not justified. Mailing payment 3 days before it is due using an incorrect address does not reflect reasonable diligence in taking into account delays occasioned by the incorrect address.

Phillips Petroleum Co., 71 IBLA 105 (Feb. 25, 1983)

Under 30 U.S.C. § 188(c) (1976), a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that the failure to pay the rental timely was justifiable or not due to a lack of reasonable diligence. Where the lessee has notice of the address of the proper office for making payment, the use of an incorrect address is not justified. A lessee has not been reasonably diligent where it twice sends payment using the incorrect address even though mailed before the due date, when the correctly addressed payment is not mailed until after the due date.

Energetics, Inc., 71 IBLA 331 (Mar. 24, 1983)

The Department of the Interior is without authority under 30 U.S.C. § 188(c) (1976) to reinstate an oil and gas lease terminated automatically by operation of law for failure to pay annual rental timely where the lessee fails to submit the entire amount due within 20 days of the anniversary date of the lease, regardless of alleged extenuating circumstances which might otherwise constitute grounds for reinstatement.

Pegasus Petroleum Corp., 71 IBLA 216 (Mar. 16, 1983)

Under 30 U.S.C. § 188(c) (1976), the Department of the Interior is without authority to reinstate an oil and gas lease terminated automatically by operation of law for failure to pay annual rental timely where the lessee fails to submit the entire amount due within 20 days of the anniversary date of the lease, regardless of alleged extenuating circumstances which might otherwise constitute grounds for reinstatement.

Sanson Resources Co., 71 IBLA 224 (Mar. 17, 1983)

The postmark date of a rental payment for an oil and gas lease is generally deemed to be the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at a date earlier than indicated by the postmark.

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2).

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental by Special Delivery Mail in New York 2 days before it was due in Billings, Montana, is considered to constitute reasonable diligence.

Bryan Colley, 71 IBLA 299 (Mar. 22, 1983)

Under 30 U.S.C. § 188(c) (1976), a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Breakdowns in a lessee's procedures for handling rental payments resulting from internal changes in its operations do not establish justification for a late rental payment.

Tenneco Oil Co., 71 IBLA 339 (Mar. 28, 1983)

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2).

Mailing or delivering the payment after it is due does not meet this requirement. The fact that appellant's computer system was "down" does not justify late payment.

Joseph F. Brode, 71 IBLA 390 (Mar. 29, 1983)

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payment sufficiently in advance of the anniversary date to account

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2). Untimely payment may be justifiable if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

James H. Withycombe, 72 IBLA 5 (Apr. 4, 1983)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates if the lessee fails to pay the the annual rental on or before the anniversary date. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A terminated lease may be reinstated under 30 U.S.C. § 188(c) (1976) only if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Reasonable diligence normally requires sending the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment from Dallas, Texas, to Billings, Montana, 2 days before it is due does not constitute reasonable diligence.

For late payment of an oil and gas lease rental to be justifiable, factors beyond the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Delay in payment resulting from improperly addressing an envelope does not justify late payment within the meaning of 30 U.S.C. § 188(c) (1976).

Buttes Resources Co., 72 IBLA 18 (Apr. 4, 1983)

Reasonable diligence in submitting an annual rental payment normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. A late payment is not justified where there is a pending assignment of the lease which has not been approved by BLM and the lessee incorrectly assumes that the assignment will have been approved by the rental due date or where the lessee is in the process of moving its corporate offices.

HP Energy Corp., 72 IBLA 34 (Apr. 6, 1983)

Where an oil and gas lease is extended beyond its expiration date because of diligent drilling operations, it nevertheless terminates by operation of law upon failure to pay annual rental for the 11th year on or before the anniversary date of the lease.

Getty Oil Co., 72 IBLA 39 (Apr. 6, 1983)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates upon failure to pay the annual rental on or before the anniversary date of the lease. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was timely paid. A terminated lease may be reinstated pursuant to 30 U.S.C. § 188(c) (1976) only if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

To show that late payment was not due to a lack of reasonable diligence, a lessee must ordinarily show that payment was mailed sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing the rental payment the day before it is due does not constitute reasonable diligence.

For late submission of an oil and gas lease rental payment to be justifiable within the meaning of 30 U.S.C. § 188(c) (1976), factors outside the control of the lessee must have arisen which prevented the lessee from meeting the objective reasonable diligence test. Inadvertence or lack of awareness that payment had to be received by the due date are not matters beyond the lessee's control and do not justify late payment.

John E. Conner, 72 IBLA 83 (Apr. 13, 1983)

Where the lessee of an oil and gas lease terminated for nonpayment of annual rentals fails to show that the failure to timely pay the rentals was not due to a lack of reasonable diligence or that the failure to exercise reasonable diligence was justifiable, a petition to reinstate the lease under 30 U.S.C. § 188(c) (1976) is properly denied.

Goldie Skodras, 72 IBLA 120 (Apr. 14, 1983)

In support of reinstatement of an oil and gas lease that has terminated automatically as the result of the lessee's failure to pay the annual rent on or before the anniversary date of the lease, the petitioner/lessee must show either that the late payment was not due to a lack of reasonable diligence or that the late payment was otherwise justified.

Reasonable diligence ordinarily requires mailing the annual rental payment for a lease sufficiently in advance of the anniversary date of the lease to account for normal delays in the collection, transmittal, and delivery of the mail. The mailing of the annual rental payment on the anniversary date of the lease does not constitute reasonable diligence.

The untimely payment of the annual rent for a lease may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease; however, such justification is not shown by a lessee's assertion that he was unavoidably detained during business travel near the anniversary date of a lease.

Vernon I. Berg, 72 IBLA 211 (Apr. 21, 1983)

Under 30 U.S.C. § 188(c) (1976), a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

O. L. Foster, 72 IBLA 367 (May 3, 1983)

Reinstatement of a terminated oil and gas lease pursuant to 30 U.S.C. § 188(c) (1976) requires a showing that the late rental payment was either justifiable or not due to a lack of reasonable diligence. Neither delay in receipt of a courtesy billing notice nor a change in corporate offices and personnel will ordinarily justify a late rental payment.

Crest Oil & Gas Corp., 72 IBLA 370 (May 4, 1983)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the Bureau of Land Management State Office on or before the anniversary date.

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the rental payment is received within 20 days after the date of termination.

Francis X. Furlong II, 73 IBLA 67 (May 16, 1983)

It is the lessee's responsibility to see that any payment tendered for annual rental for an oil and gas lease is so identified that BLM can credit payment to the proper lease account. Where the lessee shows that the payment was received and BLM unreasonably failed to credit the payment to the lease account indicated on the billing notice returned with the payment, the lease is properly held not to have terminated.

Mucorp Energy, Inc., 73 IBLA 101 (May 23, 1983)

Reinstatement of an oil and gas lease terminated pursuant to 30 U.S.C. § 188(c) (1976) requires a showing by the lessee that the late payment was either justifiable or not due to a lack of reasonable diligence. Hand deliverance of the rental payment after the due date is not reasonable diligence. Neither reliance on a courtesy notice nor the failure of an assignor of an unapproved assignment to protect the assignee's interest will justify the late payment.

Pending approval of the assignment by BLM, the assignor shall continue to be responsible for the performance of any and all obligations under the lease. Only the lessee of record can claim or request reinstatement of the lease.

Harry C. Peterson, 75 IBLA 195 (Aug. 22, 1983)

In order for the failure to pay the annual rental for a noncompetitive oil and gas lease to be considered justifiable and subject to reinstatement under 30 U.S.C. § 188(c) (1976), it must be caused by factors outside the lessee's control. Where the lessee does not demonstrate that the combination of the start of a new school year, the start of a new career for her husband, and the chronic illness of her mother-in-law during the month preceding the lease anniversary date

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

were the proximate cause of her late rental payment, failure to pay the rental timely cannot be considered justifiable and the lease will not be reinstated.

Joanne F. Bechtel, 76 IBLA 1 (Sept. 6, 1983)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Olympia, Washington, 3 days before it is due in Anchorage, Alaska, does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected her actions in paying the rental.

Eleanor L. M. Dubey, 76 IBLA 177 (Sept. 30, 1983)

Where an oil and gas lessee timely pays its annual rental in accordance with an erroneous statement issued by the Bureau of Land Management, absent issuance of a notice of a deficiency as provided by 43 CFR 3108.2-1(b), the lease may not be held to have terminated as a matter of law because of the operation of the proviso found at 30 U.S.C. § 188(b) (1976), creating a statutory exception to the rule that failure to pay the lease rental on the anniversary date terminates the lease.

McClellan Oil Corp., 76 IBLA 322 (Oct. 19, 1983)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447, amending sec. 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976), affords an additional opportunity to reinstate a lease terminated by operation of law where the rental was not tendered within 20 days of termination if certain additional conditions are met. For a lease which terminated prior to enactment of sec. 401 the lessee must have tendered the rental to BLM prior to the date of enactment to qualify the lease for reinstatement.

R. E. O'Connell, Texas American Oil Corp., et al., 76 IBLA 376 (Oct. 25, 1983)

Larry Chambers, 77 IBLA 214 (Nov. 22, 1983)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at an earlier date.

Eleanor V. Broda, 77 IBLA 63 (Nov. 7, 1983)

Under 30 U.S.C. § 188(c) (1976), a lease terminated automatically for untimely payment of annual rental may be reinstated where the rental is paid within 20 days and upon receipt of a petition for reinstatement showing that reasonable diligence was exercised or that the failure to make timely payment was justifiable. In the absence of such proof, the petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence. The postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessees' assertion that the mailing occurred at an earlier date.

A late payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessees' control which affected their actions in paying the rental fee. Unsubstantiated speculation as to errors in handling and processing the payment by the U.S. Postal Service is not evidence of extenuating circumstances which will justify the untimely rental payment.

Arthur M. Solender, Lynn Devereaux, 79 IBLA 70 (Feb. 13, 1984)

Under 30 U.S.C. § 188(c) (1976), a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justifiable. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

Untimely payment of the annual rental may be justifiable if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Being away from the office on business does not establish that late rental payment was justifiable.

Anthony F. Hoyer, 79 IBLA 148 (Feb. 23, 1984)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

To justify failure to pay annual rental of an oil and gas lease so as to entitle appellant to reinstatement of lease pursuant to 30 U.S.C. § 188(c) (1976), the failure to make timely payment must be caused by factors beyond the control of the lessee. Where the record establishes that the lessee failed to send the rental payment in a timely fashion for unexplained reasons, and then failed to discover the missed payment until nearly 1 year later, there is no justification for the failure to make timely payment which will permit reinstatement.

A lease terminated by operation of law for failure to make timely payment can be reinstated upon proof of reasonable diligence in attempting to make payment or a showing that failure to make timely payment was justifiable, or, under certain circumstances, in the case of inadvertent failure to pay. Where appellant did not offer to pay annual rental due on Sept. 1, 1982, until Aug. 24, 1983, and offered no proof of circumstances to justify nonpayment on the due date, the record fails to support the reinstatement of an oil and gas lease pursuant to any provision of 30 U.S.C. § 188 (1976) as amended.

Neither the doctrine of equitable estoppel nor substantial fairness is available to offer appellant relief where reliance upon those doctrines is predicated upon circumstances which indicate appellant merely failed to make timely payment through its own neglect. The existence of a cover letter indicating a payment was sent where it subsequently appears there was no payment attached to the letter as shown, is insufficient alone to place the burden upon the Government to either establish it did not receive payment, or alternatively, to explain why it did not notify appellant of the apparent omission of payment from its letter.

Davis Oil Co., 79 IBLA 218 (Feb. 29, 1984)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Sec. 401(d) of the Federal Oil and Gas Royalty Management Act, 30 U.S.C.A. § 188(d) (West Supp. 1983), affords an additional opportunity to reinstate a lease terminated by operation of law where the rental was not tendered within 20 days of termination, if certain additional conditions are met. Where a lease terminates on or after enactment of sec. 401 (Jan. 12, 1983), the lessee must file a petition for reinstatement together with required back rental and royalty accruing from the date of termination, on or before 60 days from receipt of notice of termination or 15 months after termination, whichever is earlier.

Harriet C. Shaffel, 79 IBLA 228 (Feb. 29, 1984)

A lessee seeking reinstatement of an oil and gas lease under sec. 401(d)(2)(A)(i) of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C.A. § 188(d)(2)(A)(i) (West Supp. 1983), must tender in full prior to Jan. 12, 1983, the rental due for the lease sought to be reinstated.

Jerry Chambers Exploration Co., Blackbird Co., 80 IBLA 123 (Apr. 3, 1984)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

Reinstatement of a terminated oil and gas lease pursuant to 30 U.S.C. § 188(c) (1982) requires a showing by the lessee that the late rental payment was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after the due date is not reasonable diligence. Neither reliance on a courtesy notice nor the complexity of the lessee's business affairs will justify a late payment.

Where a lessee files a petition for reinstatement of a terminated oil and gas lease in response to notification of his rights to petition for reinstatement under 30 U.S.C. § 188(c) (1982) and 30 U.S.C. § 188(d) and BLM denies reinstatement only on the basis of noncompliance with the former statutory provision, the case will be remanded to BLM for consideration of reinstatement under the latter provision.

Larry W. Ferguson, 81 IBLA 167 (May 31, 1984)

The holder of a noncompetitive oil and gas lease terminated by operation of law for failure to pay the annual rental timely is not entitled to reinstatement of his lease pursuant to sec. 31(c) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(c) (1982), where the late payment was mailed to BLM after the lease anniversary date and the lessee presents no evidence in support of the assertion that the reason for the late payment was illness at or near the lease anniversary date.

William F. Branscome, 81 IBLA 235 (June 6, 1984)

A petition for reinstatement pursuant to 30 U.S.C. § 188(c) (1982) of an oil and gas lease which has terminated by operation of law for failure to make timely payment of the annual rental will be denied where the petition is filed more than 15 days after receipt of notification of termination of the lease.

Kay Fink, 81 IBLA 381 (June 28, 1984)

The first-qualified applicant for an oil and gas lease acquires no vested right to have a lease issued to him but only a right to be preferred over other applicants if a lease is to be issued and his application may be rejected if it is determined that a previously terminated lease including the lands sought for leasing should be reinstated under sec. 401 of the Federal Oil and Gas Royalty Management Act, P.L. 97-451, 96 Stat. 2447, which amended sec. 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1982).

Sec. 401 of the Federal Oil and Gas Royalty Management Act, P.L. 97-451, 96 Stat. 2447, amending sec. 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1982), affords an additional opportunity to reinstate a lease terminated by operation of law where it is shown to the satisfaction of the Secretary that failure to timely pay the rental was inadvertent, provided certain criteria are met.

While the assignee of an oil and gas lease may not exercise any control or dominion over the lease prior to approval of the assignment, the assignee is not precluded from paying the annual rental in an effort to avoid termination of the lease or to qualify the lease for reinstatement upon petition by the lessee of record.

Nola Grace Ptasynski, 82 IBLA 48 (July 11, 1984)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

BLM properly denies a petition for reinstatement of a noncompetitive oil and gas lease, which terminated automatically after Jan. 12, 1983, for failure to pay the annual rental on or before the lease anniversary date, under sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 188(d), (e) (1982), where the lessee did not submit the required back rental within 60 days after receipt of a notice of termination, computed at the increased rate of $5 per acre set forth in 30 U.S.C. § 188(e)(2).

Kurt W. Hikat, 82 IBLA 71 (July 16, 1984)

The Secretary has no authority, under 30 U.S.C. § 188(c) (1982), to reinstate a lease terminated for failure to pay rentals timely unless payment has been made within 20 days of lease termination.

The Secretary may reinstate leases terminated on or after Jan. 12, 1983, if certain conditions are met and a petition for reinstatement plus required back rentals are filed the earlier of 60 days after lessee has received notice of termination or 15 months after lease termination. The submission of a rental check which is later dishonored by the drawee bank because of insufficient funds is neither a payment nor a tender of payment.

John P. Clifton, 82 IBLA 126 (July 24, 1984)

When the lessee fails to pay rentals on or before the anniversary date of the lease, where no oil or gas is being produced in paying quantities on the leased premises, then the lease shall automatically terminate by operation of law; however, if the full rental amount has been paid within 20 days of the lease anniversary date, and the failure was justifiable or not due to a lack of reasonable diligence, then the Secretary may reinstate the lease.

Late payment of an annual rental may be considered justifiable if the untimeliness was proximately caused by circumstances outside the lessee's control at or near the anniversary date of the lease; however, travel does not ordinarily prevent a person from making payment or arranging for others to make payment in his absence.

Neither the bulk nor the complexity of an individual or a corporate lessee's business organization constitutes adequate justification for a late payment, and the Board cannot conclude that a late payment is justified when the lessee neglects to order his business affairs so that his lease rental is paid on time.

In order to show that a late payment was not due to a lack of reasonable diligence, a lessee must ordinarily show that payment was made sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing the payment one day after it is due does not constitute reasonable diligence.

Leo B. Krenzler, 82 IBLA 205 (Aug. 20, 1984)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1982). Under 30 U.S.C. § 188(c) (1982), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

is not tendered at the proper office within 20 days after the due date.

Reinstatement of a terminated noncompetitive oil and gas lease under sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 188(d), (e) (1982), requires payment by the lessee of rental at the rate of $5 per acre as well as reimbursement of administrative costs (up to $500) and the cost of publishing notice in the Federal Register.

Maynard J. Bonesteel, 82 IBLA 237 (Aug. 23, 1984)

BLM does not have the authority to reinstate a noncompetitive oil and gas lease which expired at the end of its 2-year extended term because of lack of production in paying quantities.

Joseph J. C. Paine, 83 IBLA 145 (Oct. 9, 1984)

Under 30 U.S.C. § 188(c) (1982), a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justifiable. Where it benefits the affected party to do so, and there are no countervailing public policies or intervening rights which will be adversely affected, an oil and gas lease regulation which is amended while the matter is pending may be applied in its amended form. Under the reinstatement regulations as amended (Aug. 22, 1983), a rental payment postmarked on or before the anniversary date and received within 20 days thereafter may be construed as reasonably diligent.

Hugh L. Scott, 83 IBLA 184 (Oct. 16, 1984)

Reinstatement of a terminated oil and gas lease pursuant to 30 U.S.C. § 188(c) (1982), referred to as a Class I reinstatement, requires a showing by the lessee that the late rental payment was either justifiable or not due to a lack of reasonable diligence. Inadvertent mailing of the rental payment to an improper office without sufficient time for forwarding of the payment or return to the lessee so that payment can be properly sent is not reasonable diligence.

Estate of Arlyne Lansdale, 83 IBLA 190 (Oct. 16, 1984)

Pursuant to sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, amending sec. 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1982), the royalty rate imposed on a reinstated oil and gas lease may not be less than 16-2/3 percent unless the Secretary finds that there are uneconomic or other circumstances which could cause undue hardship or premature termination of production, or if in the Secretary's judgment, it would be otherwise equitable to reduce the royalty rate. Where a lessee fails to provide credible evidence of such circumstances, a reduction in the royalty rate below 16-2/3 percent is not justified.

Sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982 provides the Secretary of the Interior with discretionary authority to reinstate terminated leases. Reinstated leases which were terminated for "inadvertent" failure to make timely rental payment shall be subject to the conditions contained in 30 U.S.C. § 188(e) (1982).

Gulf Oil Corp., 83 IBLA 289 (Oct. 25, 1984)

OIL AND GAS LEASES--Continued

REINSTATEMENT--Continued

BLM may approve a petition for reinstatement, filed under sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 188(d), (e) (1982), for a noncompetitive oil and gas lease, which terminated automatically prior to Jan. 12, 1983, for failure to pay the annual rental on or before the lease anniversary date where the lessee has complied with the statutory requirements for reinstatement. In cases where petitions have been filed prior to publication of the requirement to pay back rentals at the new rate of $5 per acre, or notification of that requirement by BLM, petitioner is properly given an opportunity to tender the additional amount required.

Robert P. Creson, 83 IBLA 362 (Nov. 15, 1984)

Pursuant to 30 U.S.C. § 188(b) (1982), when the lessee fails to pay rentals on or before the anniversary date of the lease, and no oil and gas in paying quantities is being produced on the leased premises, the lease shall automatically terminate by operation of law. The Secretary may reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1982), if the full rental is paid within 20 days of the lease anniversary date, and the failure to timely pay the rental was justifiable or not due to a lack of reasonable diligence. Reliance upon receipt of a courtesy notice can neither prevent a lease from terminating by operation of law nor serve to justify a failure to timely pay the rental. When the lessee has actual notice that the rental was due, and the failure to timely pay the rental was due to the lessee's own neglect, the failure to timely pay is neither justifiable nor demonstrative of reasonable diligence. Therefore a petition for reinstatement must be rejected.

Harry L. Berges, 84 IBLA 158 (Dec. 13, 1984)

Under 30 U.S.C. § 188(c) (1982), a lease terminated automatically for late payment of annual rental may be reinstated upon receipt of a petition for reinstatement showing that reasonable diligence was exercised or that the failure to pay timely was justifiable. In the absence of such proof, e.g., where the lessee mailed the payment after the lease anniversary date as a result of an oversight, the petition for reinstatement is properly denied.

James P. Felt, 84 IBLA 205 (Dec. 27, 1984)

RELINQUISHMENTS

Where a lessee relinquishes an oil and gas lease, he is exercising a right given to him by the Mineral Leasing Act, and BLM may not interfere. The relinquishment is effective as of the day it is filed, notwithstanding that prospective assignees of an interest in the lease may object.

Where an oil and gas lessee has assigned an interest to a party which is assertedly a bona fide purchaser, and where the lessee subsequently relinquishes his lease interest as part of a guilty plea agreement in a Federal criminal proceeding in which he is charged with illegally manipulating the noncompetitive lease sale system, the assignee's interest is not preserved by the bona fide purchaser provisions, which do not protect any purchasers of lease interests from destruction by the relinquishment or compelled disposition of the underlying lease by the lessee.

J. M. Dunbar, A. G. Andrikopoulos, 62 IBLA 119 (Mar. 4, 1982)

OIL AND GAS LEASES--Continued

RELINQUISHMENTS--Continued

Although oil and gas leases issued prior to the enactment of the Combined Hydrocarbon Leasing Act of 1981, 95 Stat. 1070 (1981), and located completely within special tar sand areas may be converted to combined hydrocarbon leases, that Act did not affect oil and gas leases issued prior to the Act which are located outside such areas. The Department has no authority to convey any rights to tar sand on oil and gas leases issued prior to Nov. 16, 1981. A lessee seeking to develop the tar sand on such a lease must relinquish its lease and seek a new oil and gas lease.

Cooper Petroleum, Inc., 73 IBLA 295 (June 7, 1983)

Where BLM has unilaterally imposed special stipulations in issuing oil and gas leases and the lessee accepts such leases without protest for 7-1/2 months, she may not thereafter "withdraw" from or relinquish such leases and recover the annual advance rentals paid therefor on the ground that she did not consent to the imposition of the special stipulations, although she might have been permitted to do so had she protested promptly.

Frances Kunkel, 75 IBLA 199 (Aug. 22, 1983)

The phrase "any legal subdivision" in 43 CFR 3108.1 permitting relinquishment of an oil and gas lease or any legal subdivision thereof is not limited in meaning to whole sections for lands shown on a protracted survey.

James H. Chudnow, 82 IBLA 262 (Aug. 29, 1984)

RENEWALS

Where an applicant for an oil and gas renewal lease under 30 U.S.C. § 223 (1976) requests to be advised of additional requirements but the Bureau of Land Management fails to notify applicant of rent due, failure to submit rental before expiration of existing lease does not mandate denial of the application and 30 U.S.C. § 188 (1976) is not applicable.

Keohane, Inc., et al., 50 IBLA 249 (Sept. 30, 1980)

To obtain a renewal of a 20-year oil and gas lease, the lessee should file an application for renewal at least 90 days prior to the expiration of the lease. This requirement is permissive, however, and a delay in filing the application may be excused in the presence of special circumstances.

T & H Corp., Larry G. McLatchy, 70 IBLA 366 (Feb. 3, 1983)

RENTALS

Under 43 CFR 3130.2-1, rental for noncompetitive oil and gas leases for acquired lands in which the United States owns an undivided fractional interest is payable at the same rate as provided for full acreage leases and not prorated.

Wilfred Plouis, 45 IBLA 230 (Feb. 4, 1980)

OIL AND GAS LEASES--Continued

RENTALS--Continued

Where an oil and gas lessee pays his annual rental on or before the anniversary date of the lease in accordance with an erroneous bill issued by the Bureau of Land Management, the lease will not automatically terminate unless lessee fails to pay the deficiency within the period prescribed in a notice of deficiency sent by BLM. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(b).

C.S.Y. Oil Exploration Co., 45 IBLA 393 (Feb. 13, 1980)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, and the right of the next drawee to receive first consideration attaches <u>ex instante</u>.

Zenith S. Merritt, 46 IBLA 24 (Feb. 20, 1980)

A noncompetitive oil and gas lease on which there is no well capable of production automatically terminates by operation of law where the rental payment by the lessee on or before the due date is deficient by more than $10 or 5 percent.

Tenneco Oil Co., 46 IBLA 33 (Feb. 20, 1980)

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2).

Where the failure to pay rental on or before the anniversary date of a lease is attributable to a computer error in the mailing system, neither reasonable diligence nor justification is shown to support a petition for reinstatement.

Reliance on receipt of a courtesy notice from the Bureau of Land Management does not justify late payment and therefore permit reinstatement of an oil and gas lease terminated for failure to pay rental timely.

Melbourne Concept Profit Sharing Trust, Joseph F. Plato, Carl Gerard, 46 IBLA 87 (Feb. 28, 1980)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Philadelphia, Pennsylvania, 2 days before it is due in Cheyenne, Wyoming, does not constitute reasonable diligence.

43 CFR 3108.2-1(a) requires the lessee "to pay" the rental on or before the due date. This regulation contemplates receipt of the remittance by BLM as the date for paying the rental rather than the date of

OIL AND GAS LEASES--Continued

RENTALS--Continued

mailing of the payment or the date on which the payment is postmarked.

In order for the failure to make timely payment of the rental justifiable, the failure must be caused by factors outside the lessee's control which were the proximate cause of the failure. Traveling away from home during the latter part of July when payment is due Aug. 1 will not justify late payment.

Harry Zaglow, 46 IBLA 217 (Mar. 27, 1980)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and in delivery of the mail. Mailing the rental in Dallas, Texas, 2 days before it is due across the country in Silver Spring, Maryland, does not constitute reasonable diligence.

Bob W. Scott, 46 IBLA 254 (Mar. 27, 1980)

The lessee of an oil and gas lease, issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1976) on or before the regular anniversary date of the lease. Failure to submit the rental timely results in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1976). Where the lessee shows that his failure to pay rental timely is justifiable, he pays the required rental within 20 days after the due date, excluding the normal business days the office is closed due to snowstorms, and he otherwise complies with statutory and regulatory requirements, he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1976).

Western Reserves Oil Co., 46 IBLA 295 (Mar. 31, 1980)

Under 30 U.S.C. § 188(c) (1976), the Secretary of the Interior lacks authority to reinstate an oil and gas lease terminated by operation of law for failure to pay rental timely, unless rental payment is paid within 20 days of the due date.

Assuming arguendo, that the Department had authority otherwise to reinstate a terminated oil and gas lease under 30 U.S.C. § 188(c) (1976), where there has been late payment of rental, it could not do so where reasonable diligence was not shown nor a justifiable excuse given for the failure to exercise such diligence. Generally, a lessee will not be deemed to have exercised reasonable diligence where payment is transmitted after the due date. No justifiable excuse arises where an assignee of the lease relies on the assignor for payment, where a lessee relies on receipt of a courtesy billing notice from the Bureau of Land Management, or where a lessee was uninformed of the rental payment requirements.

Alice M. Conte, Phyllis Lane Zehr, 46 IBLA 312 (Apr. 8, 1980)

OIL AND GAS LEASES--Continued

RENTALS--Continued

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate is applicable to leases to be issued subsequent to that date for over-the-counter offers filed prior to the effective date of the regulation.

Thomas Connell, 46 IBLA 331 (Apr. 4, 1980)

Thomas Connell, 56 IBLA 23 (June 30, 1981)

The automatic termination provision of 30 U.S.C. § 188(b) (1976) is applicable to a lease whose lands formed part of a unit upon which production has at all times been maintained, but were thereafter eliminated therefrom and simultaneously segregated by reason of their inclusion in a second unit, since terminated.

Bass Enterprises Production Co., 47 IBLA 53 (Apr. 14, 1980)

Under 30 U.S.C. § 188(c) (1976) the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment unless payment is tendered at the proper office within 20 days after the due date.

Administrator of Estate of Valentine B. O'Grady, 47 IBLA 83 (Apr. 21, 1980)

Frank Burgus, 50 IBLA 259 (Sept. 30, 1980)

Harold E. Kurtz, Jr., 59 IBLA 387 (Nov. 10, 1981)

An oil and gas lease terminated automatically by operation of law for failure to pay rental timely when the rental check, although timely received by the appropriate BLM office, is not honored by the bank upon which it is drawn, when presented for payment.

An oil and gas lease terminated for nonpayment of rental may be reinstated under 30 U.S.C. § 188(c) (1976) only if the failure to pay was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. Where a lessee submits his rental check timely, but the check is nonnegotiable because insufficient funds are on deposit in the particular bank when the check is presented for payment, the lessee has not exercised reasonable diligence. Where the lessee provides no evidence that the rental check was dishonored through the fault of someone other than the lessee, there is no basis for reinstatement of the lease. In no case may the lease be reinstated where the rental payment is not tendered within 20 days following the anniversary date of the lease.

Deane A. Dunbar, 48 IBLA 7 (May 27, 1980)

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental due is $1,863, the offer will be disqualified under 43 CFR 3112.4-1 when the offeror submits a check for only $1,836 within the time required, but fails to submit the $27 deficiency within the allowed time.

Edward Goodman, 48 IBLA 152 (June 9, 1980)

OIL AND GAS LEASES--Continued

RENTALS--Continued

An oil and gas lease on which there is no well capable of production terminates automatically by operation of law if the lessee pays only 50 percent of the annual rental due on or before the anniversary date of the lease, and where this deficient payment did not result from any incorrect information in a rental bill or decision.

A delay by BLM in notifying an oil and gas lessee that his lease has terminated because he has failed to pay all of the rental due on or before the anniversary date of the lease does not extend the viability of the lease in order to allow him to pay the balance of the rental, as the lease had already terminated automatically by operation of law, without any administrative act, deed, or decision.

David Fasken, 48 IBLA 258 (June 26, 1980)

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental is due within 15 days from the receipt of notice that such payment is due, the offer will be disqualified under 43 CFR 3112.4-1 when the rental is not received in the proper office within 15 days from the receipt of notice that such payment is due.

Where payment must be accomplished within a specific number of days from receipt of notice, that number includes holidays and weekends which occur in the interim unless it is provided otherwise.

Gordon E. Jacober, 49 IBLA 91 (July 22, 1980)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease.

Placing a check for annual rental for oil and gas leases in the mails does not constitute "payment" of annual rental. Rather, the lessee must cause the rental to be received by the office administering her leases, and, until such time as it is received, no "payment" of annual rental has occurred. Placing a check for annual rental for oil and gas leases in the mails does not constitute a tender of payment of annual rental within the meaning of 43 CFR 3108.2-1(c). Rather, a lessee makes a tender of payment only when she submits payment to the BLM office administering her leases and when BLM has the opportunity either to receive or decline it.

Reasonable diligence normally requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Hollywood, California, 2 days before it is due in Cheyenne, Wyoming, does not constitute reasonable diligence.

Rose M. Keegel, 49 IBLA 106 (July 28, 1980)

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease for an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days of receipt of notice that such payment is due.

Earl F. Hartley, 49 IBLA 140 (July 30, 1980)

OIL AND GAS LEASES--Continued

RENTALS--Continued

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. When rental payment for an oil and gas lease was mailed after the date it is due, there was no basis for reinstating the lease because of reasonable diligence.

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, generally it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. A lessee's ignorance of the law and regulations and reliance on the insurance business practice of a grace period is not a justifiable excuse.

John J. O'Loughlin, 50 IBLA 50 (Sept. 15, 1980)

Where the Geological Survey has determined that any part of the lands described in a noncompetitive oil and gas lease is within an undefined known geologic structure, the lessee is required to pay increased rental in accordance with 43 CFR 3103.3-2(b)(1).

CO2-In-Action, Inc., 50 IBLA 54 (Sept. 15, 1980)

Ambra Oil and Gas Co., 58 IBLA 67 (Sept. 22, 1981)

Where an applicant for an oil and gas renewal lease under 30 U.S.C. § 223 (1976) requests to be advised of additional requirements but the Bureau of Land Management fails to notify applicant of rent due, failure to submit rental before expiration of existing lease does not mandate denial of the application and 30 U.S.C. § 188 (1976) is not applicable.

Keohane, Inc., et al., 50 IBLA 249 (Sept. 30, 1980)

The fact that there has been a cessation of production or abandonment of wells in a given field is not of itself sufficient to warrant a redefinition of the structure or the revocation of the classification of the field in the absence of a proper showing that the area does not, in fact, contain valuable deposits of oil or gas. It is not the policy of this Department to redefine a known geologic structure until all sands or formations therein have been exhausted or proven barren.

Where the Geological Survey has determined that any part of the lands described in a noncompetitive oil and gas lease is within an undefined known geologic structure, the lessee is required to pay increased rental in accordance with 43 CFR 3103.3-2(b)(1).

The Secretary may waive rental requirements on a leasehold in order to encourage the greatest ultimate recovery of oil and gas and in the interest of conservation whenever he determines it necessary to promote development or finds that the leases cannot be successfully operated under the terms provided therein. 43 CFR 3103.3-7.

SID, 50 IBLA 262 (Sept. 30, 1980)

OIL AND GAS LEASES--Continued

RENTALS--Continued

The payment of advance rental in connection with an oil and gas lease offer and the acceptance of such payment by the Bureau of Land Management do not create a binding obligation on the Bureau to issue an oil and gas lease.

James Huslow, Sr., 51 IBLA 19 (Oct. 28, 1980)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Coral Springs, Florida, 2 days before it is due in Santa Fe, New Mexico, does not constitute reasonable diligence.

In order for the failure to make timely payment of the rental justifiable, the failure must be caused by factors outside the lessee's control which were the proximate cause of the failure. Traveling away from home during the latter part of September when payment is due October 1 will not justify late payment.

Melvin D. Guttman, 51 IBLA 53 (Oct. 31, 1980)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976).

In the event that some of the land applied for in an oil and gas lease offer was unavailable, the applicant was entitled to a refund of excess rental paid, and failure of BLM to return the excess rental to the offeror after the lease issuance and prior to the next annual rental being due and payable does not prevent the lease from terminating by operation of law.

Wilfred Plonis, 51 IBLA 125 (Nov. 20, 1980)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A net credit balance reflected in statements of account covering other leases does not constitute payment of the annual rental for the subject lease, absent a written request, timely received, that monies from a particular account be applied as the rental payment for the lease.

Consolidated Crude Oil Co., 51 IBLA 217 (Dec. 10, 1980)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. The date of receipt of the rental and not the date of mailing is controlling in determining whether rental on an oil and gas lease was timely paid. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of

OIL AND GAS LEASES--Continued

RENTALS--Continued

reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing rental payments the afternoon of the day due does not constitute reasonable diligence.

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, generally it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. A lessee's ignorance of the law and regulations and reliance on the business practices of other Governmental agencies accepting a postmark as the date of delivery is not a justifiable excuse.

Overthrust Oil and Gas Corp., 52 IBLA 119 (Jan. 13, 1981) 88 I.D. 38

When, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn offeror is notified to submit the first year's advance rental, that rental must be received by the proper office within the prescribed 15 days. Where the offeror has failed to submit a signed check for the advance rental within the time allowed, he is properly disqualified to receive the lease.

William H. Revis, 52 IBLA 125 (Jan. 13, 1981)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows that the failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Silver Spring, Maryland, 2 days before it is due in Billings, Montana, does not constitute reasonable diligence.

Jeannette L. Fenwick, 52 IBLA 250 (Feb. 6, 1981)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976).

Otis Energy, Inc., 52 IBLA 316 (Feb. 19, 1981)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, no excuse may be considered, no discretion exercised, no grace period invoked, and the right of the next drawee to receive first consideration attaches eo instante.

OIL AND GAS LEASES--Continued

RENTALS--Continued

Bureau of Land Management's cashing a late rental check and depositing it in an unearned account does not constitute acceptance of the rental payment.

Robert E. Bergman and Evan V. Bergman, 53 IBLA 122 (Mar. 5, 1981)

An oil and gas lease is properly declared to have terminated automatically for nonpayment of rental because, although the lessee claims to have mailed timely the rental together with other payments which were received, the rental check cannot be found.

Jack J. Grynberg, 53 IBLA 165 (Mar. 12, 1981)

Shell Oil Co., 57 IBLA 63 (Aug. 17, 1981)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. When the lessee makes a sufficient showing that rental payment for an oil and gas lease was mailed 15 days before the date it is due, the lease will be reinstated because the late filing was not due to a lack of reasonable diligence.

Mary A. Barnett, 53 IBLA 328 (Mar. 26, 1981)

An oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent. Pursuant to 43 CFR 3130.2-1, rentals are not properly prorated for any lands in which the United States owns an undivided fractional interest, but shall be payable at the same rate as provided for the full acreage in such lands.

A noncompetitive oil and gas lease offer filed "over-the-counter," is properly rejected when the accompanying rental payment is deficient by more than 10 percent. However, in appropriate circumstances, if the balance of the rental is paid and there are no intervening rights of third parties, the offer may be reinstated with priority from the date the deficiency is corrected.

Thomas F. Keating, 53 IBLA 349 (Mar. 30, 1981)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit the advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, notwithstanding the fact that at the time of the notice the Secretary had suspended the Bureau of Land Management's authority to issue noncompetitive oil and gas leases until further notice. However, if the first-drawn applicant files a notice of appeal within that time period, the time period is suspended and following affirmation of Bureau of Land Management's decision, the first-drawn applicant is properly given the entire time period from receipt of the Board's decision within which to submit the rental.

Robert A. Shryock, Jas. O. Breene, Jr., 55 IBLA 74 (June 1, 1981)

OIL AND GAS LEASES--Continued

RENTALS--Continued

Where the rental payment accompanying a noncompetitive oil and gas lease offer is deficient by $3, less than 10 percent, and Bureau of Land Management requests submission of the deficient rental along with execution of special stipulations, within 30 days, BLM may properly reject the lease offer when the additional rental is not submitted within the 30 days, although signed stipulations were timely submitted.

Dean W. Bowell, 55 IBLA 301 (June 26, 1981)

Where leases have been found by the Department to have terminated automatically by operation of law for lessee's failure to pay the annual rental, but private legislation is subsequently enacted providing that such leases shall be held not to have terminated and for payment by the lessee of "accrued" and "unpaid" rental by the lessee, a BLM decision that such renewal is due for the period from the date when the leases were treated as terminated to the date of the private enactment will be affirmed in the special circumstances obtaining in the case.

Fuel Resources Development Co., 57 IBLA 90 (Aug. 24, 1981)

There is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their duties. Where an official BLM record does not reflect any payment for advance first-year annual rental for an oil and gas lease but does contain a dated statement by BLM's receiving clerk indicating that no money was received when the lease applicant filed her offer with BLM, it is presumed that no payment was made, in the absence of a clear showing to the contrary by the applicant.

Where, following adjudication of her simultaneous noncompetitive oil and gas lease application, an applicant fails to submit advance first-year rental along with paperwork for the lease agreement within 30 days from her receipt of notice to do so, as required by 43 CFR 3112.4-1(a), her application is properly rejected under 43 CFR 3112.6-1(d).

Theresa Jibilian, 57 IBLA 354 (Sept. 8, 1981)

A determination by the Geological Survey of the known geologic structure of a producing oil and gas field will not be disturbed in the absence of a clear showing that the determination was improperly made, nor will the applicable rental be reduced without such showing.

Roy L. McKay, 57 IBLA 401 (Sept. 14, 1981)

Where, following a drawing of simultaneously filed oil and gas lease offers, a priority applicant fails to submit advance rental within 15 days after receipt of a notice that payment was due, as prescribed by 43 CFR 3112.4-1 (1979), disqualification of the offer is automatic.

Arthur Abcowitz, 58 IBLA 112 (Sept. 24, 1981)

Where a competitive, fractional interest, oil and gas lease is issued with conflicting and confusing rental provisions recited in the lease terms and in an attachment to the lease, a deficient rental payment by the lessee in reasonable reliance on the section providing for rental based upon the pro rata fractional

OIL AND GAS LEASES--Continued

RENTALS--Continued

interest of the United States will be considered justified so as to qualify the terminated lease for reinstatement.

Texas Oil and Gas Corp., 58 IBLA 175 (Sept. 28, 1981) 88 I.D. 879

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2).

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in New Jersey, 2 days before it is due in Reno, Nevada, does not constitute reasonable diligence.

Andrew H. Nelson, 58 IBLA 220 (Sept. 30, 1981)

Where, following a drawing of simultaneously filed oil and gas lease offers, a priority applicant fails to submit advance rental within 30 days after receipt of a notice that payment was due, disqualification of the offer is automatic.

Keith D. Livermore, 59 IBLA 232 (Oct. 28, 1981)

Paul W. Landis, 61 IBLA 244 (Jan. 28, 1982)

An oil and gas lease terminated by operation of law for failure to pay the advance rental on or before the anniversary date may be reinstated only upon a showing that the failure to pay on time was either justifiable or not due to lack of reasonable diligence. The fact that appellant's employee mistakenly sent the courtesy notice to a corporation which was the assignee for part of the lease does not justify late payment.

Petroleros Corp., 60 IBLA 21 (Nov. 16, 1981)

An oil and gas lease on which there is no well capable of production terminates automatically by operation of law if the lessee pays only part of the annual rental due on or before the anniversary date of the lease, and if the deficiency in this payment was not nominal and did not result from any incorrect information in a rental bill or decision.

BLM has satisfied its burden of giving notice of the inclusion of leased lands in a KGS and of the concomitant increase in annual rental to $2 per acre or fraction thereof when it notifies the lessees of record, regardless of its failure to notify the holder of operating rights under the lease.

Robert L. Wright, Shell Oil Co., 60 IBLA 142 (Nov. 24, 1981)

OIL AND GAS LEASES--Continued

RENTALS--Continued

An oil and gas lease embracing lands committed to a subsurface storage agreement, but on which there is no production, terminates by operation of law when the annual rental payment is not timely made.

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2).

In order for a failure to pay rental timely to be justifiable, the late payment must be caused by factors outside of lessee's control which were the proximate cause of the failure. Breakdowns in lessee's procedures for handling rental payments resulting from internal changes in lessee's operations do not establish justification for a late rental payment.

Southern Union Co., 60 IBLA 181 (Nov. 25, 1981)

Failure to pay the annual rental for an oil and gas lease on which there is no well capable of producing oil or gas in paying quantities on or before the anniversary date results in the automatic termination of the lease by operation of law. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A lease may be reinstated only if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Where the date marked on an envelope by a private postage meter conflicts with the postmark made by a United States post office, the United States postmark will be deemed the date of mailing in the absence of satisfactory corroborating evidence that the mailing occurred earlier.

Max W. Young, 60 IBLA 224 (Nov. 30, 1981)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Ruth Eloise Brown, 60 IBLA 328 (Dec. 18, 1981)

Where a timely rental payment for a nonproducing oil and gas lease is nominally deficient in the amount of 24 cents, such lease is not automatically terminated if the notice of deficiency, is not served on the attorney who has notified BLM that he represents the estate of the deceased lessee. In instances where an attorney has made an appearance of record, the attorney should be recognized as controlling the matter on behalf of his client, and service of any documents relating to that matter should be made on the attorney so that he

OIL AND GAS LEASES--Continued

RENTALS--Continued

may take timely and appropriate actions on behalf of his client.

Y. George Makris, 60 IBLA 366 (Dec. 22, 1981)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Jean Szczepanski, 60 IBLA 375 (Dec. 22, 1981)

Sun Oil Co., 63 IBLA 26 (Mar. 26, 1982)

Richard C. Hubbard, 68 IBLA 170 (Nov. 4, 1982)

Burton/Hawks, Inc., 71 IBLA 336 (Mar. 28, 1983)

Alyson A. Allison, James M. Allison III, 72 IBLA 333 (Apr. 29, 1983)

M. K. O'Connell, Texas American Oil Corp., et al., 76 IBLA 376 (Oct. 25, 1983)

Larry Chambers, 77 IBLA 214 (Nov. 22, 1983)

Harriet C. Shaftel, 79 IBLA 228 (Feb. 29, 1984)

The law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it; therefore, where the Bureau of Land Management served notice of an oil and gas lease rental increase on an office of a corporate lessee which the lessee claimed was not its address of record for the lease, the lessee cannot assert ignorance of the increase because reasonable care would dictate that the office receiving the notice inform the proper office.

Getty Oil Co., 61 IBLA 226 (Jan. 28, 1982) 89 I.D. 26

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit, within 15 days after notice, payment of the advance rental identifying the lease account to which it is to be applied as prescribed by 43 CFR 3112.4-1 (1979), disqualification is automatic, and the right of the next drawee to receive first consideration attaches.

Elmer J. Parker, 61 IBLA 248 (Jan. 28, 1982)

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in San Rafael, California, 2 days before it is due in Billings, Montana, does not constitute reasonable diligence.

Thomas H. Wilson, 61 IBLA 287 (Feb. 2, 1982)

OIL AND GAS LEASES--Continued

RENTALS--Continued

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

James M. Chudnow, Laurent A. Giesbert, 62 IBLA 19 (Feb. 24, 1982)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

David E. Cooley, Jr., 62 IBLA 87 (Feb. 25, 1982)

Robert S. Hughes, Helen G. Hughes, 66 IBLA 304 (Aug. 24, 1982)

Upon failure of a lessee to pay full rental on or before the anniversary date of a lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law, where the deficiency exceeds the permissible amount of $10 or 5 percent of the total due, the amount permitted to be made up under 43 CFR 3108.2-1.

Grace Petroleum Corp., 62 IBLA 180 (Mar. 8, 1982)

Where a noncompetitive oil and gas lease is canceled in part because some of the lands were already patented, the Department may return the excess rentals pursuant to the repayment provision of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1734(c) (1976). However, in absence of statutory provisions, no interest may be paid by the Government on such refunds.

Ronald A. Jarett, 63 IBLA 228 (Apr. 16, 1982) 89 I.D. 207

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, generally it must be caused by factors outside the lessee's control, which were the proximate cause of the failure. A lessee's ignorance of BLM's correct address, resulting in the return to him of the incorrectly addressed payment envelopes, is not a justifiable excuse.

Martin Exploration Management Corp., 63 IBLA 287 (Apr. 22, 1982)

Under 30 U.S.C. § 188(c) (1976) the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment unless payment is tendered at the proper office within 20 days of the due date.

Apostolos Paliombeis, 64 IBLA 119 (May 19, 1982)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was

OIL AND GAS LEASES--Continued

RENTALS--Continued

either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Albiney U.S.A., Inc., 64 IBLA 274 (June 2, 1982)

Victory Land and Exploration Co., 65 IBLA 373 (July 20, 1982)

Robert G. Armstrong et al., 67 IBLA 357 (Oct. 6, 1982)

Donald L. Darrow, 69 IBLA 62 (Nov. 29, 1982)

An oil and gas lease terminated by operation of law for failure to pay timely the advance rentals can be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence. Reasonable diligence is not shown where a computer failure to make timely payment by Feb. 1 is discovered on or about Feb. 16; a check is not subsequently mailed until Feb. 25; and payment is not actually received by BLM until Mar. 1.

Trend Resources Ltd., 64 IBLA 383 (June 17, 1982)

Where an applicant for a noncompetitive oil and gas lease fails to submit the first year's advance rental within 30 days from receipt of notice to do so, as required by 43 CFR 3112.4-1(a), and there is insufficient evidence that the bank's failure to honor a check submitted timely to BLM in payment of the rental was due to bank error, the application is properly rejected.

Kathy L. Phillips, 64 IBLA 388 (June 17, 1982)

Where the owner of a lease that has terminated pursuant to 30 U.S.C. § 188(b) (1976) for failure to make timely annual rentals fails to pay the full rent within 20 days of the lease anniversary date, a petition for reinstatement is properly denied.

The notice of termination referred to in 43 CFR 3108.2-1 is sent to an oil and gas lessee only if the full amount of the rental due has been paid or tendered within 20 days after the lease anniversary date.

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

An oil and gas lease offer which includes advance rental commensurate to the number of acres requested is improperly rejected.

Leon Jeffcoat et al., 66 IBLA 80 (July 29, 1982)

Where the Department, through a duly promulgated regulation, has increased a rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease applications were drawn with first priority before the regulation became effective.

Peter E. Walstrom, 66 IBLA 269 (Aug. 17, 1982)

OIL AND GAS LEASES--Continued

RENTALS--Continued

A check which is negotiable by a party other than the Bureau of Land Management does not constitute timely payment of lease rental, even if received prior to the anniversary date of the lease.

Where the Bureau of Land Management returns on the fourth working day following receipt an oil and gas lease rental check which is not negotiable by it, it has acted with reasonable dispatch, and the lease terminates automatically by law when a substitute check is not received until after the anniversary date.

Kristie R. Cobb, 67 IBLA 59 (Sept. 9, 1982)

An oil and gas lease offer for surveyed land or land within a protracted survey must describe the land by legal subdivision, section, township, and range, even though irregular parcels of land within that subdivision may not be available for leasing. The addition of phrases such as "all available" or "less patents" to such a description does not make the description improper. However, where the excepted land is not specifically identified in the offer, the offeror is required to submit the first year's rental for all of the acreage in each subdivision descrited in the offer without subtracting amounts allocable to the patented acreage, and rejection of the offer is required where the offeror fails to submit sufficient rental within the limits of curable deficiency.

James M. Chudnow, John L. Messinger, 67 IBLA 76 (Sept. 10, 1982)

James M. Chudnow, John L. Messinger, 68 IBLA 228 (Nov. 15, 1982)

James M. Chudnow, John L. Messinger, 69 IBLA 157 (Dec. 13, 1982)

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

Peter H. Buehler, 67 IBLA 242 (Sept. 24, 1982)

BLM's cashing a late rental check and depositing it in its unearned account does not constitute acceptance of rental payment or a determination that a terminated oil and gas lease will be reinstated.

Rose L. Terenzi, 68 IBLA 21 (Oct. 19, 1982)

An oil and gas lease offer for irregular parcels of acquired land within a surveyed township must be described by metes and bounds under 43 CFR 3101.2-3(a). Where offerors list lands in an offer by legal subdivision but indicate that they only desire "ESFW and FWS" acquired lands within those subdivisions including both regular and irregular parcels, the Bureau of Land Management may evaluate the offer on the basis of the total land properly described by legal subdivision. However, the offeror is required to submit the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to undesired acreage, and rejection of the offer is required where the offeror fails to submit sufficient rental within the limits of curable deficiency.

James M. Chudnow, John L. Messinger, 68 IBLA 181 (Nov. 8, 1982)

OIL AND GAS LEASES--Continued

RENTALS--Continued

Where an application is drawn first in a simultaneous oil and gas lease drawing and the applicant is notified by the Bureau of Land Management that the rental due is $61, the application will be disqualified and rejected under 43 CFR 3112.4-1 and 3112.6-1, when the applicant submits a payment of $60 within the specified time, but fails to submit the $1 deficiency within the allowed time.

J. Gene Everett, 68 IBLA 225 (Nov. 15, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that a lease rental check was enclosed in the same envelope together with other documents that were received by BLM must be corroborated by other evidence to establish filing where there is no evidence of receipt of the payment in the file.

Where an applicant for a noncompetitive oil and gas lease in the simultaneous filing program fails to submit the first year's advance rental within 30 days from receipt of notice to do so, as required by 43 CFR 3112.4-1(a), his application is properly rejected under 43 CFR 3112.6-1(d).

R. E. French, 69 IBLA 66 (Nov. 30, 1982)

It is the responsibility of a lessee to see that any payment tendered for annual rental of an oil and gas lease is so identified that the appropriate Bureau of Land Management office can credit the payment to the proper lease account. Where the official assignment creating the lease contains the correct serial number, and where the lessee has previously been given a courtesy notice and receipts bearing the correct identification number, but the lessee does not return the notice with his payment and, instead, includes an incorrect identification number on his payment check, he has not adequately identified his payment, and the lease terminates by operation of law for failure to pay rental on or before the anniversary date of the lease.

Pyro Energy Corp., 69 IBLA 327 (Dec. 28, 1982)

An applicant receiving priority in a drawing of simultaneously filed oil and gas lease applications who fails to submit payment of the proper amount of advance rental within 30 days after receipt of a notice that payment is due, as prescribed by 43 CFR 3112.4-1(a), is automatically disqualified to receive a lease.

Dorelyn W. Delano, 69 IBLA 360 (Jan. 3, 1983)

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent and the offeror is deemed to have constructive knowledge of the total acreage included in the offer, by which the rental is computed.

Gigantosaurus Resources, Inc., 70 IBLA 52 (Jan. 10, 1983)

OIL AND GAS LEASES--Continued

RENTALS--Continued

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to lack of reasonable diligence on the part of the lessee.

Deck Oil Co., 70 IBLA 97 (Jan. 11, 1983)

A simultaneous oil and gas lease application is properly rejected where the rent is not paid within 30 days of notice to do so as required by 43 CFR 3112.4-1(a) because applicant's draft for the payment, although timely tendered, is dishonored by the drawee.

Kenneth R. Lewis, 70 IBLA 112 (Jan. 13, 1983)

A simultaneous oil and gas lease application is properly rejected where the executed lease forms and first year's rental were submitted to the wrong BLM office and were not thereafter received by the proper BLM office within 30 days from the receipt of notice of priority.

Jerry W. Wolf, 70 IBLA 131 (Jan. 14, 1983)

Where, following a drawing of simultaneously filed oil and gas lease applications, a priority applicant fails to submit advance rental and the executed lease forms within 30 days after receipt of a notice that payment was due, as prescribed by 43 CFR 3112.4-1, disqualification of the application is automatic.

Gerald E. Colgan, 70 IBLA 238 (Jan. 25, 1983)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit his advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1 (1979), disqualification to receive a lease is automatic.

Beverly J. Bacdowell, Dorothy Langley, 71 IBLA 23 (Feb. 15, 1983)

Under 30 U.S.C. § 188(b) (1976), an oil and gas lease terminates automatically by operation of law for failure to pay the annual rental timely. Automatic termination applies to the regular, annual rental payment, the necessity for which a lessee has continuous notice, and does not apply where a lessee has no way of knowing that the obligation has accrued. Where, on the anniversary date of a lease, there is no well capable of production in paying quantities on a lease, the lease is not committed to an approved communitization agreement, and the lessee has not been notified of any change in the rental status of the lease, the lessee is held to have known that rental was due and the lease automatically terminated for failure to pay the rental timely.

Sanson Resources Co., 71 IBLA 224 (Mar. 17, 1983)

OIL AND GAS LEASES--Continued

RENTALS--Continued

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2).

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental by Special Delivery Mail in New York 2 days before it was due in Billings, Montana, is considered to constitute reasonable diligence.

Bryan Colley, 71 IBLA 299 (Mar. 22, 1983)

Where, pursuant to 43 CFR 3112.4-1, BLM sends notice by certified mail to a simultaneous oil and gas lease applicant at her record address that she must execute and return the enclosed lease form with the required stipulations and rental, and the notice is returned to BLM marked "Unclaimed" by the Postal Service, and where nondelivery did not occur as a result of the negligence of the Postal Service, the applicant is considered to have been served at the time of return to BLM by the Postal Service of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the notice.

Nichole M. Pavurek, 71 IBLA 343 (Mar. 28, 1983)

Where a noncompetitive oil and gas lease is canceled for having been erroneously issued because the lease was deficient in the first year's rental, which deficiency was not timely cured, the Department may return the rentals pursuant to the repayment statute, 43 U.S.C. § 1734 (1976), in appropriate circumstances where the lessees have derived no benefit from the possession of the lease or there are no other factors militating against repayment.

Warren L. Jacobs, 71 IBLA 385 (Mar. 29, 1983)

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2).

Mailing or delivering the payment after it is due does not meet this requirement. The fact that appellant's computer system was "down" does not justify late payment.

Joseph F. Broda, 71 IBLA 390 (Mar. 29, 1983)

OIL AND GAS LEASES--Continued

RENTALS--Continued

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2). Untimely payment may be justifiable if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

James H. Witbycombe, 72 IBLA 5 (Apr. 4, 1983)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates if the lessee fails to pay the the annual rental on or before the anniversary date. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A terminated lease may be reinstated under 30 U.S.C. § 188(c) (1976) only if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Buttes Resources Co., 72 IBLA 18 (Apr. 4, 1983)

An oil and gas lease issued pursuant to the first-drawn application in the simultaneous filing procedures is properly canceled where the rent is not paid within 30 days of notice to do so as required by 43 CFR 3112.4-1(a) because applicant's check for the payment, although timely tendered, is dishonored by the drawee.

Longhorn Oil, Ltd., 72 IBLA 45 (Apr. 7, 1983)

Mark A. Eggers, 76 IBLA 262 (Oct. 17, 1983)

Where, pursuant to 43 CFR 3112.4-1, BLM sends notice by certified mail to a simultaneous oil and gas lease applicant at his record address that he must execute and return the enclosed lease form with the required stipulations and rental, and the notice is returned to BLM marked "Unclaimed" by the Postal Service, and where nondelivery did not occur as a result of the negligence of the Postal Service, the applicant is considered to have been served at the time of return to BLM by the Postal Service of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the notice.

Robert E. Cambridge, 72 IBLA 66 (Apr. 12, 1983)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates upon failure to pay the annual rental on or before the anniversary date of the lease. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was timely paid. A terminated lease may be reinstated pursuant to 30 U.S.C. § 188(c) (1976) only if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

John E. Conner, 72 IBLA 83 (Apr. 13, 1983)

OIL AND GAS LEASES--Continued

RENTALS--Continued

In support of reinstatement of an oil and gas lease that has terminated automatically as the result of the lessee's failure to pay the annual rent on or before the anniversary date of the lease, the petitioner/lessee must show either that the late payment was not due to a lack of reasonable diligence or that the late payment was otherwise justified.

Reasonable diligence ordinarily requires mailing the annual rental payment for a lease sufficiently in advance of the anniversary date of the lease to account for normal delays in the collection, transmittal, and delivery of the mail. The mailing of the annual rental payment on the anniversary date of the lease does not constitute reasonable diligence.

The untimely payment of the annual rent for a lease may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease; however, such justification is not shown by a lessee's assertion that he was unavoidably detained during business travel near the anniversary date of a lease.

Vernon I. Berg, 72 IBLA 211 (Apr. 21, 1983)

Where, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn applicant fails to submit his first year's advance rental payment within 30 days after receipt of notice, as prescribed by 43 CFR 3112.4-1(a), his application must be rejected.

Where there is no evidence of receipt of a check, in payment of the first year's advance rental pursuant to 43 CFR 3112.4-1(a), the presumption that BLM employees have properly discharged their duties and not lost or misplaced the check is not overcome by evidence that the check was received where the applicant submits an affidavit that the check was enclosed in the same envelope with other documents that were received by BLM and includes a copy of his personal checkbook register showing that a check was issued to BLM but not cashed.

Richard W. Kulis, 72 IBLA 251 (Apr. 27, 1983)

Reinstatement of a terminated oil and gas lease pursuant to 30 U.S.C. § 188(c) (1976) requires a showing that the late rental payment was either justifiable or not due to a lack of reasonable diligence. Neither delay in receipt of a courtesy billing notice nor a change in corporate offices and personnel will ordinarily justify a late rental payment.

Crest Oil & Gas Corp., 72 IBLA 370 (May 4, 1983)

A determination by the Department concerning known geologic structure of an oil and gas field will not be disturbed in the absence of proof the determination is erroneous, nor will the rental be reduced without such proof.

TXO Production Corp., 73 IBLA 33 (May 9, 1983)

An essential element of a claim for estoppel is that the party asserting it must be ignorant of the material facts. Since all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations, a party cannot successfully plead ignorance of the rules governing oil and gas rental payment procedures without

OIL AND GAS LEASES--Continued

RENTALS--Continued

presentation of extraordinary circumstances which overcome the presumption.

Francis E. Furlong II, 73 IBLA 67 (May 16, 1983)

Where a lessee represents to BLM that 40 acres of a 48.98 acre lease has been committed to a producing unit and inquires about the rental amount next due, BLM's answer that rental need be paid only on the 8.98 acres outside the unit is correct. But if, in fact, the other 40 acres has not been committed to such a unit on the anniversary date of the lease, the payment of only the fractional rental will result in the automatic termination of the lease.

Funk Exploration, 73 IBLA 111 (May 23, 1983)

Where a first-priority oil and gas lease applicant fails to submit, within 30 days of receipt of notice, the signed offer, and rental, and, where the offer is signed by an attorney-in-fact, a copy of his/her power of attorney or reference to the serial number under which such authorization is filed, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, and the rights of the next priority applicant attach immediately. However, a BLM decision issued prior to the expiration of the 30-day period, which rejects an offer for failure to provide the power of attorney or reference to a serial number, is premature and must be set aside where the applicant subsequently provides that information within the 30-day period.

Northwest Exploration Co., 73 IBLA 123 (May 23, 1983)

A noncompetitive oil and gas lease must be canceled pursuant to 43 CFR 3103.3-1 where the offer was not accompanied by full payment of the first year's rental, but the deficiency is less than 10 percent, and the deficiency was not paid within 30 days from notice thereof.

Where a noncompetitive oil and gas lease is canceled because a rental deficiency is not timely cured, the Department may return the rental pursuant to sec. 304(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1734(c) (1976), in appropriate circumstances where the lessee has derived no benefit from possession of the lease and there are no other factors militating against repayment.

Arden E. Grover, John E. Schumacher, 73 IBLA 308 (June 7, 1983)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, a statement that a lease rental check was enclosed in the same envelope together with other documents that were received by BLM must be corroborated by other evidence to establish a tender of rental where there is no evidence of receipt of the payment in the file.

Where the first-drawn applicant for a noncompetitive oil and gas lease in the simultaneous filing program fails to submit the first year's advance rental within 30 days from receipt of notice to do so, as required by 43 CFR 3112.4-1(a), his application is properly rejected under 43 CFR 3112.6-1(d).

Carl A. Peterson, 73 IBLA 347 (June 10, 1983)

OIL AND GAS LEASES--Continued

RENTALS--Continued

An oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

D. M. Yates, 74 IBLA 18 (June 24, 1983)

When, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn offeror is notified to submit the first year's advance rental and executed lease agreements, those submissions must be received by the proper office within the prescribed 30 days. Automatic disqualification, stemming from untimely filings, will not be avoided by allegations that submissions were timely mailed but thereafter damaged by the postal service and returned to appellant.

Mary Jane Associates, 74 IBLA 43 (June 27, 1983)

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's advance rental by more than 10 percent.

J. V. & Associates, 74 IBLA 45 (June 28, 1983)

Where, pursuant to 43 CFR 3112.4-1, BLM sends notice by certified mail to a simultaneous oil and gas lease applicant at his record address that he must execute and return the enclosed lease form with the rental, and the delivery stub shows the date the first attempted delivery was made but has no date for the second attempted delivery, and the Postal Service held the BLM notice for the required time, negligence by the Postal Service is not established; appellant was constructively served and thus had notice, and as he failed to pay the rental within the required 30 days, BLM correctly rejected appellant's oil and gas lease application.

William F. Weiss III, 74 IBLA 133 (June 30, 1983)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, an affidavit that documents were enclosed in the same envelope together with other documents that were received by BLM must be corroborated by other evidence to establish filing where there is no evidence of receipt of the missing documents.

LBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

Where BLM has unilaterally imposed special stipulations in issuing oil and gas leases and the lessee accepts such leases without protest for 7-1/2 months, she may not thereafter "withdraw" from or relinquish such leases and recover the annual advance rentals paid therefor on the ground that she did not consent to the imposition of the special stipulations, although she might have been permitted to do so had she protested promptly.

Frances Kunkel, 75 IBLA 199 (Aug. 22, 1983)

OIL AND GAS LEASES--Continued

RENTALS--Continued

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent and the offeror is deemed to have constructive knowledge of the total acreage included in the offer, by which the rental is computed.

When regulations provide that payment is based on total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision the applicant bears the burden of proof that an ambiguity exists which renders the total acreage unknown. Mere allegation of an ambiguity is not sufficient.

Thomas Connell, 75 IBLA 209 (Aug. 22, 1983)

Rejection of an oil and gas lease offer will be set aside where the offeror files his offer, rental, and, where appropriate, power of attorney or serial number reference thereto, within the 30-day period provided by regulation 43 CFR 3112.6-1(b)(2), even though the offer, rental, and appropriate power of attorney materials were not received together by BLM.

Amoco Production Co., 75 IBLA 344 (Aug. 31, 1983)

Reasonable diligence requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Olympia, Washington, 3 days before it is due in Anchorage, Alaska, does not constitute reasonable diligence.

Eleanor L. M. Dubey, 76 IBLA 177 (Sept. 30, 1983)

When, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn offeror is notified that he/she is to submit the first year's advance rental and executed lease agreements, those submissions must be received by the proper office within the prescribed 30 days. Automatic disqualification, stemming from untimely filings, will not be avoided by reliance on the assurance of the Postal Service that mailings entrusted to it would be delivered on the due date.

The 1980 amendment of 43 CFR 3112.4-1 did not create an ambiguity which excused an applicant from filing the necessary lease offer documents within 30 days from the date of receipt. The reasons for the 1980 amendments stated by the Secretary in the Federal Register at the time of proposal and final printing amplify the stated intent of the regulations to provide that the sanction for failure to file within the 30-day period is the rejection of an applicant's offer.

Eagle Basin Partnership, 76 IBLA 241 (Oct. 17, 1983)

Where an oil and gas lessee timely pays its annual rental in accordance with an erroneous statement issued by the Bureau of Land Management, absent issuance of a notice of a deficiency as provided by 43 CFR 3108.2-1(b), the lease may not be held to have terminated as a matter of law because of the operation of the proviso found at 30 U.S.C. § 188(b) (1976), creating a statutory exception to the rule that failure to pay the lease rental on the anniversary date terminates the lease.

McClellan Oil Corp., 76 IBLA 322 (Oct. 19, 1983)

OIL AND GAS LEASES--Continued

RENTALS--Continued

An oil and gas lease offer for surveyed land or land within a protracted survey must describe the land by legal subdivision, section, township, and range, even though irregular parcels of land within that subdivision may not be available for leasing. The addition of phrases such as "all available" or "less patents" to such a description does not make the description improper. Where the offeror submits the first year's rental for all of the acreage in each subdivision described in the offer without subtracting amounts allocable to the patented acreage the use of the descriptive phrase "all except patents" is acceptable and the offer is properly filed with sufficient rental.

James M. Chudnow, John L. Messinger, 77 IBLA 77 (Nov. 8, 1983)

A noncompetitive oil and gas lease offer is properly rejected where the rental tendered with the lease offer is deficient by more than 10 percent.

James M. Chudnow, John L. Messinger, 77 IBLA 147 (Nov. 15, 1983)

BLM must reject a first-drawn simultaneous oil and gas lease application where the applicant fails to submit the executed lease agreement and first year's rental within 30 days of notice to do so, pursuant to 43 CFR 3112.4-1(a), in spite of any negligence on the part of the Postal Service which delayed return of the lease agreement and rental payment.

Jay R. Angle, 77 IBLA 242 (Nov. 29, 1983)

Where an oil and gas lease applicant with first priority dies after application, but prior to lease issuance, the administratrix of his estate is entitled to the lease when she files a sufficient offer to lease.

Estate of James Philip Witmer, 77 IBLA 361 (Dec. 7, 1983)

A noncompetitive oil and gas lease offer is properly rejected pursuant to 43 CFR 3103.3-1 where the offer is deficient in the first year's rental by more than 10 percent.

James M. Chudnow, 78 IBLA 78 (Dec. 16, 1983)

An oil and gas lease offer is properly rejected where the offer is deficient in the first year's rental by more than 10 percent.

Pursuant to 43 CFR 3130.2-1, rentals are not properly prorated for any lands in which the United States owns an undivided fractional interest, but shall be payable at the same rate as provided for the full acreage in such lands.

A noncompetitive oil and gas lease offer filed "over-the-counter" is properly rejected when the accompanying rental payment is deficient by more than 10 percent. However, in appropriate circumstances, if the balance of the rental is paid prior to rejection by BLM and there are no intervening rights of third parties, the offer may be reinstated with priority from the date the deficiency is corrected.

Joe R. Johnson, 78 IBLA 382 (Jan. 31, 1984)

OIL AND GAS LEASES--Continued

RENTALS--Continued

BLM must reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976), to the extent that the land has been patented with no mineral reservation to the United States and in its entirety where the land cannot be embraced within a 6-mile square area or an area not exceeding six surveyed sections in length and width and the first year's advance rental is deficient by more than 10 percent.

James M. Chudnow, John L. Messinger, 79 IBLA 1 (Feb. 2, 1984)

An applicant receiving priority in a drawing of simultaneously filed oil and gas lease applications who fails to submit the payment of the proper amount of advance rental within 30 days after receipt of a notice that payment is due, as prescribed by 43 CFR 3112.4-1(a), is automatically disqualified to receive a lease.

B. W. Jones, 79 IBLA 295 (Mar. 20, 1984)

When, pursuant to 43 CFR 3112.4-1, BLM sends notice by certified mail to a simultaneous oil and gas applicant at the address of record that the executed lease agreement and rental must be returned to BLM within 30 days of receipt, and the notice is returned to BLM marked "UNCLAIMED" by the Postal Service, and where nondelivery did not occur as a result of negligence of the Postal Service, the applicant is considered to have been served at the time BLM receives the returned, undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the notice. A tender of the lease agreement by the applicant more than 30 days subsequent to the date of constructive delivery is properly rejected.

An essential element of a claim for estoppel is that the party asserting it must be ignorant of the true facts. Since, however, all persons are presumed to have knowledge of relevant statutory and regulatory provisions, an individual may not premise a claim of estoppel on information or advice contrary to such a provision, since the individual is properly charged with knowledge of the true facts.

Tom Hurd, 80 IBLA 107 (Apr. 3, 1984)

Where, following a drawing of simultaneously filed oil and gas lease applications, the first-drawn applicant fails to submit the executed lease agreement and advance rental within 30 days of receipt of notice, the application is properly rejected.

Paul C. Peters, 80 IBLA 121 (Apr. 3, 1984)

C. H. Postlewait, 83 IBLA 156 (Oct. 10, 1984)

Raymond C. Long, 83 IBLA 342 (Nov. 6, 1984)

A lessee seeking reinstatement of an oil and gas lease under sec. 401(d)(2)(A)(i) of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C.A. § 188(d)(2)(A)(i) (West Supp. 1983), must tender in full prior to Jan. 12, 1983, the rental due for the lease sought to be reinstated.

Jerry Chambers Exploration Co., Blackbird Co., 80 IBLA 123 (Apr. 3, 1984)

OIL AND GAS LEASES--Continued

RENTALS--Continued

A simultaneous oil and gas lease application is properly rejected where the executed lease forms are not received by the proper BLM office within 30 days from receipt of notice of rental due.

P. A. Rapp, 80 IBLA 133 (Apr. 6, 1984)

Where, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn applicant fails to submit his first year's advance rental payment within 30 days after receipt of notice, as prescribed by 43 CFR 3112.4-1(a) (1982), his lease offer must be rejected.

Where there is no evidence of receipt of a check in payment of the first year's advance rental pursuant to 43 CFR 3112.4-1(a) (1982), the presumption that BLM employees have properly discharged their duties and not lost or misplaced the check is not overcome by an affidavit executed by applicant which states that the check was enclosed in the same envelope with other documents received by BLM, which affidavit includes a copy of applicant's personal checkbook register showing a check was issued to BLM.

S. H. Partners, 80 IBLA 153 (Apr. 9, 1984)

Where, following the drawing of a simultaneously filed oil and gas lease drawing entry card, a priority applicant fails to submit advance rental within 30 days from the date of receipt of notice that payment is due, disqualification of the offer is automatic.

Judith A. Lawton, 80 IBLA 198 (Apr. 24, 1984)

Where the Minerals Management Service determines part of a noncompetitive oil and gas lease issued in 1971 to be within an undefined known geologic structure, a decision to increase rental to $2 per acre is erroneous where the record shows the lease is committed to an approved unit plan with a well capable of production, with a general provision for allocation of production but all the lease acreage is outside the participating area. An increase of rental rate is not appropriate for such a lease where the terms of the lease specifically direct that the rental rate remain at $0.50 per acre.

Dyco Petroleum Corp., 81 IBLA 65 (May 22, 1984)

Where an oil and gas lease offeror properly receives notice of his priority, and notice of the requirements that the rental payment must be paid and that the lease must be executed within 30 days, the failure to make the rental payment and execute the lease within the 30-day period will result in rejection of the application. The offeror's absence from his address of record when the notice was received at his address will not excuse noncompliance with 43 CFR 3112.6-1.

Eleanne Ervin, 81 IBLA 100 (May 29, 1984)

Where BLM mails a notice to a first-drawn applicant in a simultaneous oil and gas lease drawing requiring the applicant to submit a lease offer and tender the first year's rental in accordance with 43 CFR 3112.4-1(a), the applicant will be deemed to have received the notice if it was sent to the applicant's last address of record, regardless of whether it was in fact received by him. However, when a letter is returned to BLM as undeliverable, BLM should examine the case record to see if it contains an updated

OIL AND GAS LEASES--Continued

RENTALS--Continued

address. If an updated address would be found upon proper examination, the notice must be sent to the new address to effect service.

Stephen G. Ritchie, 81 IBLA 162 (May 31, 1984)

Where, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn applicant fails to submit his executed lease agreement and first year's advance rental payment within 30 days after receipt of notice to do so, as prescribed by 43 CFR 3112.6-1(a), his lease application must be rejected.

Fred William Berger, 81 IBLA 344 (June 25, 1984)

While the assignee of an oil and gas lease may not exercise any control or dominion over the lease prior to approval of the assignment, the assignee is not precluded from paying the annual rental in an effort to avoid termination of the lease or to qualify the lease for reinstatement upon petition by the lessee of record.

Nola Grace Ptasynski, 82 IBLA 48 (July 11, 1984)

Where the Minerals Management Service determines part of noncompetitive oil and gas leases issued in 1971 and 1972 to be within an undefined known geologic structure, a decision to increase rental for all acreage to $2 per acre is erroneous where the record shows the lease is committed to an approved unit plan with a well capable of production and a general provision for allocation of production. Where the terms of the leases specifically direct that the rental rate remain at $0.50 per acre for acreage outside a participating area, an increased rental rate is not appropriate for that acreage.

Pioneer Partners, 82 IBLA 101 (July 24, 1894)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1982). Under 30 U.S.C. § 188(c) (1982), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Maynard J. Bonesteel, 82 IBLA 237 (Aug. 23, 1984)

Where BLM has determined that any part of the lands described in a noncompetitive oil and gas lease is within an undefined known geologic structure, the lessee is required to pay increased rental in accordance with 43 CFR 3103.3-2(b)(1) (1982).

Livingston & Courdin Exploration, Inc., 82 IBLA 336 (Sept. 12, 1984)

Where, after a drawing of simultaneously filed oil and gas lease applications, the authorized officer mails a notice to the successful drawee informing him of his priority and the requirement that the advance rental must be paid within the allotted time, which letter is received at his address of record, his subsequent failure to remit the rental timely will disqualify his application even though he asserts that the

OIL AND GAS LEASES--Continued

RENTALS--Continued

person who received and signed for the notice was not his designated agent for receipt of mail.

After a drawing of simultaneously filed oil and gas lease applications the requirement that the first year's rental be received in the proper office within the allotted time after notice to the applicant is mandatory, and consideration of excuses for failure to comply is not permitted.

Daniel Pia, 83 IBLA 47 (Sept. 24, 1984)

A noncompetitive oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law upon failure of a lessee to pay rental on or before the anniversary date of the lease. If deficient payment has been made on or before the anniversary date but the deficiency is nominal, the lease does not terminate unless the lessee fails to pay the deficiency within the period prescribed in a notice of deficiency. Departmental regulation 43 CFR 3108.2-1(b), 48 FR 33673 (July 22, 1983), provides that a deficiency shall be considered nominal if it is not more than $100 or more than 5 percent of the total payment due, whichever is less. Absent an affirmative billing error by BLM, an oil and gas lessee is not entitled to a notice of deficiency and an opportunity to correct it unless the deficiency is nominal.

Louise Y. Lee, 83 IBLA 50 (Sept. 24, 1984)

Under 30 U.S.C. § 188(c) (1982), a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justifiable. Where it benefits the affected party to do so, and there are no countervailing public policies or intervening rights which will be adversely affected, an oil and gas lease regulation which is amended while the matter is pending may be applied in its amended form. Under the reinstatement regulations as amended (Aug. 22, 1983), a rental payment postmarked on or before the anniversary date and received within 20 days thereafter may be construed as reasonably diligent.

Hugh L. Scott, 83 IBLA 184 (Oct. 16, 1984)

If the rental payment accompanying an over-the-counter noncompetitive oil and gas lease offer is deficient by less than 10 percent, and BLM requests submission of the deficient rental along with execution of special stipulations within 30 days, BLM may properly assign the offer a new priority as of the date the rental is submitted if the rental is not submitted within the 30-day period.

Richard W. Eckels, 83 IBLA 220 (Oct. 18, 1984)

Where the Bureau of Land Management has determined that any part of the lands described in a noncompetitive oil and gas lease is within an undefined addition to a known geologic structure, the lessee is required to pay increased rental of $2 per acre for the entire lease.

Eagle Exploration Co., 83 IBLA 354 (Nov. 15, 1984)

OIL AND GAS LEASES--Continued

RENTALS--Continued

An unsigned check tendered within the 30-day notice period provided by 43 CFR 3112.4-1(a) (1982) is not acceptable for rental payment. BLM must reject an oil and gas lease offer when a properly executed check submitted for rental payment to replace an unsigned check is received after the expiration of the 30-day period.

Stephen S. Thompson, 84 IBLA 146 (Dec. 12, 1984)

RIGHTS-OF-WAY LEASES

Lands under reservoir rights-of-way may be leased only under the authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). However, the language of the 1930 Act is construed to mean that it applies only to land actually within the limits of the right-of-way and that the lands in legal subdivisions, exclusive of the reservoir right-of-way may be leased under the Mineral Leasing Act of 1920, provided there are no justifiable reasons for refusing to lease them.

R. C. Beveridge, 50 IBLA 173 (Sept. 30, 1980)

Under the "notation rule," where a reservoir right-of-way affecting certain land is noted on the official records of the Bureau of Land Management, that notation is effective to bar leasing of the oil and gas therein under the Mineral Leasing Act of 1920. This result follows even if the reservoir right-of-way should have been terminated.

BDM Interests, 57 IBLA 163 (Aug. 27, 1981)

Lands under reservoir rights-of-way may be leased for oil and gas only under authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976). Such lands are not "available for leasing under the [Mineral Leasing] Act," within the ambit of the 640-acre limitation set forth at 43 CFR 3110.1-3(a). However, a lease offer, which does not include all of the lands within a reservoir right-of-way comprised of only about 110 acres, is properly rejected in the exercise of the Secretary's discretionary authority, and must be rejected as a matter of law when the offeror is not a person qualified under the 1930 Act to lease the lands in question.

Curtis Wheeler, 62 IBLA 384 (Mar. 24, 1982)

Lands under a railroad right-of-way issued pursuant to the Act of Mar. 3, 1875, 18 Stat. 482, are not properly leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (1976), but instead must be leased under the exclusive authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976), and 43 CFR 3100.0-3(d)(1).

An oil and gas lease issued under the Mineral Leasing Act of 1920 does not include the oil and gas deposits underlying a railroad right-of-way, which crosses the leased tract, even though the lease does not expressly except such deposits from its coverage.

Chaeplin Petroleum Co., 68 IBLA 142 (Oct. 29, 1982)
89 I.D. 561

OIL AND GAS LEASES--Continued

ROYALTIES

Where the statute and operating regulations each provide that gas used for production purposes on the leasehold shall be excepted from royalty due the United States, it is error for the Geological Survey to require payment of royalty for gas produced from the Embar-Tensleep participating area and used in operations in the Madison participating area within the same leasehold under the Elk Basin Unit Agreement.

Amoco Production Co., 45 IBLA 16 (Jan. 8, 1980)

30 CFR 221.21(c) provides that an oil and gas lessee shall drill and produce from such wells as are necessary to protect the lessor from loss of royalty by reason of drainage or pay a sum estimated to reimburse the lessor for such loss of royalty. Where Geological Survey affords the lessee an opportunity to submit evidence as to why a paying well cannot be drilled and the lessee does not submit an adequate response, or drill the well, compensatory royalty is properly assessed.

Inexco Oil Co., 45 IBLA 377 (Feb. 13, 1980)

A Geological Survey Area Supervisor is acting within the authority granted to him by applicable provisions of Indian oil and gas leases and Indian and Federal royalty regulations when he decides to adopt the greater of either 1) actual sales prices of production from the leased lands or 2) a substitute price computed by him which is reasonably based on sales prices from all production from other similar tribal leases in the area, as the "value" of gas produced on these leases, and when he directs lessees to compute royalty based on the greater of the two values so calculated.

Where the Area Supervisor assembles data concerning sales from all Jicarilla tribal leases for a particular year and determines the median sales price, his use of this figure as a minimum floor price by which to determine value will be affirmed, as this decision is within the latitude afforded him, and this price is reasonably based on transactions indicative of the actual value of the production in the area at that time.

A lessee's obligation to pay royalty based on an accurate determination of the current value of production is not mitigated by its having committed by long-term contract to sell this product at a price below this value.

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of the payment subsequently.

The Area Supervisor has the authority to require a lessee to determine the value of the lease product by both the "BTU" and "net-realization" methods and may require the lessee to adopt as value whichever result is higher as the basis for computation of royalty for natural gas.

Where a United States district court has ordered a lessee to adopt a dual accounting method of determining value and has ordered the Department to require this dual accounting from the lessee, the question of the propriety of the Area Supervisor's order doing so is apparently res judicata, the only question being whether the order is the court's final action.

Under controlling provisions, an Area Supervisor has the discretion to establish a cost-of-manufacture allowance for use in the net-realization method of

OIL AND GAS LEASES--Continued

ROYALTIES--Continued

determining value for royalty purposes. Where this allowance is well based on the actual amounts needed to process out by-products of the crude gas, it will be upheld in the absence of a clear showing that it is erroneous.

Supron Energy Corp. et al., 46 IBLA 181 (Mar. 21, 1980)

When the point of delivery of OCS royalty oil produced under a sec. 8 lease, 43 U.S.C. § 1337 (1976), as amended, 43 U.S.C. § 1337 (Supp. II 1978), is on or immediately adjacent to the leased area, the lessee is not entitled to reimbursement for costs incurred in transporting the royalty oil to such delivery point.

JFD, Inc., 49 IBLA 337 (Aug. 25, 1980)

A Geological Survey decision requiring additional royalties to be paid under oil and gas lease OCS G-1752 will be reversed where such decision rests upon the assumption that a parent corporation can rescind at will a contract for the sale of natural gas entered into with its wholly owned subsidiary, especially where all of the evidence indicates that the agreement does, in fact, represent fair market value and where other Governmental regulatory controls are applicable and the rights of a third party will be affected.

Getty Oil Co., 51 IBLA 47 (Oct. 31, 1980)

The Crude Oil Windfall Profit Tax Act, P.L. 96-223, 94 Stat. 229 (1980) imposes the windfall profit tax on Federal oil royalty revenue. The states have no economic interest, as that phrase is used in the Windfall Profit Tax Act, in Federal royalty revenue that would exempt their share from taxation. Moreover, revenue from the windfall profit tax cannot be treated as royalty revenue and be distributed to the states under sec. 35 of the Mineral Leasing Act, as amended, 30 U.S.C. § 191 (1976). Accordingly, the states' share of Federal oil royalties must be based upon after-tax royalty revenue.

Effect of the Crude Oil Windfall Profit Tax Act of 1980 on the States' Share of Federal Oil Royalties, M-36929 (Dec. 30, 1980) 87 I.D. 661

The Secretary of the Interior has discretionary authority to determine the factors to be considered in computing transportation allowances for royalty valuation purposes. Where the Geological Survey applies a formula developed after appropriate research and consultation with affected oil companies and where the appellant does not provide convincing evidence that the 6 percent rate of return used in the formula is unreasonable as applied to appellant's production from 1968 to 1973, the transportation allowance will be upheld.

Shell Oil Co., 52 IBLA 15 (Jan. 5, 1980) 88 I.D. 1

In determining the amount of royalty due to the United States from an oil and gas lease, it is proper for the Geological Survey to use a base value which includes both the purchase price paid for the natural gas and the amount of severance taxes paid by the purchaser directly to the State where, under Oklahoma law,

OIL AND GAS LEASES--Continued

ROYALTIES--Continued

the purchaser is authorized to deduct the amount of taxes paid from the amount paid to the producer. Decision in Wheless Drilling Co., 13 IBLA 21, 80 I.D. 599 (1973), cited and applied.

Hoover & Bracken Energies, Inc., 52 IBLA 27 (Jan. 5, 1981) 88 I.D. 7

Where a Geological Survey audit reveals that an offshore oil and gas producer has overpaid royalties in one month and underpaid royalties in the next month, it is proper to offset these two amounts against the other despite the fact that the audit was performed some 4 years after the transactions at issue.

Shell Oil Co., 52 IBLA 74 (Jan. 9, 1981)

In determining the amount of royalty due to the United States from an oil and gas lease, it is proper for the Geological Survey to use a base value which includes both the purchase price paid for the natural gas and the amount of severance taxes paid by the purchaser directly to the State where, under Oklahoma law, the purchaser is authorized to deduct the amount of taxes paid from the amount paid to the producer.

Michigan Wisconsin Pipeline Co., Inc., 54 IBLA 190 (Apr. 22, 1981)

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of payment subsequently.

An appellant who challenges a determination by the Geological Survey as to the value of gas or other hydrocarbons produced from a Federal oil and gas lease must show not merely that the methodology utilized by Geological Survey is susceptible to error; it must show that error did, in fact, occur.

An Area Supervisor's order which requires that royalty be based on either the price specified in the order or the amount actually received, whichever is greater, comports with all regulatory requirements as to definitiveness and finality.

Supron Energy Corp., Atlantic Richfield Co., 55 IBLA 318 (June 26, 1981)

A request for refund, repayment, or crediting of excess payments against future payments due under 43 U.S.C. § 1339 (1976) must be made as the limitation in the statute provides, within 2 years from the date such excess payments are actually made.

Where a Geological Survey audit revealing that a lessee has underpaid royalties on certain leases is challenged by the lessee who alleges that overpayments were also made on the same leases during the audit period, and where Geological Survey has assessed the lessee for the underpayments, but not considered the merits of the lessee's allegations with respect to overpayments, the case will be remanded to Geological Survey to determine whether offsets of payments would have been proper.

Mobil Oil Corp., 65 IBLA 295 (July 13, 1982)

OIL AND GAS LEASES--Continued

ROYALTIES--Continued

The United States, as lessor of an oil and gas lease, is entitled to its royalty based on "the reasonable value" of the gas as set by the Secretary. Where a party challenges a determination as to the value of gas produced, the party must establish that the methodology used in the Government's computation is, in fact, erroneous.

Amoco Production Co., 78 IBLA 93 (Dec. 19, 1983)

STIPULATIONS

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on environmental analysis reports for the Uinta National Forest, special protective stipulations are not unreasonable, per se.

Oil and gas lessees must bear the expenses occasioned by compliance with stipulations for the protection of other land use values.

Diane R. Katz, 47 IBLA 177 (May 7, 1980)

Departmental regulations 43 CFR Subpart 3109 and 3120.2-3, and sec. 603 of the Federal Land Policy and Management Act of 1976 provide ample authority for the Bureau of Land Management to require oil and gas lessees to agree to wilderness protection stipulations.

Emery Energy, Inc., 47 IBLA 284 (May 15, 1980)

The Secretary has broad power to regulate all on-lease activities by oil and gas lessees and operators pursuant to the conditions contained in oil and gas leases and his general regulatory authority under the Mineral Leasing Act. The procedures for regulating activities on oil and gas leases, established under Secretarial Order 2948 and the BLM-USGS Cooperative Procedures Agreement implementing that order, reserve to the Department the authority to protect the United States legal interests in the property. The Secretary has broad discretion either to continue this procedure, or to substitute any other delegation of his authority and any other reasonable regulatory procedure which he concludes would equally protect the United States interests.

Right-of-Way Requirements for Gathering Lines and Other Production Facilities Located Within Oil and Gas Leaseholds, M-36921 (June 19, 1980) 87 I.D. 291

BLM's decision to impose a no-surface occupancy stipulation covering a canyon and creek bed on an oil and gas lease will be affirmed where the record shows that these areas have significant aesthetic values, where much of the balance of the leased lands is apparently suitable for drilling, and where the lessee has previously expressed his willingness to accept the lease subject to designation by BLM of "zones of nondisturbance."

James O. Greene, Jr., 49 IBLA 350 (Aug. 29, 1980)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

Where the Bureau of Land Management requests within 30 days the execution of special stipulations prepared by the Forest Service for acquired lands embraced in a noncompetitive oil and gas lease offer, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days.

J. Thomas Lewis, 50 IBLA 350 (Oct. 14, 1980)

Bureau of Land Management decisions rejecting oil and gas lease offers will be set aside and the cases remanded for further consideration where the only basis for the decisions was possible future harm to desert tortoises which are currently under consideration to determine if they should be placed on the endangered species list, and the record demonstrates the decline of the species is due to other reasons, and there has been no determination whether other measures, including protective stipulations in oil and gas leases, could be taken to protect the tortoises while permitting oil and gas exploration and development.

Tucker and Snyder Exploration Co., Inc., et al., 51 IBLA 35 (Oct. 30, 1980)

Under the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. §§ 351-59 (1976), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a service or bureau within the Department of the Interior, such as the Bureau of Reclamation (now the Water and Power Resources Service), the consent of the Secretary of the Interior is necessary under the Act for leasing of the land.

Where the Bureau of Land Management, based on the recommendation of the Bureau of Reclamation (now the Water and Power Resources Service) requires the execution of a special stipulation prohibiting all drilling operations on any of the lands described in the lease as a condition to issuance of an oil and gas lease, such stipulation must be supported by valid reasons weighed with due regard for the public interest, including evidence that less stringent alternatives would not adequately accomplish the intended purpose.

Mardan Exploration, Inc., 52 IBLA 296 (Feb. 9, 1981)

The Bureau of Land Management may require execution of a no surface occupancy stipulation prior to issuance of a noncompetitive oil and gas lease only where there is evidence that less stringent alternatives would not adequately accomplish the intended purpose of avoiding erosion and protecting the recreational and scenic value of an area.

Melvin A. Brown, 53 IBLA 45 (Feb. 27, 1981)

Where the Bureau of Land Management requests an offeror for a noncompetitive oil and gas lease to execute special stipulations involving protection of cultural and archaeological resources on the leased lands within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days.

Arthur Ancovitz, 53 IBLA 69 (Mar. 2, 1981)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record does not show that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper departmental purposes, a decision requiring stipulations will be set aside and remanded for reconsideration.

James E. Sullivan, 54 IBLA 1 (Apr. 1, 1981)

James M. Chudnow, 62 IBLA 16 (Feb. 23, 1982)

Rejection of an oil and gas lease offer is a more severe measure than the most stringent stipulations and the record supporting a decision rejecting a lease offer in the public interest should ordinarily reflect consideration of whether leasing subject to clear and reasonable stipulations would adequately protect the public interest concerns of the surface management agency.

Endras E. Hartley, 54 IBLA 38 (Apr. 9, 1981) 88 I.D. 437

Western Interstate Energy, Inc., 71 IBLA 19 (Feb. 15, 1983)

Although the Bureau of Land Management may require such special stipulations as are necessary for protection of the lands embraced in any oil and gas lease, such special stipulations must be supported by valid reasons weighed by the Department with due regard for the public interest. A decision to impose a no surface occupancy stipulation will be set aside and the case remanded where there is no data in the record to support the decision and no indication that less stringent stipulations were considered.

Max B. Lewis, 56 IBLA 293 (July 28, 1981)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect the wilderness characteristics of the land pending a study as required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulations are not unreasonable, per se.

John B. Anderson, 57 IBLA 149 (Aug. 25, 1981)

Where an acquired lands noncompetitive oil and gas lease offer is partially rejected on the basis of a recommendation made by the Bureau of Reclamation and merely concurred in by the Forest Service and on appeal the offeror alleges that the present policy of the Bureau of Reclamation is to lease with appropriate stipulations and the record fails to support adequately the original recommendation, the case will be remanded in order to determine whether a lease may issue for such lands.

Endras E. Hartley, 57 IBLA 293 (Aug. 31, 1981)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

The Secretary of the Interior may require an oil and gas lease applicant to accept a stipulation reasonably designed to protect a duly established subsurface oil and gas storage area as a condition precedent to the issuance of a lease.

M. Robert Paglee, 59 IBLA 192 (Oct. 27, 1981)

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations involving protection of cultural and paleontological resources on the leased lands within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror asserts on appeal that it actually never received the stipulations, its failure to execute the stipulations and return them to BLM may be treated as a curable defect, and priority of filing will be determined as of the date the signed stipulations are received by BLM.

First Mississippi Corp., 62 IBLA 184 (Mar. 9, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect wilderness characteristics of the land pending a study required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulation is reasonable.

Banner Oil & Gas, Ltd., 63 IBLA 23 (Mar. 26, 1982)

Where separate lease stipulations are proposed by different agencies having management responsibilities for the same land, and their combined effect is to preclude the lessee from operating on any portion of the lease, the case will be remanded for possible modification or substitution to accommodate leasing operations where it appears that neither agency intended that the lessee be barred from surface occupancy of the entire leasehold.

Marta F. Stroock, 63 IBLA 119 (Apr. 2, 1982)

A stipulation properly implementing an amendment to sec. 1 of the Mineral Leasing Act, 30 U.S.C. § 181 (1976), by P.L. 97-78, Nov. 16, 1981, which requires the lessee to submit a plan of operation for nonconventional development methods, may be imposed by BLM at any time prior to BLM's formal acceptance of a noncompetitive lease offer.

Havoco of America, Ltd., 63 IBLA 284 (Apr. 22, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 175 (May 26, 1982)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where there is no evidence that an offeror had actual knowledge of the stipulation at the time of filing, the posting of a notice of the stipulation in the public room of the BLM State office is not adequate notice, and the offeror is not bound to accept the lease with the added stipulation.

Emery Energy, Inc., 64 IBLA 285 (June 4, 1982)

Security Resources Corp., 70 IBLA 319 (Jan. 31, 1983)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect bighorn sheep habitat in an area where it is hoped that these animals will be reestablished, the imposition of protective stipulations will be affirmed.

Ted C. Pindejas, 65 IBLA 210 (June 30, 1982)

Where the notice of a competitive sale of oil and gas leases clearly provided that the leases would be subject to a "No Surface Occupancy" stipulation, by making a bid for the indicated parcel, the bidder was bound to accept the stipulation.

Where, through inadvertence, there was failure to include the "No Surface Occupancy" stipulation recited in the sale notice with the executed lease, BLM is not estopped to require compliance with the omitted stipulation when the omission is discovered after issuance of the lease.

Anadarko Production Co., 66 IBLA 174 (Aug. 12, 1982)

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of additional stipulations, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulations. Where there is no evidence that an offeror had actual knowledge of the stipulations at the time of filing, the offeror is not bound to accept the lease with the added stipulations.

John D. La Rue, 66 IBLA 347 (Aug. 26, 1982)

Applicants for oil and gas leases may be required to accept a stipulation as reasonable and in the public interest and in accord with national and departmental policy, which stipulation requires lessees to engage the services of a qualified professional archaeologist to conduct a survey of the areas to be leased for evidences of archaeological or historic sites or materials with the cost to be borne by the lessees.

Altex Oil Corp., 67 IBLA 197 (Sept. 22, 1982)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. However, the offeror's consent to the additional stipulation will be assumed, and the lease presumed to be validly issued, unless the offeror objects to the stipulation within 30 days of its receipt. Any deficiency in the notice procedure for the stipulation is cured when the offeror fails to object timely to imposition of the new stipulation.

Energy Energy (On Reconsideration), 67 IBLA 260 (Sept. 27, 1982)

Harry E. Veal, 73 IBLA 86 (May 18, 1983)

William A. Stevenson, Altex Oil Corp., Imperial Resources, Inc., Donald W. Stevenson, Overthrust Partnership, 73 IBLA 305 (June 7, 1983)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect bighorn sheep habitat, the imposition of protective stipulations will be affirmed.

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect the wilderness characteristics of the land pending a study as required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulations are not unreasonable, per se.

Ida Lee Anderson, John R. Anderson, 67 IBLA 340 (Oct. 5, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest. However, if he decides to issue a lease, he may require the acceptance of stipulations reasonably designed to protect environmental and other land use values as a condition precedent to issuance of such a lease.

James M. Chudnow, John L. Messinger, 67 IBLA 360 (Oct. 7, 1982)

Ted C. Findeisa, 69 IBLA 34 (Nov. 29, 1982)

Carl J. Taffora, 71 IBLA 72 (Feb. 22, 1983)

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror subsequently submits the signed stipulations prior to the filing of a junior offer, the Board will remand the case to BLM so that his offer may be considered with priority as of that time.

James M. Chudnow, 68 IBLA 87 (Oct. 22, 1982)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record shows that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper Departmental purposes, a decision requiring the stipulations will be affirmed.

Ted C. Findeisa, 68 IBLA 167 (Oct. 29, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest. However, if he decides to issue a lease, he may require the acceptance of stipulations reasonably designed to protect environmental and other land use values as a condition precedent to issuance of such a lease.

Where the Bureau of Land Management imposes a no surface occupancy stipulation on certain lands in an oil and gas lease offer and rejects the remainder of the lands in the offer stating that all lands in the offer are in the Jackson Canyon Bald Eagle Roost, and there is no information in the record to support a distinction between the lands available for leasing subject to stipulation and those considered unavailable, the decision will be set aside and the case remanded for reconsideration.

Fortune Oil Co., 68 IBLA 288 (Nov. 19, 1982)

Although the Bureau of Land Management may require such special stipulations as are necessary for protection of environmental and other land use values, such special stipulations must be supported by valid reasons weighed with due regard for the public interest. A decision to impose a no surface occupancy stipulation will be affirmed where the record on appeal indicates that the restriction is based on valid concerns and the applicant fails to show that the restriction is unreasonable.

James M. Chudnow, 69 IBLA 16 (Nov. 24, 1982)

The Board of Land Appeals will affirm a decision requiring execution of a no surface occupancy stipulation where the record identifies the resource requiring such protection and explains why less stringent alternatives would be insufficient to provide it. Where the case record does not contain an adequate explanation referable to the specific land included in the lease offer, the record is inadequate for adjudication of the appeal and the case will be remanded to the Bureau of Land Management.

James M. Chudnow, John L. Messinger, 70 IBLA 225 (Jan. 24, 1983)

Where BLM rejects over-the-counter noncompetitive oil and gas lease offers in part and imposes no-surface-occupancy stipulations on almost all of the remaining lands, covering almost 19,000 acres, and where the record contains nothing explaining BLM's reasons for its decision and no evidence showing that its decision was valid as to the specific lands involved, BLM's decision will be set aside and the matter remanded for further consideration.

Fortune Oil Co., 70 IBLA 286 (Jan. 26, 1983)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

Where BLM affords an offeror a period of 30 days to execute stipulations as a condition to issuance of an oil and gas lease and states that failure to comply will result in rejection of the offer to lease, the decision is interlocutory and there is no right of appeal. The offeror may elect to comply, to comply under protest, or to let the 30-day period run without complying and appeal the resulting BLM decision rejecting the offer. In the latter case the offeror has waived the right to comply and, if the appeal is unsuccessful, the rejection is final and no additional opportunity to execute the stipulations will be granted.

Fortune Oil Co., 71 IBLA 153 (Mar. 9, 1983)
90 I.D. 84

A noncompetitive over-the-counter oil and gas lease issued with stipulations of which the offeror has had no prior notice, either actual or constructive, constitutes, in legal effect, a counter offer which will not preclude offeror from withdrawing his offer within 30 days of receipt of the lease and stipulations.

Robert P. Schafer, 71 IBLA 191 (Mar. 14, 1983)

The Secretary of the Interior may, in his discretion, condition the issuance of an oil and gas lease upon the acceptance of special stipulations reasonably designed to protect environmental and other land use values. Where on appeal evidence suggests that a "no surface occupancy" stipulation has embraced more land than necessary to protect the identified resource values due to BLM's use of full legal subdivisions to describe the land to be so restricted, and that a topographical description might provide the same protection while limiting the restriction to a smaller area, the decision will be set aside and remanded for reconsideration.

Bill J. Maddox, 72 IBLA 22 (Apr. 4, 1983)

Under the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-59 (1976 and Supp. V 1981), if the lands embraced within an oil and gas lease application are under surface jurisdiction of a bureau within the Department of the Interior, such as the Bureau of Reclamation, the consent of the Secretary of the Interior or his proper delegate is necessary under the Act for leasing of the land.

Where the Bureau of Land Management, based on the recommendation of the Bureau of Reclamation, requires the execution of a special stipulation prohibiting all drilling operations on any of the lands described in the lease as a condition to issuance of an oil and gas lease, the record must reflect that such stipulation is supported by valid reasons weighed with due regard for the public interest, including evidence that less stringent alternatives would not adequately accomplish the intended purpose.

Gary D. Askins, 74 IBLA 12 (June 24, 1983)

Where BLM has unilaterally imposed special stipulations in issuing oil and gas leases and the lessee accepts such leases without protest for 7-1/2 months, she may not thereafter "withdraw" from or relinquish such leases and recover the annual advance rentals paid therefor on the ground that she did not consent to the imposition of the special stipulations, although she might have been permitted to do so had she protested promptly.

Frances Kunkel, 75 IBLA 199 (Aug. 22, 1983)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

The Bureau of Land Management may properly require an oil and gas lease offeror to execute no surface occupancy stipulations as a condition precedent to issuance of an oil and gas lease for land identified as critical habitat for bighorn sheep where the record explains why less stringent alternatives would not provide sufficient protection. However, where the record is inadequate to resolve issues raised by appellant and BLM files no response to the appeal, the case will be remanded to BLM to provide adequate support for its decision.

James M. Chudnow, 76 IBLA 167 (Sept. 28, 1983)

The Board of Land Appeals will affirm a decision rejecting an oil and gas lease offer because of important geological features in the lands sought where the record supports the need to protect the resource and the offeror fails to indicate how leasing would be compatible with protection.

The Board of Land Appeals will affirm a decision requiring execution of a no surface occupancy stipulation where the record identifies the resource requiring such protection and explains why less stringent alternatives would be insufficient to provide it. Where the case record does not contain an adequate explanation referable to the specific land included in the lease offer, the record is inadequate for adjudication of the appeal and the case will be remanded to the Bureau of Land Management.

James M. Chudnow, John L. Messinger, 77 IBLA 73 (Nov. 8, 1983)

The Act establishing the Flaming Gorge National Recreation Area requires that any oil and gas lease or permit be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe. 16 U.S.C. § 460v-4 (1976). Where BLM conditions the grant of a lease upon stipulations required by the Forest Service, the Department of the Interior has no authority to waive compliance with the Act.

Thomas F. Stroock, 77 IBLA 137 (Nov. 15, 1983)

The Secretary of the Interior may require an oil and gas lease offeror to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease for land located in a national forest. Where on appeal an offeror registers objections concerning such stipulations, and the Forest Service subsequently clarifies the nature of the stipulations and the offeror raises no further complaints, the imposition of the stipulation will be upheld.

James M. Chudnow, Laurent A. Giesbert, 78 IBLA 317 (Jan. 24, 1984)

Where a competitive oil and gas lease imposes additional stipulations without prior notice to the offeror, the offeror may accept or reject the lease containing the additional stipulations. The imposition of additional stipulations without notice to the offeror defers the 15-day period in 43 CFR 3132.5(e) until the offeror has notice of the stipulations to be included in the lease.

Texaco U.S.A., et al., 82 IBLA 61 (July 11, 1984)

Shell Oil Co., et al., 83 IBLA 22 (Sept. 21, 1984)

OIL AND GAS LEASES--Continued

STIPULATIONS--Continued

Under sec. 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1982), leases may only be issued with the consent of the surface management agency and subject to such conditions as it may impose to ensure adequate utilization of the land for the primary purposes for which it is being administered. A decision denying an application for permit to drill will be affirmed where the surface management agency has objected on the grounds that the proposed well site is within a no-surface-occupancy area stipulated to by the lessee.

Diamond Shamrock Exploration Co., 83 IBLA 318 (Oct. 31, 1984)

The Surface Disturbance Notice (M-2) is not a stipulation; it is merely notice to the oil and gas lessee that prior to disturbing the surface of the leased lands, it should contact the surface managing agency. Such notice may be included in a noncompetitive oil and gas lease by BLM without the consent of the offeror.

Where a noncompetitive over-the-counter oil and gas lease is issued without notice to the offeror of an additional stipulation relating to cultural resource protection, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulation. Where the offeror files a timely objection within 30 days of receipt of the lease, and seeks cancellation of the lease and return of the first year's rental, it is improper to deny such request.

Robert G Frances Kunkel, 84 IBLA 140 (Dec. 11, 1984)

SUBSURFACE STORAGE

Under sec. 17(j) of the Mineral Leasing Act, the Secretary of the Interior may authorize the subsurface storage of oil and gas in lands leased or subject to leasing under the Act. Any lease on which storage is authorized shall be extended at least for the period of storage and so long thereafter as oil or gas not previously produced is produced in paying quantities. A storage agreement which recognizes an existing lease and only reserves to the United States all of the United States interest in minerals in the lands does not terminate the rights of the existing lessee to drill for and produce oil and gas. An oil and gas lease offer submitted subsequently by a third party for the lands subject to the lease is properly rejected since the United States does not hold the mineral interest sought.

American Natural Gas Production Co., 49 IBLA 230 (Aug. 12, 1980)

Under sec. 17(j) of the Mineral Leasing Act the Secretary of the Interior may authorize the subsurface storage of oil and gas in lands leased or subject to leasing under the Act. Where an oil and gas lease applicant applies for lands underlain by such a storage area he may properly be required to execute a stipulation for the protection of the storage area.

The Secretary of the Interior may require an oil and gas lease applicant to accept a stipulation reasonably designed to protect a duly established subsurface oil and gas storage area as a condition precedent to the issuance of a lease.

M. Robert Paglee, 59 IBLA 192 (Oct. 27, 1981)

OIL AND GAS LEASES--Continued

SUBSURFACE STORAGE--Continued

An oil and gas lease embracing lands committed to a subsurface storage agreement, but on which there is no production, terminates by operation of law when the annual rental payment is not timely made.

Southern Union Co., 60 IBLA 181 (Nov. 25, 1981)

SUSPENSIONS

A competitive oil and gas lease is properly issued for a primary term of 5 years. Where an application for suspension of production requirements for a lease on which there is no well capable of producing in paying quantities is not timely filed in accordance with 43 CFR 3103.3-8 before the expiration date of the lease, the lease automatically terminates.

Coronado Oil Co., 52 IBLA 308 (Feb. 10, 1981)

A nonproducing oil and gas lease expires and may not be retroactively suspended when there is no suspension application pending at the time of expiration.

Cogeka Resources (U.S.A.), Ltd., 56 IBLA 19 (June 30, 1981)

Teton Energy Co., Inc., 61 IBLA 47 (Dec. 31, 1981)

An oil and gas lessee's request for suspension of production of an oil and gas lease may properly be granted in circumstances where the lessee submits a schedule of work that, in this instance, can be considered as expeditious as possible and that will lead to initiation or restoration of production sufficient for compliance with 30 CFR 250.12(b), as amended.

Superior Oil Co., 57 IBLA 404 (Sept. 14, 1981)

The applicable statute, 30 U.S.C. § 184(j) (1976), and regulation, 43 CFR 3108.3(e), authorize the granting of a suspension of lease term and obligation to pay rental where, during a proceeding described therein, a party files with the Secretary a waiver of his rights under the lease, including particularly, where applicable, rights to drill and to assign.

Michigan Wisconsin Pipeline Co., et al., 64 IBLA 247 (May 28, 1982)

A timely-filed application for suspension of an oil and gas lease is an appropriate vehicle for protecting the rights of a lessee where prejudice is threatened by delay in granting an application for a permit to drill a well without fault of the lessee. Although an application for suspension filed prior to lease expiration may be approved retroactively after the expiration date, the lease expires at the end of its term if no application for suspension is filed prior to the expiration date.

Fuel Resources Development Co., 69 IBLA 39 (Nov. 29, 1982)

No suspension of an oil and gas lease will be granted in the absence of a well capable of production, "except where MMS [now BLM] directs or assents to a suspension in the interest of conservation." 43 CFR 3103.3-8(a).

Harpel Drilling Co., 74 IBLA 228 (July 19, 1983)

OIL AND GAS LEASES--Continued

SUSPENSIONS--Continued

Where an offer to lease lands cannot be accepted because the lands are not available for leasing, the offer will be rejected and not held in suspense until the land may become available for leasing.

Paul C. Kohlman, 75 IBLA 171 (Aug. 19, 1983)

Where application is made for suspension of unitized oil and gas leases in order to preserve them from expiration pending approval of an application for permission to drill, and where the suspension is granted at the discretion of the authorized officer on condition that permission to drill may be denied upon a finding that drilling operations would result in unacceptable impacts on the wilderness characteristics of the area, an environmental impact statement on the effects of such drilling which fails to consider the alternative of refusing permission to drill is an inadequate basis for a decision to permit drilling.

Sierra Club et al. (On Judicial Remand), 80 IBLA 251 (May 2, 1984)

An oil and gas lease expires upon the running of its primary term unless eligible for extension as provided by 43 CFR Subpart 3701. While a request for suspension of a lease may be retroactively approved after the lease has expired, no suspension application may be approved where the application itself is not filed until after the expiration date of the lease, unless it can be found that actions of the Department have constituted a de facto suspension of the lease during its term.

William C. Kirkwood, 81 IBLA 204 (June 1, 1984)

TERMINATION

When an oil and gas lessee submits the amount of rental stated in a bill rendered by an authorized officer and the amount is found to be in error resulting in a deficiency, generally such lease shall not have automatically terminated for failure to pay the annual rental timely and new offers to lease the lands must be rejected.

Lucinda E. Boggs, 45 IBLA 60 (Jan. 14, 1980)

An oil and gas lease which is in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no approved reworking or drilling operations are commenced within 60 days of cessation of production.

A request for extension of a lease terminated by operation of law must be denied. A lease in its extended term because of production can be held only so long as oil and gas in paying quantities is produced.

Robert Hawkins, 45 IBLA 105 (Jan. 17, 1980)

Where an oil and gas lessee erroneously transmits a check for the annual rental to the wrong office of the Bureau of Land Management, which office receives the payment 14 days prior to the anniversary date but takes no action either to forward the check to the proper office or return it to the lessee until the anniversary date of the lease, a petition for reinstatement of the terminated lease will be granted when it is established that the negligence of BLM employees was an

OIL AND GAS LEASES--Continued

TERMINATION--Continued

equally causative factor in the lessee's failure to timely pay the rental.

Richard L. Rosenthal, 45 IBLA 146 (Jan. 23, 1980)

A State Office properly holds that a noncompetitive oil and gas lease expires at the end of its primary term when there is no cognizable activity on the leased lands as of that date under 30 U.S.C. § 226(e) (1976), and the unit or cooperative provisions of 30 U.S.C. § 226(j) (1976) have not operated to extend the lease.

Dale Carr, 45 IBLA 183 (Jan. 30, 1980)

Where an oil and gas lessee pays his annual rental on or before the anniversary date of the lease in accordance with an erroneous bill issued by the Bureau of Land Management, the lease will not automatically terminate unless lessee fails to pay the deficiency within the period prescribed in a notice of deficiency sent by BLM. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(b).

C.S.V. Oil Exploration Co., 45 IBLA 393 (Feb. 13, 1980)

A noncompetitive oil and gas lease on which there is no well capable of production automatically terminates by operation of law where the rental payment by the lessee on or before the due date is deficient by more than $10 or 5 percent.

The Department of the Interior has no authority to reinstate a terminated oil and gas lease where the full rental has not been paid within 20 days after the date of termination.

Tenneco Oil Co., 46 IBLA 33 (Feb. 20, 1980)

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2).

Where the failure to pay rental on or before the anniversary date of a lease is attributable to a computer error in the mailing system, neither reasonable diligence nor justification is shown to support a petition for reinstatement.

Melbourne Concept Profit Sharing Trust, Joseph F. Fiato, Carl Gerard, 46 IBLA 87 (Feb. 28, 1980)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows his failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Harry Zaslow, 46 IBLA 217 (Mar. 27, 1980)

Bob W. Scott, 46 IBLA 254 (Mar. 27, 1980)

Melvin D. Guttman, 51 IBLA 53 (Oct. 31, 1980)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

The lessee of an oil and gas lease, issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1976) on or before the regular anniversary date of the lease. Failure to submit the rental timely results in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1976). Where the lessee shows that his failure to pay rental timely is justifiable, he pays the required rental within 20 days after the due date, excluding the normal business days the office is closed due to snowstorms, and he otherwise complies with statutory and regulatory requirements, he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1976).

Western Reserves Oil Co., 46 IBLA 295 (Mar. 31, 1980)

The automatic termination provision of 30 U.S.C. § 188(b) (1976) is applicable to a lease whose lands formed part of a unit upon which production has at all times been maintained, but were thereafter eliminated therefrom and simultaneously segregated by reason of their inclusion in a second unit, since terminated.

Bass Enterprises Production Co., 47 IBLA 53 (Apr. 14, 1980)

An oil and gas lease committed to a unit agreement expires at the end of its primary term if there is then no well capable of production of oil or gas in paying quantities within it or any lease committed to the unit, and there are no other statutory reasons for extending it.

Where the State Office determines that an oil and gas lease committed to a unit has expired at the end of its primary term because there is not within it or the unit a well capable of production in paying quantities, the lessee is entitled to notice and an opportunity for a hearing on that issue where it has presented evidence that raises an issue of fact regarding the status of wells in the unit.

Burton/Hawks, Inc., 47 IBLA 125 (Apr. 29, 1980)

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental payment on the anniversary date of the lease does not constitute reasonable diligence.

Kenneth and Era Tveten, 47 IBLA 180 (May 7, 1980)

An oil and gas lease terminated automatically by operation of law for failure to pay rental timely when the rental check, although timely received by the appropriate BLM office, is not honored by the bank upon which it is drawn, when presented for payment.

Deane A. Dunham, 48 IBLA 7 (May 27, 1980)

An oil and gas lease on which there is no well capable of production terminates automatically by operation of law if the lessee pays only 50 percent of the annual rental due on or before the anniversary date of the lease, and where this deficient payment did not result from any incorrect information in a rental bill or decision.

A delay by BLM in notifying an oil and gas lessee that his lease has terminated because he has failed to

OIL AND GAS LEASES--Continued

TERMINATION--Continued

pay all of the rental due on or before the anniversary date of the lease does not extend the viability of the lease in order to allow him to pay the balance of the rental, as the lease had already terminated automatically by operation of law, without any administrative act, deed, or decision.

The Department is without authority to reinstate an oil and gas lease terminated automatically by operation of law for failure to pay annual rental timely where the lessee fails to submit the entire amount due within 20 days of the anniversary date of the lease, regardless of alleged extenuating circumstances which might otherwise constitute grounds for reinstatement.

David Fasken, 48 IBLA 258 (June 26, 1980)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the proper Bureau of Land Management State Office on or before the anniversary date.

Stefan Deesko, 49 IBLA 14 (July 15, 1980)

Kenneth W. Hecox, 49 IBLA 153 (July 30, 1980)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease.

Rose M. Koegel, 49 IBLA 106 (July 28, 1980)

Where oil and gas lessees allege that they have entered into a communitization agreement associating the leased land with adjacent lands on which there is a producing well, but do not so show, and where the record shows that no such agreement was filed for approval with GS prior to the anniversary date of the lease in any event, the lease is not properly regarded as having been in "producing" status on the anniversary date, so that it terminates automatically by operation of law upon the lessees' failure to submit annual rental on or before this date.

Melvin A. Brown, Douglas Bickerstaff, 49 IBLA 234 (Aug. 12, 1980)

Where a unit agreement specifies that a determination as to whether a well completed prior to the effective date of the agreement is capable of producing unitized substances in paying quantities will be deferred until an initial participating area is established as the result of completion of a well for production in paying quantities under the unit agreement, wells completed prior to the effective date of the agreement and capable of production in paying quantities will not extend a unitized lease upon which no such well exists.

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold or for the lease under an approved unit agreement on the last day of the lease term with a bona fide intent to complete a producing well.

Energy Trading Inc., 50 IBLA 9 (Sept. 5, 1980)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

Where an applicant for an oil and gas renewal lease under 30 U.S.C. § 223 (1976) requests to be advised of additional requirements but the Bureau of Land Management fails to notify applicant of rent due, failure to submit rental before expiration of existing lease does not mandate denial of the application and 30 U.S.C. § 188 (1976) is not applicable.

Keohane, Inc., et al., 50 IBLA 249 (Sept. 30, 1980)

Under 30 U.S.C. § 188(c) (1976) the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment unless payment is tendered at the proper office within 20 days after the due date.

Jaeger Valjalo, 50 IBLA 256 (Sept. 30, 1980)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976).

In the event that some of the land applied for in an oil and gas lease offer was unavailable, the applicant was entitled to a refund of excess rental paid, and failure of BLM to return the excess rental to the offeror after the lease issuance and prior to the next annual rental being due and payable does not prevent the lease from terminating by operation of law.

Wilfred Plonis, 51 IBLA 125 (Nov. 20, 1980)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A net credit balance reflected in statements of account covering other leases does not constitute payment of the annual rental for the subject lease, absent a written request, timely received, that monies from a particular account be applied as the rental payment for the lease.

Consolidated Crude Oil Co., 51 IBLA 217 (Dec. 10, 1980)

An oil and gas lease which is in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no approved reworking or drilling operations are commenced within 60 days of cessation of production.

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the

OIL AND GAS LEASES--Continued

TERMINATION--Continued

due to a lack of reasonable diligence. Reasonable diligence normally requires sending or delivering payment to the proper office sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. Late payment of the rental is justifiable only where failure to make timely payment is the result of causes beyond the control of the lessee, and simple inadvertence in mailing the payment to the wrong office does not justify failure to send timely payment to the proper office.

Monsanto Co., 51 IBLA 271 (Dec. 15, 1980)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Pursuant to 30 U.S.C. § 188(b) (1976) an oil and gas lease will not automatically terminate when an annual rental payment is deficient if the deficiency is nominal. A deficiency is nominal if it is not more than $10 or five percent of the total payment due, whichever is more.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Submission of a deficient payment, even though received in advance of the due date, does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. No justifiable excuse arises where a discrepancy as to total acreage exists between the parcel listing and lease, BLM notifies the lessee at his address of record of the correct amount and the notice is returned as not deliverable, and the lessee, relying on the advice of his leasing service and landman, submits the incorrect amount.

Virgil T. Hartquist, 51 IBLA 356 (Dec. 29, 1980)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark on the payment envelope will be assumed to indicate the date of mailing in the absence of evidence to the contrary.

OIL AND GAS LEASES--Continued

TERMINATION--Continued

Payment due on Oct. 1, 1980, bearing a postmark date of Sept. 30, 1980, does not reflect reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Speculation as to errors in post office mail processing does not constitute such extenuating circumstances as to make untimely payment of annual rental justified.

Elizabeth A. Christensen, 52 IBLA 113 (Jan. 13, 1981)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. The date of receipt of the rental and not the date of mailing is controlling in determining whether rental on an oil and gas lease was timely paid. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Overthrust Oil and Gas Corp., 52 IBLA 119 (Jan. 13, 1981) 88 I.D. 38

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not received by the Bureau of Land Management State Office on or before the anniversary date.

Dorothy C. Axelson, 52 IBLA 146 (Jan. 16, 1981)

An oil and gas lease, terminated by operation of law for failure to timely pay the annual rental, will not be reinstated where the lessee mailed the rental payment to the wrong Bureau of Land Management office, where that office returned the payment in sufficient time for lessee to make timely payment in the proper office, but where the lessee failed to do so.

Energetics, Inc., 52 IBLA 236 (Feb. 3, 1981)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. A terminated lease can be reinstated only if, among other requirements, the lessee shows that the failure to pay on time was either justifiable or not due to a lack of reasonable diligence.

Jeannette L. Fenwick, 52 IBLA 250 (Feb. 6, 1981)

A competitive oil and gas lease is properly issued for a primary term of 5 years. Where an application for suspension of production requirements for a lease on which there is no well capable of producing in paying quantities is not timely filed in accordance with 43 CFR 3103.3-8 before the expiration date of the lease, the lease automatically terminates.

Coronado Oil Co., 52 IBLA 308 (Feb. 10, 1981)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976).

Reliance upon receipt of a courtesy notice can neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the full lease rental in a timely manner.

A purported assignment of an oil and gas lease does not relieve the lessee of record of the responsibility to make timely payment of all rentals until such assignment is formally approved by BLM.

Otis Energy, Inc., 52 IBLA 316 (Feb. 19, 1981)

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Willard Pease Oil & Gas Co., 52 IBLA 379 (Feb. 19, 1981)

An oil and gas lease is properly declared to have terminated automatically for nonpayment of rental because, although the lessee claims to have mailed timely the rental together with other payments which were received, the rental check cannot be found.

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination. The erroneous acceptance of rental payment a year later cannot create such authority nor estop the the Government from regarding the lease as having terminated.

No assignment can be approved for a terminated oil and gas lease.

Jack J. Grynberg, 53 IBLA 165 (Mar. 12, 1981)

A State Office properly holds that a noncompetitive oil and gas lease expires at the end of its primary term when there is no cognizable activity on the leased lands as of that date under 30 U.S.C. § 226(e) (1976), and the unit or cooperative provisions of 30 U.S.C. § 226(j) have not operated to extend the lease.

Pacific Transmission Supply Co. and Raymond Chorney, 53 IBLA 204 (Mar. 18, 1981)

Upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law.

A lessee may be entitled to reinstatement of the lease if it is shown, among other things, that reasonable diligence was exercised in mailing the payment,

OIL AND GAS LEASES--Continued

TERMINATION--Continued

or that the delay in remitting the rental is justifiable. Where a lessee is unable to make the requisite showing, a petition for reinstatement is properly denied.

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental payment 1 day before or on the anniversary date of the lease does not constitute reasonable diligence.

A late rental payment or an insufficient tender of rental may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Instances of simple forgetfulness, inadvertence, ignorance of the regulations, reliance on BLM courtesy notices, and similar occurrences do not excuse a failure to exercise due diligence.

Martin Mattler, 53 IBLA 323 (Mar. 26, 1981)
88 I.D. 420

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at an earlier date.

Margaret Lee Pirtle, 54 IBLA 113 (Apr. 16, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Transmittal of payment 14 days after the due date does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. No justifiable excuse arises where a lessee has been specifically notified of the due date and through inadvertence fails timely to make payment.

Ralph W. M. Keating, 55 IBLA 113 (June 3, 1981)

Where a unit agreement specifies that a determination whether a well completed prior to the effective date of the agreement is capable of producing in paying quantities will be deferred until completion of a well capable of producing in paying quantities under the unit agreement, wells completed prior to the effective date of the agreement and capable of production in paying quantities will not extend a unitized lease upon which no such well exists.

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold or, for the lease under an approved unit agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Energy Trading, Inc., 55 IBLA 167 (June 9, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. The fact that a lessee's accountant, responsible for submitting the rental payment, is overburdened with work will not justify reinstatement.

International Resource Enterprises, Inc., 55 IBLA 386 (June 30, 1981)

A nonproducing oil and gas lease expires and may not be retroactively suspended when there is no suspension application pending at the time of expiration.

Coseka Resources (U.S.A.), Ltd., 56 IBLA 19 (June 30, 1981)

Teton Energy Co., Inc., 61 IBLA 47 (Dec. 31, 1981)

A petition for reinstatement of an oil and gas lease which has expired by operation of law for failure to make timely payment of the annual rental will be denied where the petition is filed with the appropriate office more than 15 days after receipt of notification of termination of the lease.

Michael Morrisroe, Jr., 56 IBLA 49 (July 8, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Untimely payment of annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at an earlier date. Mailing the

OIL AND GAS LEASES--Continued

TERMINATION--Continued

rental payment 1 day after the anniversary date of the lease does not constitute reasonable diligence.

Russell D. Bryan, 56 IBLA 345 (Aug. 3, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark on the payment envelope will be assumed to indicate the date of mailing in the absence of evidence to the contrary. Payment due on Jan. 2, 1981, bearing a postmark date of the same day does not reflect reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Neither ignorance of the law nor a business or pleasure trip justifies late payment. Furthermore, where lessee presents no evidence to support a finding that the illness of an employee entrusted with making payment occurred at or near the anniversary date and with such causality to constitute sufficiently extenuating circumstances to justify late payment, lessee's petition for reinstatement must be denied.

Arnold L. Silberg, 57 IBLA 46 (Aug. 17, 1981)

An oil and gas lease is properly declared to have terminated automatically for nonpayment of rental because, although the lessee claims to have mailed timely the rental together with other payments which were received, the rental check cannot be found.

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

Shell Oil Co., 57 IBLA 63 (Aug. 17, 1981)

Where leases have been found by the Department to have terminated automatically by operation of law for lessee's failure to pay the annual rental, but private legislation is subsequently enacted providing that such leases shall be held not to have terminated and for payment by the lessee of "accrued" and "unpaid" rental by the lessee, a BLM decision that such renewal is due for the period from the date when the leases were treated as terminated to the date of the private enactment will be affirmed in the special circumstances obtaining in the case.

Fuel Resources Development Co., 57 IBLA 90 (Aug. 24, 1981)

Where a competitive, fractional interest, oil and gas lease is issued with conflicting and confusing rental provisions recited in the lease terms and in an attachment to the lease, a deficient rental payment by the lessee in reasonable reliance on the section providing for rental based upon the pro rata fractional

OIL AND GAS LEASES--Continued

TERMINATION--Continued

interest of the United States will be considered justified so as to qualify the terminated lease for reinstatement.

Texas Oil and Gas Corp., 58 IBLA 175 (Sept. 28, 1981) 88 I.D. 879

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2).

Andrew H. Nelson, 58 IBLA 220 (Sept. 30, 1981)

Bryan Colley, 71 IBLA 299 (Mar. 22, 1983)

Where the record shows that, at the end of the primary term of a noncompetitive oil and gas lease, there is no active production of oil or gas in paying quantities from the lease area and no well capable of such production, the lease terminates automatically by operation of law as of the expiration date of the lease, in the absence of allegations by the lessees that there was such production or a well capable of such production.

Assuming, arguendo, that an oil and gas lease area contained a well capable of production of oil or gas in paying quantities on its expiration date, the lease terminates automatically as of this date if the lessee fails to comply with a 60-day notice from Geological Survey to put this well into production. An alleged filing of information showing production 2 years after the expiration of the 60-day notice period would not resuscitate the lease.

Where an oil and gas lease has already terminated by operation of law, the subsequent issuance by Geological Survey of a 60-day notice to produce does not renew the lease.

Edward H. Colthorp, Dale F. Killian, 58 IBLA 234 (Oct. 6, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. However, where the lessee has entrusted payment to an employee who is hospitalized because of an injury, and another employee who assumes the injured employee's responsibilities fails to make timely payment, the injury of the employee is not the proximate cause of the late payment.

Dome Petroleum Corp., 59 IBLA 370 (Nov. 9, 1981) 88 I.D. 1012

OIL AND GAS LEASES--Continued

TERMINATION--Continued

An oil and gas lease on which there is no well capable of production terminates automatically by operation of law if the lessee pays only part of the annual rental due on or before the anniversary date of the lease, and if the deficiency in this payment was not nominal and did not result from any incorrect information in a rental bill or decision.

BLM has satisfied its burden of giving notice of the inclusion of leased lands in a KGS and of the concomitant increase in annual rental to $2 per acre or fraction thereof when it notifies the lessees of record, regardless of its failure to notify the holder of operating rights under the lease.

Robert L. Wright, Shell Oil Co., 60 IBLA 142 (Nov. 24, 1981)

An oil and gas lease embracing lands committed to a subsurface storage agreement, but on which there is no production, terminates by operation of law when the annual rental payment is not timely made.

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2).

Southern Union Co., 60 IBLA 181 (Nov. 25, 1981)

Failure to pay the annual rental for an oil and gas lease on which there is no well capable of producing oil or gas in paying quantities on or before the anniversary date results in the automatic termination of the lease by operation of law. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A lease may be reinstated only if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Max W. Young, 60 IBLA 224 (Nov. 30, 1981)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

Ruth Elaine Brown, 60 IBLA 328 (Dec. 18, 1981)

Pursuant to 30 U.S.C. § 188(b) (1976) an oil and lease will not automatically terminate when an annual rental payment is deficient if the deficiency is nominal. A deficiency is nominal if it is not more than $10 or 5 percent of the total payment due, whichever is more.

Where a timely rental payment for a nonproducing oil and gas lease is nominally deficient in the amount of 24 cents, such lease is not automatically terminated

OIL AND GAS LEASES--Continued

TERMINATION--Continued

if the notice of deficiency, is not served on the attorney who has notified BLM that he represents the estate of the deceased lessee. In instances where an attorney has made an appearance of record, the attorney should be recognized as controlling the matter on behalf of his client, and service of any documents relating to that matter should be made on the attorney so that he may take timely and appropriate actions on behalf of his client.

T. George Harris, 60 IBLA 366 (Dec. 22, 1981)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Reliance upon receiving a courtesy billing notice before the due date can neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the full lease rental in a timely manner.

Jean Szczepanski, 60 IBLA 375 (Dec. 22, 1981)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at an earlier date. Mailing the rental payment 1 day before or on the anniversary date of the lease does not constitute reasonable diligence.

Helen T. Ayers, Roger Quintal, 61 IBLA 71 (Dec. 31, 1981)

The law imputes knowledge when opportunity and interest, combined with reasonable care, would necessarily impart it; therefore, where the Bureau of Land Management served notice of an oil and gas lease rental increase on an office of a corporate lessee which the lessee claimed was not its address of record for the lease, the lessee cannot assert ignorance of the increase because reasonable care would dictate that the office receiving the notice inform the proper office.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Where a lessee asserts a lack of knowledge of a rental increase as justification for its failure to pay timely the full amount of the rental, the lease will not be reinstated if the record supports a finding that the lessee had knowledge of the increase approximately 6 weeks prior to the anniversary date of the lease.

Getty Oil Co., 61 IBLA 226 (Jan. 28, 1982) 89 I.D. 26

OIL AND GAS LEASES--Continued

TERMINATION--Continued

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his actions in paying the rental fee. The fact that lessee's employee, responsible for submitting the rental payment, was home 1 day with his ill wife and was overburdened with extraordinary business matters, does not justify reinstatement.

Thomas H. Walpod, 61 IBLA 287 (Feb. 2, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Neither ignorance of the law nor a business or pleasure trip justifies late payment.

James B. Chudnow, 62 IBLA 13 (Feb. 23, 1982)

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

David E. Cooley, Jr., 62 IBLA 67 (Feb. 25, 1982)

Robert S. Hughes, Helen G. Hughes, 66 IBLA 304 (Aug. 24, 1982)

Upon failure of a lessee to pay full rental on or before the anniversary date of a lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law, where the deficiency exceeds the permissible amount of $10 or 5 percent of the total due, the amount permitted to be made up under 43 CFR 3106.2-1.

Where a proposed assignment of an oil and gas lease has not been approved by BLM and the lease has automatically terminated by operation of law for failure to pay rental timely, only the original lessee as the holder of record of the lease, and not the potential assignee, may have the lease reinstated on the ground that due diligence was exercised or that late payment was justified.

Grace Petroleum Corp., 62 IBLA 180 (Mar. 8, 1982)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

A notice of termination is sent to the lessee of a terminated oil and gas lease only if the lessee has tendered payment of the rental within 20 days after the anniversary date.

Sun Oil Co., 63 IBLA 26 (Mar. 26, 1982)

The lessee of an oil and gas lease issued after Sept. 2, 1960, that has reached the end of its primary term must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1976) on or before the regular anniversary date of the lease. Failure to submit the rental timely results in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1976).

Gulf Oil Corp., 63 IBLA 296 (Apr. 23, 1982)

An assignee of a preexisting oil and gas lease which is held by BLM to have been terminated by operation of law has standing to appeal, even though the assignment has not yet been approved, although BLM may not be required to give separate notice of termination to such an assignee.

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved communitization agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Upon a determination that an oil and gas lease terminated because no drilling operations were being performed on the leased lands, or for the lease under an approved communitization agreement, on the last day of the lease term, the lessee of record and its de facto assignee are entitled to a hearing on issues of fact, where they have alleged that the well was actually spudded prior to midnight on the relevant date.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the Bureau of Land Management State Office on or before the anniversary date.

I. W. Lovelady (Lessee), Liberty Oil & Gas Corp. (Appellant), 64 IBLA 123 (May 19, 1982)

Peter H. Buehler, 67 IBLA 242 (Sept. 24, 1982)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was

OIL AND GAS LEASES--Continued

TERMINATION--Continued

either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Aleinex U.S.A., Inc., 64 IBLA 274 (June 2, 1982)

Victory Land and Exploration Co., 65 IBLA 373 (July 20, 1982)

Robert G. Armstrong et al., 67 IBLA 357 (Oct. 6, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Depositing the payment in the mail on the same date it is due does not constitute reasonable diligence.

Liberty Oil & Gas Corp., 64 IBLA 277 (June 3, 1982)

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

Trend Resources Ltd., 64 IBLA 383 (June 17, 1982)

Rose L. Terenzi, 68 IBLA 21 (Oct. 19, 1982)

Where the owner of a lease that has terminated pursuant to 30 U.S.C. § 188(b) (1976) for failure to make timely annual rentals fails to pay the full rent within 20 days of the lease anniversary date, a petition for reinstatement is properly denied.

The notice of termination referred to in 43 CFR 3108.2-1 is sent to an oil and gas lessee only if the full amount of the rental due has been paid or tendered within 20 days after the lease anniversary date.

Tesoro Petroleum Corp., 65 IBLA 99 (June 24, 1982)

An oil and gas lease which is in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no approved reworking or drilling operations are commenced within 60 days of cessation of production.

John G. Swanson, 66 IBLA 200 (Aug. 13, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." Delivering the rental payment to BLM after it is due does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. The breakdown of a system for payment of lease rentals allegedly because of confusion attributed to a probate lawsuit is not a sufficiently

OIL AND GAS LEASES--Continued

TERMINATION--Continued

extenuating circumstance outside the lessee's control to justify late payment.

Zions First National Bank, 67 IBLA 43 (Sept. 8, 1982)

An oil and gas lease terminated automatically for untimely payment of rental may be reinstated upon proof that reasonable diligence was exercised. Mailing payment to the Bureau of Land Management after it is due does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. Inadvertently sending, prior to the anniversary date, a rental check which is not negotiable by the Bureau of Land Management is not a circumstance outside the control of the lessee and does not justify a subsequent late payment of rental.

Kristie B. Cobb, 67 IBLA 59 (Sept. 9, 1982)

"Paying quantities." For the purposes of the extension provision of 30 U.S.C. § 226(j) (1976) relating to leases committed to a unit plan of development, "paying quantities" requires production sufficient to recover the costs of operation and marketing but does not include recovery of drilling expenditures.

Yates Petroleum Corp. et al., 67 IBLA 246 (Sept. 24, 1982) 89 I.D. 480

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was justifiable. A late payment will not be excused where payment was transmitted after the due date and the lessee asserts that he was unaware of the appropriate due date.

Rhorrc Associates, 68 IBLA 92 (Oct. 22, 1982)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Reliance upon receiving a courtesy billing notice before the due date can neither prevent the lease from terminating by operation of law nor serve to justify a failure to pay the full lease rental in a timely manner.

A notice of termination is sent to the lessee of a terminated oil and gas lease only if the lessee has tendered payment of the rental within 20 days of the anniversary date.

Richard C. Hubbard, 68 IBLA 170 (Nov. 4, 1982)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

Where BLM holds that a noncompetitive oil and gas lease has expired because drilling operations were not diligently pursued after the end of its primary term and on appeal the operator presents evidence raising an issue of fact regarding drilling operations, the case will be remanded for a factual determination of whether the lease is entitled to a 2-year extension under 43 CFR 3107.2-3.

Christian F. Huber, 68 IBLA 356 (Nov. 22, 1982)

Where the record shows that, at the end of the primary term of an oil and gas lease, there is no production of oil or gas in paying quantities from the lease area, and no well capable of such production, the lease expires at the end of its term in the absence of diligent drilling operations initiated prior to expiration or a suspension of the lease.

A timely-filed application for suspension of an oil and gas lease is an appropriate vehicle for protecting the rights of a lessee where prejudice is threatened by delay in granting an application for a permit to drill a well without fault of the lessee. Although an application for suspension filed prior to lease expiration may be approved retroactively after the expiration date, the lease expires at the end of its term if no application for suspension is filed prior to the expiration date.

Fuel Resources Development Co., 69 IBLA 39 (Nov. 29, 1982)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. The fact that appellant "commutes" to his place of business in California from his home in Illinois, does not justify late payment.

Donald L. Darrow, 69 IBLA 62 (Nov. 29, 1982)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Where a lessee misdirects a lease rental payment to the wrong Bureau of Land Management office and it arrives at the office on the anniversary date of the lease, there can be no finding of reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. An accidental deviation in a lessee's normal payment procedure which results in payment being misdirected to the wrong Bureau of Land Management office is not a circumstance outside the lessee's control.

Gulf Oil Corp., 69 IBLA 263 (Dec. 21, 1982)

It is the responsibility of a lessee to see that any payment tendered for annual rental of an oil and gas lease is so identified that the appropriate Bureau of Land Management office can credit the payment to the proper lease account. Where the official assignment creating the lease contains the correct serial number, and where the lessee has previously been given a courtesy notice and receipts bearing the correct identification number, but the lessee does not return the notice with his payment and, instead, includes an incorrect identification number on his payment check, he has not adequately identified his payment, and the lease terminates by operation of law for failure to pay rental on or before the anniversary date of the lease.

Pyro Energy Corp., 69 IBLA 327 (Dec. 28, 1982)

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to lack of reasonable diligence on the part of the lessee.

Dyck Oil Co., 70 IBLA 97 (Jan. 11, 1983)

No lease for lands on which there is a well capable of producing oil and gas in paying quantities shall expire because the lessee fails to produce, unless the lessee fails to place the well in a producing status within 60 days of receipt of notice to do so. Upon a BLM determination that a lease has expired at the end of its extended term because the well on the leasehold is not capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

C & K Petroleum, Inc., Twin Arrow, Inc., 70 IBLA 354 (Feb. 3, 1983)

With regard to oil and gas leases, forfeitures are favored by the law, so that such leases are to be construed liberally in favor of the lessor and provisions for forfeiture strictly enforced.

The Department is obligated to notify only the lessee of record about the termination of an oil and gas lease for cessation of production. If the lessee has created an interest in any other person, whether by assignment, agreement, or otherwise, such other person must look to the lessee of record to provide notice of the termination of the lease or for redress if such notice is not provided.

KerrCo Drilling Co., et al., 71 IBLA 53 (Feb. 22, 1983)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

The Department of the Interior is without authority under 30 U.S.C. § 188(c) (1976) to reinstate an oil and gas lease terminated automatically by operation of law for failure to pay annual rental timely where the lessee fails to submit the entire amount due within 20 days of the anniversary date of the lease, regardless of alleged extenuating circumstances which might otherwise constitute grounds for reinstatement.

Pelagus Petroleum Corp., 71 IBLA 216 (Mar. 16, 1983)

"Paying quantities." For the purposes of a communitization agreement providing for the extension of such agreement so long as communitized substances are produced in paying quantities, "paying quantities" requires production sufficient for the lessee to recover the costs of operation and marketing but not to recoup drilling costs.

Hoover & Bracken Energies, Inc., 71 IBLA 220 (Mar. 17, 1983)

Under 30 U.S.C. § 188(b) (1976), an oil and gas lease terminates automatically by operation of law for failure to pay the annual rental timely. Automatic termination applies to the regular, annual rental payment, the necessity for which a lessee has continuous notice, and does not apply where a lessee has no way of knowing that the obligation has accrued. Where, on the anniversary date of a lease, there is no well capable of production in paying quantities on a lease, the lease is not committed to an approved communitization agreement, and the lessee has not been notified of any change in the rental status of the lease, the lessee is held to have known that rental was due and the lease automatically terminated for failure to pay the rental timely.

Under 30 U.S.C. § 188(c) (1976), the Department of the Interior is without authority to reinstate an oil and gas lease terminated automatically by operation of law for failure to pay annual rental timely where the lessee fails to submit the entire amount due within 20 days of the anniversary date of the lease, regardless of alleged extenuating circumstances which might otherwise constitute grounds for reinstatement.

Season Resources Co., 71 IBLA 224 (Mar. 17, 1983)

An oil and gas lease which is in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no approved reworking or drilling operations are commenced within 60 days of cessation of production.

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Ingel Energy Corp., 71 IBLA 237 (Mar. 18, 1983)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Burton/Hawks, Inc., 71 IBLA 336 (Mar. 28, 1983)

Alyson A. Allison, James M. Allison III, 72 IBLA 333 (Apr. 29, 1983)

Under 30 U.S.C. § 188(c) (1976), a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

Untimely payment of the annual rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Breakdowns in a lessee's procedures for handling rental payments resulting from internal changes in its operations do not establish justification for a late rental payment.

Tenneco Oil Co., 71 IBLA 339 (Mar. 28, 1983)

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the payment is received within 20 days after the date of termination.

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2).

Mailing or delivering the payment after it is due does not meet this requirement. The fact that appellant's computer system was "down" does not justify late payment.

Joseph F. Broda, 71 IBLA 390 (Mar. 29, 1983)

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payment sufficiently in advance of the anniversary date to account

OIL AND GAS LEASES--Continued

TERMINATION--Continued

for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2). Untimely payment may be justifiable if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

James H. Withycombe, 72 IBLA 5 (Apr. 4, 1983)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates if the lessee fails to pay the the annual rental on or before the anniversary date. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was paid timely. A terminated lease may be reinstated under 30 U.S.C. § 188(c) (1976) only if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

Buttes Resources Co., 72 IBLA 18 (Apr. 4, 1983)

Reasonable diligence in submitting an annual rental payment normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. A late payment is not justified where there is a pending assignment of the lease which has not been approved by BLM and the lessee incorrectly assumes that the assignment will have been approved by the rental due date or where the lessee is in the process of moving its corporate offices.

MP Energy Corp., 72 IBLA 34 (Apr. 6, 1983)

Where an oil and gas lease is extended beyond its expiration date because of diligent drilling operations, it nevertheless terminates by operation of law upon failure to pay annual rental for the 11th year on or before the anniversary date of the lease.

Getty Oil Co., 72 IBLA 39 (Apr. 6, 1983)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates upon failure to pay the annual rental on or before the anniversary date of the lease. The date of receipt of the rental and not the date of mailing controls in determining whether rental on an oil and gas lease was timely paid. A terminated lease may be reinstated pursuant to 30 U.S.C. § 188(c) (1976) only if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

The automatic termination of an oil and gas lease for failure to pay timely the annual rental is not subject to the general principle of law that forfeitures are viewed with disfavor and will be enforced only when circumstances require it. Courts have held in connection with oil and gas leases that forfeitures are

OIL AND GAS LEASES--Continued

TERMINATION--Continued

favored by the law so that such leases are to be construed liberally in favor of the lessor and provisions for forfeiture strictly enforced.

John E. Connor, 72 IBLA 83 (Apr. 13, 1983)

In support of reinstatement of an oil and gas lease that has terminated automatically as the result of the lessee's failure to pay the annual rent on or before the anniversary date of the lease, the petitioner/lessee must show either that the late payment was not due to a lack of reasonable diligence or that the late payment was otherwise justified.

Reasonable diligence ordinarily requires mailing the annual rental payment for a lease sufficiently in advance of the anniversary date of the lease to account for normal delays in the collection, transmittal, and delivery of the mail. The mailing of the annual rental payment on the anniversary date of the lease does not constitute reasonable diligence.

The untimely payment of the annual rent for a lease may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease; however, such justification is not shown by a lessee's assertion that he was unavoidably detained during business travel near the anniversary date of a lease.

Vernon I. Berg, 72 IBLA 211 (Apr. 21, 1983)

Under 30 U.S.C. § 188(c) (1976), a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justified. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

O. L. Foster, 72 IBLA 367 (May 3, 1983)

Reinstatement of a terminated oil and gas lease pursuant to 30 U.S.C. § 188(c) (1976) requires a showing that the late rental payment was either justifiable or not due to a lack of reasonable diligence. Neither delay in receipt of a courtesy billing notice nor a change in corporate offices and personnel will ordinarily justify a late rental payment.

Crest Oil & Gas Corp., 72 IBLA 370 (May 4, 1983)

An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not actually received by the Bureau of Land Management State Office on or before the anniversary date.

The Department has no authority to reinstate an oil and gas lease which has terminated by operation of law unless the rental payment is received within 20 days after the date of termination.

Francis X. Furlong II, 73 IBLA 67 (May 16, 1983)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

It is the lessee's responsibility to see that any payment tendered for annual rental for an oil and gas lease is so identified that BLM can credit payment to the proper lease account. Where the lessee shows that the payment was received and BLM unreasonably failed to credit the payment to the lease account indicated on the billing notice returned with the payment, the lease is properly held not to have terminated.

Hooper Energy, Inc., 73 IBLA 101 (May 23, 1983)

Where a lessee represents to BLM that 40 acres of a 48.98 acre lease has been committed to a producing unit and inquires about the rental amount next due, BLM's answer that rental need be paid only on the 8.98 acres outside the unit is correct. But if, in fact, the other 40 acres has not been committed to such a unit on the anniversary date of the lease, the payment of only the fractional rental will result in the automatic termination of the lease.

Where, on appeal from the automatic termination of an oil and gas lease pursuant to 30 U.S.C. § 188(b), appellant submits an affidavit in support of its assertion that no termination could occur under the statute because there was present on the lease a well capable of producing oil or gas in paying quantities on the anniversary date of the lease, and that statement is absolutely false, the misrepresentation is one of material fact which, if knowingly and willfully made, constitutes a criminal violation of 18 U.S.C. § 1001 (1976).

Funk Exploration, 73 IBLA 111 (May 23, 1983)

Where the record shows that, at the end of the primary term of an oil and gas lease, there is no production of oil or gas in paying quantities from the lease area, and no well capable of such production, the lease expires at the end of its term in the absence of diligent drilling operations initiated prior to expiration or a suspension of the lease.

No suspension of an oil and gas lease will be granted in the absence of a well capable of production, "except where MMS [now BLM] directs or assents to a suspension in the interest of conservation." 43 CFR 3103.3-8(a).

Hertel Drilling Co., 74 IBLA 228 (July 19, 1983)

In the absence of actual production of oil and gas in paying quantities, a lease that has concluded its primary term and is enjoying a 2-year extension by reason of actual drilling operations (43 CFR 3107.2-3) will not expire if there exists on the lease a well capable of producing oil or gas in paying quantities and BLM has failed to serve notice on the lessee by registered or certified mail to place such well in producing status within a reasonable time.

Hancock Enterprises, 74 IBLA 292 (July 27, 1983)

Reinstatement of an oil and gas lease terminated pursuant to 30 U.S.C. § 188(c) (1976) requires a showing by the lessee that the late payment was either justifiable or not due to a lack of reasonable diligence. Hand deliverance of the rental payment after the due date is not reasonable diligence. Neither reliance on a courtesy notice nor the failure of an assignor of an unapproved assignment to protect the assignee's interest will justify the late payment.

Harry C. Peterson, 75 IBLA 195 (Aug. 22, 1983)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

In order for the failure to pay the annual rental for a noncompetitive oil and gas lease to be considered justifiable and subject to reinstatement under 30 U.S.C. § 188(c) (1976), it must be caused by factors outside the lessee's control. Where the lessee does not demonstrate that the combination of the start of a new school year, the start of a new career for her husband, and the chronic illness of her mother-in-law during the month preceding the lease anniversary date were the proximate cause of her late rental payment, failure to pay the rental timely cannot be considered justifiable and the lease will not be reinstated.

Joanne F. Bechtel, 76 IBLA 1 (Sept. 6, 1983)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

A late rental payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected her actions in paying the rental.

Eleanor L. B. Dubey, 76 IBLA 177 (Sept. 30, 1983)

Where an oil and gas lessee timely pays its annual rental in accordance with an erroneous statement issued by the Bureau of Land Management, absent issuance of a notice of a deficiency as provided by 43 CFR 3108.2-1(b), the lease may not be held to have terminated as a matter of law because of the operation of the proviso found at 30 U.S.C. § 188(b) (1976), creating a statutory exception to the rule that failure to pay the lease rental on the anniversary date terminates the lease.

McClellan Oil Corp., 76 IBLA 322 (Oct. 19, 1983)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447, amending sec. 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976), affords an additional opportunity to reinstate a lease terminated by operation of law where the rental was not tendered within 20 days of termination if certain additional conditions are met. For a lease which terminated prior to enactment of sec. 401 the lessee must have tendered the rental to BLM prior to the date of enactment to qualify the lease for reinstatement.

R. K. O'Connell, Texas American Oil Corp., et al., 76 IBLA 376 (Oct. 25, 1983)

Larry Chambers, 77 IBLA 214 (Nov. 22, 1983)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

In the absence of an approved communitization agreement involving a Federal oil and gas lease, production from fee land within a state spacing unit cannot be attributed pro rata to Federal oil and gas leases within the spacing unit, and where there is no drilling operation, producing well or well capable of production of oil or gas in paying quantities on such Federal lease, the lease expires at the end of its primary term.

Union Oil Co. of California, 77 IBLA 32 (Oct. 31, 1983)

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at an earlier date.

Eleanor V. Breda, 77 IBLA 63 (Nov. 7, 1983)

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved cooperative or unit agreement, on the last day of the lease term, with a bona fide intent to complete a producing well. Where the lessee asserts that actual drilling operations were being diligently pursued for the lease in that a well was being tested and evaluated on the last day of the lease term, yet the record of daily activities for the well shows that it was shut in pending evaluation for 2 months prior to and 2 months following the expiration date, and the lessee provides no evidence to support its allegation, the decision holding the lease to have expired will be affirmed.

JMD III, Inc., 77 IBLA 164 (Nov. 17, 1983)

Where a 1941 private oil and gas lease provides that the lease be held by production beyond its 3-year term and where there was no evidence of production beyond 1956 on the leased lands when the Forest Service acquired the lands in 1976, an "assignment" of such lease in 1979 is invalid since the lease terminated when production ceased.

Constitution Petroleum Co., Inc., 78 IBLA 3 (Dec. 12, 1983)

Under 30 U.S.C. § 188(c) (1976), a lease terminated automatically for untimely payment of annual rental may be reinstated where the rental is paid within 20 days and upon receipt of a petition for reinstatement showing that reasonable diligence was exercised or that the failure to make timely payment was justifiable. In the absence of such proof, the petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence. The postmark date of a rental payment is generally considered the date of mailing,

OIL AND GAS LEASES--Continued

TERMINATION--Continued

unless there is satisfactory corroborating evidence to support the lessees' assertion that the mailing occurred at an earlier date.

A late payment may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessees' control which affected their actions in paying the rental fee. Unsubstantiated speculation as to errors in handling and processing the payment by the U.S. Postal Service is not evidence of extenuating circumstances which will justify the untimely rental payment.

Arthur R. Solender, Lynn Devereaux, 79 IBLA 70 (Feb. 13, 1984)

Under 30 U.S.C. § 188(c) (1976), a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justifiable. In the absence of such proof, a petition for reinstatement is properly denied.

Reasonable diligence ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. Mailing a rental payment after it is due does not constitute reasonable diligence.

Untimely payment of the annual rental may be justifiable if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Being away from the office on business does not establish that late rental payment was justifiable.

Anthony P. Hoyer, 79 IBLA 148 (Feb. 23, 1984)

To justify failure to pay annual rental of an oil and gas lease so as to entitle appellant to reinstatement of lease pursuant to 30 U.S.C. § 188(c) (1976), the failure to make timely payment must be caused by factors beyond the control of the lessee. Where the record establishes that the lessee failed to send the rental payment in a timely fashion for unexplained reasons, and then failed to discover the missed payment until nearly 1 year later, there is no justification for the failure to make timely payment which will permit reinstatement.

A lease terminated by operation of law for failure to make timely payment can be reinstated upon proof of reasonable diligence in attempting to make payment or a showing that failure to make timely payment was justifiable, or, under certain circumstances, in the case of inadvertent failure to pay. Where appellant did not offer to pay annual rental due on Sept. 1, 1982, until Aug. 24, 1983, and offered no proof of circumstances to justify nonpayment on the due date, the record fails to support the reinstatement of an oil and gas lease pursuant to any provision of 30 U.S.C. § 188 (1976) as amended.

Davis Oil Co., 79 IBLA 218 (Feb. 29, 1984)

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

(1976). Under 30 U.S.C. § 188(c) (1976), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Sec. 401(d) of the Federal Oil and Gas Royalty Management Act, 30 U.S.C.A. § 188(d) (West Supp. 1983), affords an additional opportunity to reinstate a lease terminated by operation of law where the rental was not tendered within 20 days of termination, if certain additional conditions are met. Where a lease terminates on or after enactment of sec. 401 (Jan. 12, 1983), the lessee must file a petition for reinstatement together with required back rental and royalty accruing from the date of termination, on or before 60 days from receipt of notice of termination or 15 months after termination, whichever is earlier.

Harriet C. Shaffel, 79 IBLA 228 (Feb. 29, 1984)

A lessee seeking reinstatement of an oil and gas lease under sec. 401(d)(2)(A)(i) of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C.A. § 188(d)(2)(A)(i) (West Supp. 1983), must tender in full prior to Jan. 12, 1983, the rental due for the lease sought to be reinstated.

Jerry Chambers Exploration Co., Blackbird Co., 80 IBLA 123 (Apr. 3, 1984)

The partial commitment of lands within an oil and gas lease to a unit agreement segregates the lands in the lease into separate leases embracing those lands committed to the unit and those lands not unitized. The lease committed to the unit continues in effect for as long as committed provided that production is obtained within the unit prior to expiration of the term of the lease. Upon commitment and segregation of the nonproducing portion of a producing oil and gas lease prior to expiration of its primary term or its extended term (other than by production), production on the nonunitized portion of the lease will not serve to extend the unitized portion.

Conoco, Inc., 80 IBLA 161 (Apr. 11, 1984) 91 I.D. 181

Reinstatement of a terminated oil and gas lease pursuant to 30 U.S.C. § 188(c) (1982) requires a showing by the lessee that the late rental payment was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after the due date is not reasonable diligence. Neither reliance on a courtesy notice nor the complexity of the lessee's business affairs will justify a late payment.

Where a lessee files a petition for reinstatement of a terminated oil and gas lease in response to notification of his rights to petition for reinstatement under 30 U.S.C. § 188(c) (1982) and 30 U.S.C. § 188(d) and BLM denies reinstatement only on the basis of noncompliance with the former statutory provision, the case will be remanded to BLM for consideration of reinstatement under the latter provision.

Larry W. Ferguson, 81 IBLA 167 (May 31, 1984)

The holder of a noncompetitive oil and gas lease terminated by operation of law for failure to pay the annual rental timely is not entitled to reinstatement of his lease pursuant to sec. 31(c) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(c) (1982), where the late payment was mailed to BLM after the lease anniversary date and the lessee presents no evidence in support of the assertion that the reason

OIL AND GAS LEASES--Continued

TERMINATION--Continued

for the late payment was illness at or near the lease anniversary date.

William F. Braddock, 81 IBLA 235 (June 6, 1984)

A petition for reinstatement pursuant to 30 U.S.C. § 188(c) (1982) of an oil and gas lease which has terminated by operation of law for failure to make timely payment of the annual rental will be denied where the petition is filed more than 15 days after receipt of notification of termination of the lease.

Kay Fink, 81 IBLA 381 (June 28, 1984)

The first-qualified applicant for an oil and gas lease acquires no vested right to have a lease issued to him but only a right to be preferred over other applicants if a lease is to be issued and his application may be rejected if it is determined that a previously terminated lease including the lands sought for leasing should be reinstated under sec. 401 of the Federal Oil and Gas Royalty Management Act, P.L. 97-451, 96 Stat. 2447, which amended sec. 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1982).

Sec. 401 of the Federal Oil and Gas Royalty Management Act, P.L. 97-451, 96 Stat. 2447, amending sec. 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1982), affords an additional opportunity to reinstate a lease terminated by operation of law where it is shown to the satisfaction of the Secretary that failure to timely pay the rental was inadvertent, provided certain criteria are met.

While the assignee of an oil and gas lease may not exercise any control or dominion over the lease prior to approval of the assignment, the assignee is not precluded from paying the annual rental in an effort to avoid termination of the lease or to qualify the lease for reinstatement upon petition by the lessee of record.

Nola Grace Ptasynski, 82 IBLA 48 (July 11, 1984)

The Secretary has no authority, under 30 U.S.C. § 188(c) (1982), to reinstate a lease terminated for failure to pay rentals timely unless payment has been made within 20 days of lease termination.

The Secretary may reinstate leases terminated on or after Jan. 12, 1983, if certain conditions are met and a petition for reinstatement plus required back rentals are filed the earlier of 60 days after lessee has received notice of termination or 15 months after lease termination. The submission of a rental check which is later dishonored by the drawee bank because of insufficient funds is neither a payment nor a tender of payment.

John F. Clifton, 82 IBLA 126 (July 24, 1984)

When the lessee fails to pay rentals on or before the anniversary date of the lease, where no oil or gas is being produced in paying quantities on the leased premises, then the lease shall automatically terminate by operation of law; however, if the full rental amount has been paid within 20 days of the lease anniversary date, and the failure was justifiable or not due to a lack of reasonable diligence, then the Secretary may reinstate the lease.

Leo M. Krenzler, 82 IBLA 205 (Aug. 20, 1984)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1982). Under 30 U.S.C. § 188(c) (1982), the Department of the Interior has no authority to reinstate a terminated oil and gas lease where the rental payment is not tendered at the proper office within 20 days after the due date.

Reinstatement of a terminated noncompetitive oil and gas lease under sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 188(d), (e) (1982), requires payment by the lessee of rental at the rate of $5 per acre as well as reimbursement of administrative costs (up to $500) and the cost of publishing notice in the Federal Register.

Maynard J. Bonesteel, 82 IBLA 237 (Aug. 23, 1984)

A noncompetitive oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law upon failure of a lessee to pay rental on or before the anniversary date of the lease. If deficient payment has been made on or before the anniversary date but the deficiency is nominal, the lease does not terminate unless the lessee fails to pay the deficiency within the period prescribed in a notice of deficiency. Departmental regulation 43 CFR 3108.2-1(b), 48 FR 33673 (July 22, 1983), provides that a deficiency shall be considered nominal if it is not more than $100 or more than 5 percent of the total payment due, whichever is less. Absent an affirmative billing error by BLM, an oil and gas lessee is not entitled to a notice of deficiency and an opportunity to correct it unless the deficiency is nominal.

Louise V. Lee, 83 IBLA 50 (Sept. 24, 1984)

BLM does not have the authority to reinstate a noncompetitive oil and gas lease which expired at the end of its 2-year extended term because of lack of production in paying quantities.

Joseph J. C. Paine, 83 IBLA 145 (Oct. 9, 1984)

Reinstatement of a terminated oil and gas lease pursuant to 30 U.S.C. § 188(c) (1982), referred to as a class I reinstatement, requires a showing by the lessee that the late rental payment was either justifiable or not due to a lack of reasonable diligence. Inadvertent mailing of the rental payment to an improper office without sufficient time for forwarding of the payment or return to the lessee so that payment can be properly sent is not reasonable diligence.

The provisions of 30 U.S.C. § 184(h)(2) (1982) protecting the interests of bona fide purchasers from certain actions by the Department to cancel an oil and gas lease are not applicable to automatic termination of a lease by operation of law for failure to pay the rental on or before the anniversary date under 30 U.S.C. § 188(b) (1982).

Estate of Arlyne Langdale, 83 IBLA 190 (Oct. 16, 1984)

OIL AND GAS LEASES--Continued

TERMINATION--Continued

Pursuant to sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, amending sec. 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1982), the royalty rate imposed on a reinstated oil and gas lease may not be less than 16-2/3 percent unless the Secretary finds that there are uneconomic or other circumstances which could cause undue hardship or premature termination of production, or if in the Secretary's judgment, it would be otherwise equitable to reduce the royalty rate. Where a lessee fails to provide credible evidence of such circumstances, a reduction in the royalty rate below 16-2/3 percent is not justified.

Sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982 provides the Secretary of the Interior with discretionary authority to reinstate terminated leases. Reinstated leases which were terminated for "inadvertent" failure to make timely rental payment shall be subject to the conditions contained in 30 U.S.C. § 188(e) (1982).

Gulf Oil Corp., 83 IBLA 289 (Oct. 25, 1984)

Pursuant to 30 U.S.C. § 188(b) (1982), when the lessee fails to pay rentals on or before the anniversary date of the lease, and no oil and gas in paying quantities is being produced on the leased premises, the lease shall automatically terminate by operation of law. The Secretary may reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1982), if the full rental is paid within 20 days of the lease anniversary date, and the failure to timely pay the rental was justifiable or not due to a lack of reasonable diligence. Reliance upon receipt of a courtesy notice can neither prevent a lease from terminating by operation of law nor serve to justify a failure to timely pay the rental. When the lessee has actual notice that the rental was due, and the failure to timely pay the rental was due to the lessee's own neglect, the failure to timely pay is neither justifiable nor demonstrative of reasonable diligence. Therefore a petition for reinstatement must be rejected.

Harry L. Beyers, 84 IBLA 158 (Dec. 13, 1984)

Under 30 U.S.C. § 188(c) (1982), a lease terminated automatically for late payment of annual rental may be reinstated upon receipt of a petition for reinstatement showing that reasonable diligence was exercised or that the failure to pay timely was justifiable. In the absence of such proof, *e.g.*, where the lessee mailed the payment after the lease anniversary date as a result of an oversight, the petition for reinstatement is properly denied.

James P. Felt, 84 IBLA 205 (Dec. 27, 1984)

TWENTY-YEAR LEASES

To obtain a renewal of a 20-year oil and gas lease, the lessee should file an application for renewal at least 90 days prior to the expiration of the lease. This requirement is permissive, however, and a delay in filing the application may be excused in the presence of special circumstances.

T & N Corp., Larry G. McLatchy, 70 IBLA 366 (Feb. 3, 1983)

OIL AND GAS LEASES--Continued

UNIT AND COOPERATIVE AGREEMENTS

Where the statute and operating regulations each provide that gas used for production purposes on the leasehold shall be excepted from royalty due the United States, it is error for the Geological Survey to require payment of royalty for gas produced from the Embar-Tensleep participating area and used in operations in the Madison participating area within the same leasehold under the Elk Basin Unit Agreement.

Amoco Production Co., 45 IBLA 16 (Jan. 8, 1980)

An order by a GS conservation manager directing holders of two adjacent outer continental shelf oil and gas leases covering a single producing geological structure to unitize will be affirmed where the record shows that the producing mechanism of the structure is a gas cap almost wholly under the exclusive control of the holders of one of the leases, and that improper development of gas from this cap would reduce the ultimate recovery of oil and gas from the structure, as the Department has the authority to require unitization in order to conserve the resources of the outer continental shelf under sec. 5(a) of the OCS Lands Act, as amended.

Placid Oil Co. et al., 46 IBLA 392 (Apr. 10, 1980)

The automatic termination provision of 30 U.S.C. § 188(b) (1976) is applicable to a lease whose lands formed part of a unit upon which production has at all times been maintained, but were thereafter eliminated therefrom and simultaneously segregated by reason of their inclusion in a second unit, since terminated.

Bass Enterprises Production Co., 47 IBLA 53 (Apr. 14, 1980)

An oil and gas lease committed to a unit agreement expires at the end of its primary term if there is then no well capable of production of oil or gas in paying quantities within it or any lease committed to the unit, and there are no other statutory reasons for extending it.

Where the State Office determines that an oil and gas lease committed to a unit has expired at the end of its primary term because there is not within it or the unit a well capable of production in paying quantities, the lessee is entitled to notice and an opportunity for a hearing on that issue where it has presented evidence that raises an issue of fact regarding the status of wells in the unit.

Burton/Hawks, Inc., 47 IBLA 125 (Apr. 29, 1980)

Federal lands included in a unit agreement approved pursuant to 30 CFR Part 226 or a communitization agreement approved pursuant to 43 CFR 3105.2 are treated like an individual oil and gas leasehold for the purpose of determining whether rights-of-way are required for facilities located thereon.

Right-of-Way Requirements for Gathering Lines and Other Production Facilities Located Within Oil and Gas Leaseholds, M-36921 (June 19, 1980) 87 I.D. 291

OIL AND GAS LEASES--Continued

UNIT AND COOPERATIVE AGREEMENTS--Continued

Where a unit agreement specifies that a determination as to whether a well completed prior to the effective date of the agreement is capable of producing unitized substances in paying quantities will be deferred until an initial participating area is established as the result of completion of a well for production in paying quantities under the unit agreement, wells completed prior to the effective date of the agreement and capable of production in paying quantities will not extend a unitized lease upon which no such well exists.

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold or for the lease under an approved unit agreement on the last day of the lease term with a bona fide intent to complete a producing well.

Energy Trading Inc., 50 IBLA 9 (Sept. 5, 1980)

The authority to segregate partially unitized oil and gas leases must be clear, since segregation creates two new leases from a single lease and fundamentally modifies a lessee's legal rights and obligations. Such authority will not be presumed or extrapolated from a general grant of regulatory authority.

New OCS Unitization Rules--Authority of the Secretary to Segregate Partially Unitized Offshore Oil and Gas Leases, M-36927 (Dec. 16, 1980) 87 I.D. 616

An order by a Conservation Manager of the Geological Survey directing oil and gas lessees of Outer Continental Shelf lands to subscribe to a unit plan allocating production from a specific reservoir on the basis of original net acre-feet of gas-bearing sand, i.e., the volume of gas-bearing sand in place prior to production of any gas from the reservoir, will be affirmed where such a plan of allocation of production is in common use on OCS lands and it has not been shown that the order is arbitrary or capricious.

Texaco, Inc., Gulf Oil Exploration and Production Co., 51 IBLA 332 (Dec. 29, 1980) 87 I.D. 648

A determination by the Geological Survey to include certain land within the participating area of a producing oil or gas well established pursuant to an approved unit agreement will not be set aside where it is not arbitrary or capricious and is supported by competent evidence, and the appellant has not demonstrated by a clear and definite showing that the determination was in error.

When the Geological Survey determines that certain lands have been reasonably proven to be productive in paying quantities and approves a revision to a participating area to include those lands, later exclusion of the lands must be based on a finding that the lands did not contain unitized substances in paying quantities. Mechanical failure of a well on those lands and resulting failure to produce does not support exclusion.

Davis Oil Co., 53 IBLA 62 (Mar. 2, 1981)

OIL AND GAS LEASES--Continued

UNIT AND COOPERATIVE AGREEMENTS--Continued

A noncompetitive oil and gas lease may only be issued to the first-qualified applicant therefor. An extension of time may be granted to supply necessary evidence of joinder in a unit agreement prior to lease issuance and a lease offer will not be rejected in favor of a junior offeror where an extension is timely requested and the requested evidence is provided in good faith and without unreasonable delay thereafter.

Barbara J. Wiernberger, Thomas H. Connelly, 53 IBLA 112 88 I.D. 347 (Mar. 4, 1981)

Where a unit agreement specifies that a determination whether a well completed prior to the effective date of the agreement is capable of producing in paying quantities will be deferred until completion of a well capable of producing in paying quantities under the unit agreement, wells completed prior to the effective date of the agreement and capable of production in paying quantities will not extend a unitized lease upon which no such well exists.

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold or, for the lease under an approved unit agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Energy Trading, Inc., 55 IBLA 167 (June 9, 1981)

Determinations by Geological Survey delineating two communicating gas-bearing structures or sands and providing that unitization of leases producing gas from these sands is in the interest of conservation will be affirmed where the record shows that these determinations were reasonably based on facts of record.

A challenge to decisions by Geological Survey (1) that various outer continental shelf wells are producing from common reservoirs, i.e., that they are "competitive," and (2) that unitization of these wells is necessary in the interest of conservation, will not be sustained where there is a preponderance of substantial and persuasive evidence to support the Survey's findings.

Where Geological Survey has ordered all outer continental shelf lessees with producing wells in two delineated competitive reservoirs to comply with a plan to allocate production on the basis of percentage of original net acre-feet of gas sand, this order will be affirmed in the absence of a clear showing that another method of allocation is superior.

Texaco Oil Co., Texaco, Inc., 57 IBLA 85 (Aug. 24, 1981)

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976), the evidence must show that actual drilling operations were being diligently pursued on the leasehold, or for the lease under an approved communitization agreement, on the last day of the lease term, with a bona fide intent to complete a producing well.

Texaco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

OIL AND GAS LEASES--Continued

UNIT AND COOPERATIVE AGREEMENTS--Continued

Where the parties to a unit agreement forward to Geological Survey documents evidencing their intention to terminate the unit but such documents are not mailed until the expiration date of one of the leases in the unit, such lease is not entitled to the 2-year extension provided by 30 U.S.C. § 226(j) (1976) for leases in effect at the termination of an approved unit plan.

Aquarius Resources Corp., 64 IBLA 153 (May 24, 1982)

Where a unit agreement approved by the Department provides that where a leased tract committed to the unit agreement is relinquished, unless the tract is included in a new lease within 6 months thereafter, the fee owner of the tract is deemed to have waived the right to lease such lands within a participating area in the unit and to have agreed, in consideration of compensation provided by the unit agreement, that operations under the unit agreement in the participating area shall not be affected by the relinquishment. The United States is considered to be the "fee owner" of unleased public domain in the context of the unit agreement.

Delco Development Corp., 66 IBLA 134 (Aug. 10, 1982)

Under regulations adopted pursuant to sec. 5(a) of the Outer Continental Shelf Lands Act, both before and after its amendment in 1978, the Geological Survey can direct two lessees on a single competitive offshore gas reservoir to enter into a unit agreement if doing so is "in the interest of conservation." Survey's decision to require unitization will be affirmed where, but for unitization, one of the lessees would have been entitled to drill an additional well or wells in order to protect its correlative rights, in view of the waste of expensive, critical offshore drilling resources and the potential for adverse environmental consequences which drilling the additional well would have entailed, and in view of the fact that such additional drilling would have done nothing to increase ultimate recovery.

Where actual production figures from a jointly produced offshore gas reservoir show that one party overproduced its entitlement to gas-in-place, as determined by Geological Survey, by a factor of almost 3, and where the record contains nothing suggesting that this party engaged in drilling practices that might have unfairly increased its production, the matter will be referred for a hearing to allow that party to show that Survey's entitlement determination is incorrect.

Sun Oil Co. et al. (Appellants), Shell Oil Co. (Appellee), 67 IBLA 80 (Sept. 10, 1982)

"Paying quantities." For the purposes of the extension provision of 30 U.S.C. § 226(j) (1976) relating to leases committed to a unit plan of development, "paying quantities" requires production sufficient to recover the costs of operation and marketing but does not include recovery of drilling expenditures.

Yates Petroleum Corp. et al., 67 IBLA 246 (Sept. 24, 1982) 89 I.D. 480

Where only a portion of an oil and gas lease is committed to an approved unit agreement, sec. 17(j) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(j) (1976), mandates the segregation of the noncommitted lands into a separate lease.

Sec. 17(j) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(j) (1976), contains no authority for the Department to segregate a unitized lease into

OIL AND GAS LEASES--Continued

UNIT AND COOPERATIVE AGREEMENTS--Continued

separate leases upon its partial elimination from a unit plan by reason of contraction of the unit area.

Marathon Oil Co. et al., 78 IBLA 102 (Dec. 20, 1983)

The partial commitment of lands within an oil and gas lease to a unit agreement segregates the lands in the lease into separate leases embracing those lands committed to the unit and those lands not unitized. The lease committed to the unit continues in effect for as long as committed provided that production is obtained within the unit prior to expiration of the term of the lease. Upon commitment and segregation of the nonproducing portion of a producing oil and gas lease prior to expiration of its primary term or its extended term (other than by production), production on the nonunitized portion of the lease will not serve to extend the unitized portion.

Conoco, Inc., 80 IBLA 161 (Apr. 11, 1984) 91 I.D. 181

Where the Minerals Management Service determines part of noncompetitive oil and gas leases issued in 1971 and 1972 to be within an undefined known geologic structure, a decision to increase rental for all acreage to $2 per acre is erroneous where the record shows the lease is committed to an approved unit plan with a well capable of production and a general provision for allocation of production. Where the terms of the leases specifically direct that the rental rate remain at $0.50 per acre for acreage outside a participating area, an increased rental rate is not appropriate for that acreage.

Picoance Partners, 82 IBLA 101 (July 24, 1894)

A finding that an oil and gas lease has expired for failure of one of several lessees of record to execute a joinder to a unit agreement for a producing unit will be set aside, in the absence of intervening rights in the leasehold, where a substantial allegation is made that an assignment of record was intended by the parties to convey all the interest of that lessee to an assignee who timely executed a joinder to the unit agreement.

Monsanto Co., 82 IBLA 108 (July 24, 1984)

Where a unit operator seeks to include certain acreage in a unit, BLM may properly declare the acreage not committed if all working interests have not been committed; however, such a determination will be set aside where on appeal BLM expresses its willingness to consider the acreage partially committed.

Cooks Energy Co., 82 IBLA 212 (Aug. 22, 1984)

WELL CAPABLE OF PRODUCTION

An oil and gas lease which is in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no approved reworking or drilling operations are commenced within 60 days of cessation of production.

Robert Hawkins, 65 IBLA 105 (Jan. 17, 1980)

John G. Swanson, 66 IBLA 200 (Aug. 13, 1982)

OIL AND GAS LEASES--Continued

WELL CAPABLE OF PRODUCTION--Continued

An oil and gas lease committed to a unit agreement expires at the end of its primary term if there is then no well capable of production of oil or gas in paying quantities within it or any lease committed to the unit, and there are no other statutory reasons for extending it.

Where the State Office determines that an oil and gas lease committed to a unit has expired at the end of its primary term because there is not within it or the unit a well capable of production in paying quantities, the lessee is entitled to notice and an opportunity for a hearing on that issue where it has presented evidence that raises an issue of fact regarding the status of wells in the unit.

Burton/Hawks, Inc., 47 IBLA 125 (Apr. 29, 1980)

Where a unit agreement specifies that a determination as to whether a well completed prior to the effective date of the agreement is capable of producing unitized substances in paying quantities will be deferred until an initial participating area is established as the result of completion of a well for production in paying quantities under the unit agreement, wells completed prior to the effective date of the agreement and capable of production in paying quantities will not extend a unitized lease upon which no such well exists.

Energy Trading Inc., 50 IBLA 9 (Sept. 5, 1980)

An oil and gas lease, which is in its extended term because of production, terminates when production ceases unless pursuant to 30 U.S.C. § 226(f) (1976): (1) reworking or drilling operations are begun within 60 days after cessation and are continued with reasonable diligence until production resumes; (2) the Secretary has ordered or consented to suspension of operations or production; or (3) for lands on which there is a well capable of production, the lessee places the well in production within 60 days of receipt of notice to do so.

Michael P. Grace, 50 IBLA 150 (Sept. 26, 1980)

An oil and gas lease which is in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no approved reworking or drilling operations are commenced within 60 days of cessation of production.

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

John Swanson, 51 IBLA 239 (Dec. 15, 1980)

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented

OIL AND GAS LEASES--Continued

WELL CAPABLE OF PRODUCTION--Continued

evidence raising an issue of fact regarding the status of the well.

Willard Pease Oil & Gas Co., 52 IBLA 379 (Feb. 19, 1981)

Where a unit agreement specifies that a determination whether a well completed prior to the effective date of the agreement is capable of producing in paying quantities will be deferred until completion of a well capable of producing in paying quantities under the unit agreement, wells completed prior to the effective date of the agreement and capable of production in paying quantities will not extend a unitized lease upon which no such well exists.

Energy Trading, Inc., 55 IBLA 167 (June 9, 1981)

Where the record shows that, at the end of the primary term of a noncompetitive oil and gas lease, there is no active production of oil or gas in paying quantities from the lease area and no well capable of such production, the lease terminates automatically by operation of law as of the expiration date of the lease, in the absence of allegations by the lessees that there was such production or a well capable of such production.

Assuming, arguendo, that an oil and gas lease area contained a well capable of production of oil or gas in paying quantities on its expiration date, the lease terminates automatically as of this date if the lessee fails to comply with a 60-day notice from Geological Survey to put this well into production. An alleged filing of information showing production 2 years after the expiration of the 60-day notice period would not resuscitate the lease.

Where an oil and gas lease has already terminated by operation of law, the subsequent issuance by Geological Survey of a 60-day notice to produce does not renew the lease.

Edward H. Colthorp, Dale F. Killian, 58 IBLA 234 (Oct. 6, 1981)

"Paying quantities." For the purposes of the extension provision of 30 U.S.C. § 226(j) (1976) relating to leases committed to a unit plan of development, "paying quantities" requires production sufficient to recover the costs of operation and marketing but does not include recovery of drilling expenditures.

Yates Petroleum Corp. et al., 67 IBLA 246 (Sept. 24, 1982) 89 I.D. 480

No lease for lands on which there is a well capable of producing oil and gas in paying quantities shall expire because the lessee fails to produce, unless the lessee fails to place the well in a producing status within 60 days of receipt of notice to do so. Upon a BLM determination that a lease has expired at the end of its extended term because the well on the leasehold is not capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

C & K Petroleum, Inc., Twin Arrow, Inc., 70 IBLA 354 (Feb. 3, 1983)

OIL AND GAS LEASES--Continued

WELL CAPABLE OF PRODUCTION--Continued

"Paying quantities." For the purposes of a communitization agreement providing for the extension of such agreement so long as communitized substances are produced in paying quantities, "paying quantities" requires production sufficient for the lessee to recover the costs of operation and marketing but not to recoup drilling costs.

Hoover & Bracken Energies, Inc., 71 IBLA 220 (Mar. 17, 1983)

An oil and gas lease which is in its extended term by reason of production terminates by operation of law when it is determined that the lease no longer has a well capable of production in paying quantities and no approved reworking or drilling operations are commenced within 60 days of cessation of production.

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Impel Energy Corp., 71 IBLA 237 (Mar. 18, 1983)

In the absence of actual production of oil and gas in paying quantities, a lease that has concluded its primary term and is enjoying a 2-year extension by reason of actual drilling operations (43 CFR 3107.2-3) will not expire if there exists on the lease a well capable of producing oil or gas in paying quantities and BLM has failed to serve notice on the lessee by registered or certified mail to place such well in producing status within a reasonable time.

Hancock Enterprises, 74 IBLA 292 (July 27, 1983)

OIL SHALE

GENERALLY

"Oil shale." Rock containing less than 3 gallons per ton of kerogen is not distinguishable from average shale or limestone in the earth's crust and is therefore not "oil shale." Discovery of such shale on a mining claim, without more, does not provide any basis for inferring the presence of oil shale at depth.

United States v. Weber Oil Co., et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

MINING CLAIMS

The Supreme Court has determined that a finding of present marketability as of Feb. 25, 1920, is not a prerequisite to a determination that oil shale deposits are valuable mineral deposits within the meaning of the general mining laws, and has excepted oil shale claims from the general rules of discovery for mining claims.

Frederick H. Larson v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

OIL SHALE--Continued

MINING CLAIMS--Continued

In an oil shale mining claim contest, the Government bears only the burden of going forward with sufficient evidence to establish a prima facie case of invalidity, and the burden then shifts to the claimant to overcome this showing by a preponderance of the evidence. However, since abandonment and lack of good faith are questions of intent, the Government bears the ultimate burden of proving these charges.

Any exposure of the rich oil shale formation known as the Parachute Creek member can be geologically inferred to embrace sufficient quantity of high grade oil shale and, therefore, to constitute a valuable mineral deposit on an oil shale placer mining claim. However, exposure of a surface deposit of lean oil shale is inadequate to demonstrate the existence of rich deposits at depth in the absence of evidence showing that it is part of a deposit that can be followed to depth within the lateral limits of the claim.

"Oil shale." Rock containing less than 3 gallons per ton of kerogen is not distinguishable from average shale or limestone in the earth's crust and is therefore not "oil shale." Discovery of such shale on a mining claim, without more, does not provide any basis for inferring the presence of oil shale at depth.

Where evidence creates only inferences of lack of good faith in the location and holding of mining claims and fails to show clearly that these claims were abandoned, these charges are not sustained.

The Department is not barred by the equitable doctrines of laches or waiver from declaring oil shale placer mining claims null and void, since, until patent issues, it has the power and duty to invalidate adverse interests in public lands as required by governing laws.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

WITHDRAWALS

Lands which are known to be underlain by deposits of oil shale are withdrawn from desert land entry by Exec. Order No. 5327 (Apr. 15, 1930), and a desert land application for such lands is properly rejected.

Agee Jones et al., 61 IBLA 149 (Jan. 18, 1982)

A placer mining claim located for gold on land previously withdrawn from appropriation under the mining laws relating to metalliferous minerals by Public Land Order No. 4522, dated Sept. 13, 1968, is null and void ab initio.

Charles H. Phillips, 78 IBLA 320 (Jan. 24, 1984)

Mining claims located for trace minerals on land previously withdrawn from mineral entry by Exec. Order No. 5327, as to nonmetalliferous minerals, and Public Land Order No. 4522, as to metalliferous minerals, are properly declared null and void ab initio.

Mineral Life Corp., 81 IBLA 103 (May 30, 1984)

OMB CIRCULAR A-76

An appeal claiming that the Government failed to conduct a new cost-comparison study before changing from a leased aircraft to a Government aircraft for transportation services is dismissed for lack of jurisdiction because the appeals process does not provide for the deciding official to order new cost-comparison studies.

Appeal of Ontario Flight Service, Inc., IBCA-1812(A-76), (Sept. 20, 1984) 91 I.D. 321

A contractor's appeal is denied where his challenge of the Government's cost estimate claimed significant differences between the work scope of the estimate and the performance work statement of the bid, and the Government provided a correlation between the two showing the work scope to be identical in both documents.

Appeal of D-K Associates, Inc., IBCA-1811(A-76), (Oct. 5, 1984) 91 I.D. 325

On reconsideration, an order of dismissal for lack of jurisdiction is affirmed where the circular does not provide for the appeal.

Appeal of Ontario Flight Service, Inc., IBCA 1812 (A-76) (Dec. 12, 1984) 91 I.D. 362

An appeal arising out of a cost comparison by the National Park Service under OMB Circular A-76 is dismissed as moot where a newly enacted statute prohibits the National Park Service from awarding any contracts pursuant to the Circular absent specific appropriations therefor, and no specific appropriations are provided for the purpose of the contract.

Appeal of Applicators, Inc., IBCA-1797(A-76), (Dec. 31, 1984) 91 I.D. 365

Appeal of Crimson Enterprises, Inc., IBCA-1876(A-76), (Dec. 31, 1984) 91 I.D. 366

OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY GRANT LANDS

GENERALLY

Under sec. 701(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), wilderness review under sec. 603 of FLPMA is applicable to Oregon and California railroad (O&C) lands only to the extent that it is consistent with the Act of Aug. 28, 1937. The Act requires O&C lands to be managed for permanent forest production. No wilderness review is required where the O&C lands are being managed for commercial timber production.

Julie Adams et al., 45 IBLA 252 (Feb. 4, 1980)

The provisions of sec. 603(a), FLPMA, requiring the Secretary to review those roadless areas of 5,000 acres or more having wilderness characteristics does not apply to revested Oregon and California (O&C) Railroad lands classified as timberlands.

Oregon Wilderness Coalition, 45 IBLA 347 (Feb. 7, 1980)

OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY GRANT LANDS--Continued

GENERALLY--Continued

Lands which were revested under the Act of June 9, 1916, 39 Stat. 218, and were subsequently conveyed to private owners do not regain their status as revested O&C lands upon a later reconveyance back to the United States.

Junior L. Dennis, 61 IBLA 8 (Dec. 29, 1981)

Under sec. 701(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), wilderness review under sec. 603 of FLPMA is applicable to Oregon and California Railroad (O&C) lands only to the extent that it is consistent with the Act of Aug. 28, 1937. The Act requires O&C lands to be managed for permanent forest production. No wilderness review is required where the O&C lands are being managed for commercial timber production.

Oregon Wilderness Coalition, 71 IBLA 67 (Feb. 22, 1983)

MINING CLAIMS

The Bureau of Land Management properly reserves to the United States in a mineral patent for O & C revested grant lands the timber now on a mining claim subject to the Act of June 9, 1916, 39 Stat. 218, and the timber now or hereafter growing on a mining claim subject to the Act of Apr. 8, 1948, 62 Stat. 162.

Joseph A. Barnes et al., 78 IBLA 46 (Dec. 13, 1983) 90 I.D. 550

TIMBER SALES

Under sec. 701(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), wilderness review under sec. 603 of FLPMA is applicable to Oregon and California railroad (O&C) lands only to the extent that it is consistent with the Act of Aug. 28, 1937. The Act requires O&C lands to be managed for permanent forest production. No wilderness review is required where the O&C lands are being managed for commercial timber production.

Julie Adams et al., 45 IBLA 252 (Feb. 4, 1980)

With respect to the management of timber resources subject to the Act of Aug. 28, 1937, which relates to Oregon and California Railroad and Reconveyed Coos Bay Grant Lands, any conflict or inconsistency between that Act and the Federal Land Policy and Management Act of 1976 must be resolved in accordance with the former. However, where no relevant conflict is shown, FLPMA's definition of "sustained yield" will apply to both statutes.

A.C.O.T.S., 61 IBLA 166 (Jan. 25, 1982)

"Sustained yield." As used in sec. 1 of the Act of Aug. 28, 1937, 43 U.S.C. § 1181a (1976), the term "sustained yield" means that the level of timber harvesting established should be such that, considering present levels of silviculture techniques, a constant amount of timber will be annually available on an indefinite basis.

OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY GRANT LANDS--Continued

TIMBER SALES--Continued

A party challenging a decision to harvest timber on the grounds that the lands involved will not regenerate within the time contemplated by the applicable rules bears the burden of establishing both the factual predicates and the ultimate conclusion.

A party who challenges a decision to sell timber on the ground that timber harvesting will adversely affect water quality, plant and animal life, recreational values, or the economic stability of surrounding communities must show not only that some adverse effect will result because of timber harvesting, but that these effects are of sufficient magnitude so as to render the decision to harvest contrary to the applicable laws and regulations.

Where the evidence establishes that BLM failed to conduct a cultural resource inventory in conformity with the applicable rules and regulations prior to offering timber for sale, BLM will be required to conduct a complete and proper cultural resource inventory before entry onto the land for harvesting is permitted.

In re Lick Gulch Timber Sale, 72 IBLA 261 (Apr. 28, 1983) 90 I.D. 189

A party challenging a decision to harvest timber on the grounds that allowable cut has been exceeded and that pertinent environmental considerations were disregarded bears the burden of establishing both the factual predicates and the ultimate conclusions.

In re Otter Slide Timber Sale, 75 IBLA 380 (Aug. 31, 1983)

A BLM decision to proceed with a proposed timber sale, when reached after consideration of all relevant factors and supported by the record, will not be disturbed in the absence of a showing that the decision is clearly in error.

An appellant who levels specific criticisms of a BLM decision to proceed with a timber sale in an attempt to overturn the sale as being poorly planned and ill-conceived cannot prevail where the record shows that BLM complied with applicable law and procedures in offering the tract for sale and where many of the concerns and criticisms amount to mere expressions of disagreement with BLM's conclusions. An appellant's judgment cannot be substituted for that of BLM on the basis of arguable differences of opinion.

Robert C. Salisbury, 79 IBLA 370 (Mar. 26, 1984)

A decision by BLM denying a protest to a proposed timber sale will be affirmed where the appellant does not present sufficient evidence that the sale area was misclassified as high-intensity land.

Where BLM removes concentrated unplantable zones from the area of a proposed timber sale, that area is not misclassified as high-intensity land even though small unplantable zones are interspersed throughout it.

In re Chapman-Keeler Timber Sale, 80 IBLA 237 (Apr. 30, 1984)

OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY GRANT LANDS--Continued

TIMBER SALES--Continued

A decision by BLM denying a protest to a proposed timber sale will be affirmed where the appellant does not present sufficient evidence that the sale area was misclassified as high-intensity land.

BLM may deviate from provisions contained in an environmental impact statement with respect to regeneration cutting in a planned timber sale where the deviation is not so significant as to require preparation of a supplemental environmental impact statement.

BLM may properly proceed with a proposed timber sale where the environmental assessment of the sale considered all relevant factors, including the impact of road construction on soil erosion, wildlife and recreational resources.

In re Bald Point Timber Sale, 80 IBLA 304 (May 4, 1984)

In reviewing a denial by the BLM of a protest of a timber sale on lands managed pursuant to the Act of Aug. 28, 1937 (O & C Act), 43 U.S.C. § 1181a (1982), on the issue of violation of the principle of "sustained yield," the Board will defer to BLM's judgment in the absence of a clear showing of failure to consider critical factors or that the timber sale is not supported by the administrative record.

In determining regeneration for purposes of high-intensity timber management land, the term "stocked" referring to the number of suitable trees per acre is properly distinguished from "established" referring to a stand of suitable growing trees which have survived at least one growing season.

In re Thompson Creek Timber Sale, 81 IBLA 242 (June 7, 1984)

A party challenging a decision to harvest timber on the grounds that clearcutting is an inappropriate method to be employed and that pertinent environmental considerations were disregarded bears the burden of establishing both the factual predicates and the ultimate conclusions.

Where the record reflects that the BLM decision not to do class III onsite cultural resource studies on the timber sale units was made without the consultation process as required by 36 CFR 800.4(a)(1), BLM will be required to so consult and to take whatever further action is required as a result of the consultation process prior to any entry by the timber purchaser.

Curtin Mitchell & STAND, 82 IBLA 275 (Aug. 31, 1984)

A party who challenges a decision to sell timber on the ground that timber harvesting will adversely affect water quality, plant and animal life, property values, or the economic stability of surrounding communities must establish the decision to proceed with the timber sale is erroneous.

In re Crooked Cedar Timber Sale, 83 IBLA 329 (Nov. 5, 1984)

OUTER CONTINENTAL SHELF LANDS ACT
(See also Oil & Gas Leases--if included in this Index.)

GENERALLY

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations, including OCS regulations pertaining to the submittal of production and development plans, have the force and effect of law and are binding on the Department.

Exxon Co., U.S.A., 45 IBLA 313 (Feb. 6, 1980)

The Outer Continental Shelf Lands Act, as amended, 43 U.S.C. §§ 1331-56 (Supp. II 1978), provides the exclusive authority for the development of minerals on the outer continental shelf. Mining claims situated on the outer continental shelf assertedly located pursuant to the placer provisions of the general mining law, 30 U.S.C. §§ 35-36 (1976), must be declared null and void.

Ford MacElvain, 50 IBLA 303 (Oct. 7, 1980)
87 I.D. 478

Apart from control over authorizations to exploit the mineral resources of the OCS, the Department has no authority to regulate activities affecting mineral resources on the OCS.

The National Historic Preservation Act, Outer Continental Shelf Lands Act and National Environmental Policy Act authorize a stipulation which provides that a cultural resource included on or eligible for inclusion on the National Register which is discovered by an OCS lessee as a result of lease operations and which is salvaged, be made reasonably available to recognized scientific or educational institutions for study.

Clarification of Authorities and Responsibilities for Identifying and Protecting Cultural Resources on the Outer Continental Shelf, M-36928 (Nov. 24, 1980)
87 I.D. 593

The legislative history of the OCS Lands Act shows that the Secretary is authorized to modify and incorporate the regulatory provisions of the Mineral Leasing Act, as they existed in 1953 when the OCS Lands Act was passed, into OCS leasing regulations as the circumstances of offshore leasing make appropriate.

The Secretary generally is free to adopt any reasonable regulatory measures which he determines to be necessary and proper to prevent waste, conserve natural resources, protect correlative rights, or carry out the leasing provisions of the OCS Lands Act, regardless of whether such measures are expressly listed in either that Act or the Mineral Leasing Act.

New OCS Unitization Rules--Authority of the Secretary to Segregate Partially Unitized Offshore Oil and Gas Leases, M-36927 (Dec. 16, 1980) 87 I.D. 616

Use of consultation procedures of sec. 18 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1344 (Supp. II 1978), are not required for annual review of an approved 5-year OCS leasing program under sec. 18(e) of the Act.

Under sec. 18 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1344 (Supp. II 1978), a reapproval must include a schedule of proposed lease sales for the full 5-year period following reapproval but may

OUTER CONTINENTAL SHELF LANDS ACT--Continued

GENERALLY--Continued

not include sales beyond the 5-year period. A revision permits changes within an existing approved schedule without requiring an extension of that schedule to include a full 5 years after revision.

Under sec. 18 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1344 (Supp. II 1978), a revision may add, delete, delay or advance sales and planning milestones within an approved 5-year program. A revision cannot be used to tack additional sales or milestones onto the end of an approved 5-year program. Only a reapproval can add sales beyond an existing approved program.

Sec. 18(e) of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1344(e) (Supp. II 1978), states in discussing revisions and reapprovals that only a revision which is not significant may escape the requirement of sec. 18 consultation procedures. A fortiori, all reapprovals require use of these procedures. Therefore, the procedures must be followed to schedule any sales or milestones beyond the existing 5-year program.

Under sec. 18 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1344 (Supp. II 1978), the Secretary has considerable discretion to determine whether or not the deletion, delay or advancement of sales or milestones within an approved 5-year program is a significant revision.

Planning milestones and sale dates beyond the 5-year horizon can be made available as a matter of information, but final approval of a schedule containing such sales cannot occur until the procedures of sec. 18 have been followed. Those milestones occurring within the 5-year period that apply to sales expected beyond 5 years may be included in a reapproved schedule.

Annual Review, Revision and Reapproval of 5-Year OCS Oil and Gas Leasing Programs, M-36932 (Jan. 5, 1981) 88 I.D. 20

An application to purchase offshore royalty oil, submitted in response to a notice published in the Federal Register on Jan. 14, 1980, is properly rejected where the applicant's runs to stills per calendar day exceed the applicant's refining capacity per calendar day.

Quitman Refining Co., 57 IBLA 53 (Aug. 17, 1981)

An application to purchase offshore royalty oil, submitted in response to a notice published in the Federal Register on Jan. 14, 1980, is properly rejected where the refinery capacity presented in the application was not certified by the Economic Regulatory Administration as operable on or before Apr. 1, 1980, as required by the notice of sale.

Arthur Refining Co., 60 IBLA 331 (Dec. 22, 1981)

Limitation of a small refiner's allocation in a sale of Outer Continental Shelf royalty oil under sec. 27(b)(4) of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. § 1353(b)(2) (Supp. II 1978), to excess refinery capacity, as determined by subtracting the volume of oil actually refined in a representative period from the applicant's refinery capacity, is both reasonable and consistent with the statutory authority.

Mid-America Refining Co., 61 IBLA 84 (Dec. 31, 1981)

OUTER CONTINENTAL SHELF LANDS ACT--Continued

GENERALLY--Continued

Under the civil penalty provision of sec. 24(b) of the Outer Continental Shelf Lands Act, notice of a violation and failure to correct the violation within such reasonable period of time as may be allowed is a prerequisite to liability.

Conoco, Inc., 78 IBLA 192 (Jan. 5, 1984)

GEOLOGICAL AND GEOPHYSICAL EXPLORATION

Generally

A deep stratigraphic test, whether drilled on or off a structure believed to hold oil or gas, is a kind of geological exploration. Therefore, the Secretary has the authority to allow prelease on-structure tests under sec. 11 of the Outer Continental Shelf Lands Act.

On-Structure, Deep Stratigraphic Test Wells, M-36922 (Oct. 29, 1980) 87 I.D. 517

Under 30 CFR 251.6-3(d), the Director of Geological Survey will require republication of an exploratory test drilling application and a period for other persons to join in a venture as original participants without penalty where the applicant proposes changes to the original application and the Director determines that those changes are significant. Proposed changes to the Department of the Interior's announced Outer Continental Shelf leasing schedule or proposed changes to regulations governing test drilling are not significant changes within the meaning of 30 CFR 251.6-3(d).

Shell Oil Co., 66 IBLA 397 (Aug. 31, 1982) 89 I.D. 430

30 CFR 251.6-3(a) directs that a person proposing to drill a deep stratigraphic test well provide an opportunity through a signed agreement for other interested persons to participate on a cost-sharing basis. Where an oil company announces such a proposal, makes itself available to discuss the proposals, and negotiates details of the agreement with interested parties, it has provided the required opportunity. A person that indicates an interest, participates in discussion of the proposal, and thereafter notifies the company that it has decided not to participate has not been denied the opportunity to participate.

Under 30 CFR 251.6-3(d), the Director of Geological Survey will only require republication of exploratory test drilling applications and a period for other persons to join in a venture as original participants without penalty where the applicant proposes changes to the original application and the Director determines that those changes are significant. Changes negotiated in the cost-share agreement, the correction of an error in the published description of the location of a well, and changed circumstances not affecting the application are not significant changes as contemplated by 30 CFR 251.6-3(d).

Sohio Alaska Petroleum Co., 68 IBLA 250 (Nov. 16, 1982)

Under 30 CFR 251.6-3(d), the Director of the Minerals Management Service will require republication of an exploratory test drilling application and a period for other persons to join in a venture as original participants without penalty where the applicant proposes changes to the original application and the Director determines that those changes are significant. Deepening of a test well in an attempt to achieve the recognized goal of penetrating a particular geological zone was an anticipated event which was

OUTER CONTINENTAL SHELF LANDS ACT--Continued

GEOLOGICAL AND GEOPHYSICAL EXPLORATION--Continued

Generally--Continued

properly determined not to be significant within the meaning of 30 CFR 251.6-3(d).

Shell Oil Co., 80 IBLA 184 (Apr. 20, 1984)

Reimbursement

The U.S. Geological Survey must pay permittees reasonable reproduction costs for geological data and information submitted under sec. 26.

Reimbursement for Geological and Geophysical Data and Information; Exxon's Petition to Revise 30 CFR Parts 250, 251, and 252, M-36924 (Nov. 17, 1980) 87 I.D. 563

OIL AND GAS INFORMATION PROGRAM

Generally

30 CFR 250.3, requiring the U.S. Geological Survey to release a lessee's well logs two years after they are submitted, is a reasonable exercise of the Secretary's discretion. It does not apply to the Survey's findings of producibility under OCS Order No. 8; such findings may consequently be released immediately.

The history and text of the 1978 Amendments show that "privileged or proprietary information" is a term to be defined by the Secretary after balancing competing interests of disclosure and confidentiality.

Whether the U.S. Geological Survey May Make Public Certain Information About Offshore Oil and Gas Wells, M-36925 (Nov. 20, 1980) 88 I.D. 699

Reimbursement

The U.S. Geological Survey has a right to look at all of a lessee's geological and geophysical data and information. If it keeps the lessee's copy, it must pay the lessee a reasonable sum for reproduction costs. In certain situations, the Survey must also pay the lessee a reasonable sum for processing geophysical data.

Reimbursement for Geological and Geophysical Data and Information; Exxon's Petition to Revise 30 CFR Parts 250, 251 and 252, M-36924 (Nov. 17, 1980) 87 I.D. 563

Secretary's Access to Data and Information

Sec. 26(a)(1)(A) applies to geological and geophysical data and information only. Other types of data and information are gathered under other sections of the Act.

The Secretary may require permittees to ship data and information to him for review. If he then decides to keep them, he must pay the reimbursement required by sec. 26.

Reimbursement for Geological and Geophysical Data and Information; Exxon's Petition to Revise 30 CFR Parts 250, 251, and 252, M-36924 (Nov. 17, 1980) 87 I.D. 563

OUTER CONTINENTAL SHELF LANDS ACT--Continued

OIL AND GAS LEASES

An order by a GS conservation manager directing holders of two adjacent outer continental shelf oil and gas leases covering a single producing geological structure to unitize will be affirmed where the record shows that the producing mechanism of the structure is a gas cap almost wholly under the exclusive control of the holders of one of the leases, and that improper development of gas from this cap would reduce the ultimate recovery of oil and gas from the structure, as the Department has the authority to require unitization in order to conserve the resources of the outer continental shelf under sec. 5(a) of the OCS Lands Act, as amended.

Placid Oil Co. et al., 46 IBLA 392 (Apr. 30, 1980)

When the point of delivery of OCS royalty oil produced under a sec. 8 lease, 43 U.S.C. § 1337 (1976), as amended, 43 U.S.C. § 1337 (Supp. II 1978), is on or immediately adjacent to the leased area, the lessee is not entitled to reimbursement for costs incurred in transporting the royalty oil to such delivery point.

IPD, Inc., 49 IBLA 337 (Aug. 25, 1980)

A Geological Survey decision requiring additional royalties to be paid under oil and gas lease OCS G-1752 will be reversed where such decision rests upon the assumption that a parent corporation can rescind at will a contract for the sale of natural gas entered into with its wholly owned subsidiary, especially where all of the evidence indicates that the agreement does, in fact, represent fair market value and where other Governmental regulatory controls are applicable and the rights of a third party will be affected.

Getty Oil Co., 51 IBLA 47 (Oct. 31, 1980)

The Secretary's mandate under the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 et seq. (Supp. II 1978), to administer and supervise development and production of the oil and gas resources of the OCS could not be accomplished without the authority to require development and production plans from oil and gas lessees in the Gulf of Mexico.

Sec. 25 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1351 (Supp. II 1978) does not deprive the Secretary of authority to require development and production plans for oil and gas leases in the Gulf of Mexico.

Secs. 25(a)(1) and (h) of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1351(a)(1) and (h) (Supp. II 1978), exempt oil and gas lessees in the Gulf of Mexico and OCS lessees who have discovered oil or gas in paying quantities at the time of enactment of these sections from submitting development and production plans which meet the requirements of sec. 25 of the Act.

The Secretary need not apply the criteria of sec. 25(c) of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1351(c) (Supp. II 1978), which describe the contents of a development and production plan, to lessees in the western Gulf of Mexico if the full range of information required by sec. 25(c) is not necessary for effective administration of the exempted leases.

The submission of environmental reports is not necessary for oil and gas lessees in the Gulf of Mexico except where the environmental information in the report is necessary for a state with an approved coastal zone

OUTER CONTINENTAL SHELF LANDS ACT--Continued

OIL AND GAS LEASES--Continued

management plan to make a consistency determination or is necessary for the Secretary to carry out his statutory responsibilities.

No environmental impact statements need be prepared prior to the approval of development and production plans for oil and gas leases in the western Gulf of Mexico.

The Secretary is not required to follow the approval time frames set out in sec. 25(g) and (h) of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1351(g) and (h) (Supp. II 1978), when considering development and production plans submitted by oil and gas lessees in the western Gulf of Mexico.

Oil and gas leases in the western Gulf of Mexico are not exempt from the requirement in sec. 19 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1345 (Supp. II 1978), which provides that the Governor of any affected state and the executive of any affected local government in such state shall have a 60-day period, prior to the approval of a development and production plan for a lessee to submit recommendations to the Secretary.

Oil and gas lessees in the western Gulf of Mexico are not exempt from sec. 5(a)(8) of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1334(a)(8) (Supp. II 1978), requiring that lessees comply with air quality standards to the extent that authorized activities significantly affect the air quality of any state.

Western Gulf of Mexico lessees conducting activities for which a Federal license or permit is required and which affect any land use or water use in the coastal zone of a state with an approved state coastal zone management program are not exempt from the federal consistency requirements of sec. 25(d) and (h) of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1351(d) and (h) (Supp. II 1978).

Gulf of Mexico Exemption from Section 25 of the Outer Continental Shelf Lands Act, As Amended, M-36923 (Nov. 5, 1980) 87 I.D. 544

The Secretary is authorized to require the prompt and efficient exploration and development of the entire area of each offshore oil and gas lease by § 5 of the OCS Lands Act, various regulations, the terms of each lease, and, in some cases, implied covenants of diligent development.

New OCS Unitization Rules--Authority of the Secretary to Segregate Partially Unitized Offshore Oil and Gas Leases, M-36927 (Dec. 16, 1980) 87 I.D. 616

An order by a Conservation Manager of the Geological Survey directing oil and gas lessees of Outer Continental Shelf lands to subscribe to a unit plan allocating production from a specific reservoir on the basis of original net acre-feet of gas-bearing sand, i.e., the volume of gas-bearing sand in place prior to production of any gas from the reservoir, will be affirmed where such a plan of allocation of production is in common use on OCS lands and it has not been shown that the order is arbitrary or capricious.

Texaco, Inc., Gulf Oil Exploration and Production Co., 51 IBLA 332 (Dec. 29, 1980) 87 I.D. 648

OUTER CONTINENTAL SHELF LANDS ACT--Continued

OIL AND GAS LEASES--Continued

The Secretary of the Interior has discretionary authority to determine the factors to be considered in computing transportation allowances for royalty valuation purposes. Where the Geological Survey applies a formula developed after appropriate research and consultation with affected oil companies and where the appellant does not provide convincing evidence that the 6 percent rate of return used in the formula is unreasonable as applied to appellant's production from 1968 to 1973, the transportation allowance will be upheld.

Shell Oil Co., 52 IBLA 15 (Jan. 5, 1980) 88 I.D. 1

Determinations by Geological Survey delineating two communicating gas-bearing structures or sands and providing that unitization of leases producing gas from these sands is in the interest of conservation will be affirmed where the record shows that these determinations were reasonably based on facts of record.

A challenge to decisions by Geological Survey (1) that various outer continental shelf wells are producing from common reservoirs, i.e., that they are "competitive," and (2) that unitization of these wells is necessary in the interest of conservation, will not be sustained where there is a preponderance of substantial and persuasive evidence to support the Survey's findings.

Where Geological Survey has ordered all outer continental shelf lessees with producing wells in two delineated competitive reservoirs to comply with a plan to allocate production on the basis of percentage of original net acre-feet of gas sand, this order will be affirmed in the absence of a clear showing that another method of allocation is superior.

Texaco Oil Co., Texaco, Inc., 57 IBLA 85 (Aug. 24, 1981)

Under regulations adopted pursuant to sec. 5(a) of the Outer Continental Shelf Lands Act, both before and after its amendment in 1978, the Geological Survey can direct two lessees on a single competitive offshore gas reservoir to enter into a unit agreement if doing so is "in the interest of conservation." Survey's decision to require unitization will be affirmed where, but for unitization, one of the lessees would have been entitled to drill an additional well or wells in order to protect its correlative rights, in view of the waste of expensive, critical offshore drilling resources and the potential for adverse environmental consequences which drilling the additional well would have entailed, and in view of the fact that such additional drilling would have done nothing to increase ultimate recovery.

Where actual production figures from a jointly produced offshore gas reservoir show that one party overproduced its entitlement to gas-in-place, as determined by Geological Survey, by a factor of almost 3, and where the record contains nothing suggesting that this party engaged in drilling practices that might have unfairly increased its production, the matter will be referred for a hearing to allow that party to show that Survey's entitlement determination is incorrect.

Sun Oil Co. et al. (Appellants), Shell Oil Co. (Appellee), 67 IBLA 80 (Sept. 10, 1982)

The United States, as lessor of an oil and gas lease, is entitled to its royalty based on "the reasonable value" of the gas as set by the Secretary. Where a party challenges a determination as to the value of

OUTER CONTINENTAL SHELF LANDS ACT--Continued

OIL AND GAS LEASES--Continued

gas produced, the party must establish that the methodology used in the Government's computation is, in fact, erroneous.

30 CFR 250.49 authorizes Minerals Management Service to impose a late payment interest charge where royalty payments for offshore oil and gas leases are untimely or improper. The authority of the United States to enforce a public right or to protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Amoco Production Co., 78 IBLA 93 (Dec. 19, 1983)

OPERATING PROCEDURES

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations, including OCS regulations pertaining to the submittal of production and development plans, have the force and effect of law and are binding on the Department.

Exxon Co., U.S.A., 45 IBLA 313 (Feb. 6, 1980)

REFUNDS

Where a Geological Survey audit reveals that an offshore oil and gas producer has overpaid royalties in one month and underpaid royalties in the next month, it is proper to offset those two amounts against the other despite the fact that the audit was performed some 4 years after the transactions at issue.

Shell Oil Co., 52 IBLA 74 (Jan. 9, 1981)

Sec. 10 of the Outer Continental Shelf Lands Act does not authorize refunds to purchasers of royalty oil.

Sec. 10 of the Outer Continental Shelf Lands Act does not authorize refunds to persons who have paid a civil penalty under sec. 24 of the Act.

Before allowing refunds or credits against future payments, the Secretary must report them to Congress.

The request for a refund or credit must be in writing, must ask for a specific amount, and must explain why the lessee considers the amount to have been excessive. Except under certain circumstances, the lessee must request the refund or credit within two years after making the payment. Those circumstances are when the lessee both has acted to verify his account within two years and has given the Department enough information to estimate the potential amount of the refund or credit.

An excess net profit share payment, to be credited under 10 CFR 390.034(c), must be reported to Congress before crediting.

Generally, when one co-lessee files a request for repayment, his request does not toll the two-year limit for other co-lessees. But if the co-lessee has the authority to make all lease payments for the other co-lessees, then his request protects all of them.

A lessee may receive a refund or credit of an overpayment even though he did not pay the excess under protest.

Upon discovering an overpayment and an underpayment in a lease account, the Secretary may properly offset the two without regard to sec. 10. But when an

OUTER CONTINENTAL SHELF LANDS ACT--Continued

REFUNDS--Continued

excess remains after the offset, the Secretary must comply with sec. 10 in giving a refund or credit.

Refunds and Credits Under the Outer Continental Shelf Lands Act, M-36942 (Dec. 15, 1981) 88 I.D. 1090

Where a Geological Survey audit revealing that a lessee has underpaid royalties on certain leases is challenged by the lessee who alleges that overpayments were also made on the same leases during the audit period, and where Geological Survey has assessed the lessee for the underpayments, but not considered the merits of the lessee's allegations with respect to overpayments, the case will be remanded to Geological Survey to determine whether offsets of payments would have been proper.

Mobil Oil Corp., 65 IBLA 295 (July 13, 1982)

UNIT PLANS

An order by a GS conservation manager directing holders of two adjacent outer continental shelf oil and gas leases covering a single producing geological structure to unitize will be affirmed where the record shows that the producing mechanism of the structure is a gas cap almost wholly under the exclusive control of the holders of one of the leases, and that improper development of gas from this cap would reduce the ultimate recovery of oil and gas from the structure, as the Department has the authority to require unitization in order to conserve the resources of the outer continental shelf under sec. 5(a) of the OCS Lands Act, as amended.

Placid Oil Co. et al., 46 IBLA 392 (Apr. 10, 1980)

Sec. 5 of the OCS Lands Act implicitly authorizes the Secretary to require compulsory unitization of offshore oil and gas leases.

The Secretary is not authorized to require compulsory segregation of an offshore oil and gas lease when part of it is committed to a unit agreement.

Sec. 5 of the OCS Lands Act of 1953 does not provide the clear authority required to permit segregation of OCS leases, since it neither expressly mentions the power to segregate nor incorporates the segregation authority added to the Mineral Leasing Act in 1954.

The U.S. Geological Survey may not condition its approval of any unit agreement or development plan for an offshore oil and gas lease upon the lessee's consent to segregation.

New OCS Unitization Rules--Authority of the Secretary to Segregate Partially Unitized Offshore Oil and Gas Leases, M-36927 (Dec. 16, 1980) 87 I.D. 616

An order by a Conservation Manager of the Geological Survey directing oil and gas lessees of Outer Continental Shelf lands to subscribe to a unit plan allocating production from a specific reservoir on the basis of original net acre-feet of gas-bearing sand, i.e., the volume of gas-bearing sand in place prior to production of any gas from the reservoir, will be affirmed where such a plan of allocation of production is in common use on OCS lands and it has not been shown that the order is arbitrary or capricious.

Texaco, Inc., Gulf Oil Exploration and Production Co., 51 IBLA 332 (Dec. 29, 1980) 87 I.D. 648

OUTER CONTINENTAL SHELF LANDS ACT--Continued

UNIT PLANS--Continued

Determinations by Geological Survey delineating two communicating gas-bearing structures or sands and providing that unitization of leases producing gas from these sands is in the interest of conservation will be affirmed where the record shows that these determinations were reasonably based on facts of record.

A challenge to decisions by Geological Survey (1) that various outer continental shelf wells are producing from common reservoirs, i.e., that they are "competitive," and (2) that unitization of these wells is necessary in the interest of conservation, will not be sustained where there is a preponderance of substantial and persuasive evidence to support the Survey's findings.

Where Geological Survey has ordered all outer continental shelf lessees with producing wells in two delineated competitive reservoirs to comply with a plan to allocate production on the basis of percentage of original net acre-feet of gas sand, this order will be affirmed in the absence of a clear showing that another method of allocation is superior.

Tenneco Oil Co., Texaco, Inc., 57 IBLA 85 (Aug. 24, 1981)

Under regulations adopted pursuant to sec. 5(a) of the Outer Continental Shelf Lands Act, both before and after its amendment in 1978, the Geological Survey can direct two lessees on a single competitive offshore gas reservoir to enter into a unit agreement if doing so is "in the interest of conservation." Survey's decision to require unitization will be affirmed where, but for unitization, one of the lessees would have been entitled to drill an additional well or wells in order to protect its correlative rights, in view of the waste of expensive, critical offshore drilling resources and the potential for adverse environmental consequences which drilling the additional well would have entailed, and in view of the fact that such additional drilling would have done nothing to increase ultimate recovery.

Where actual production figures from a jointly produced offshore gas reservoir show that one party overproduced its entitlement to gas-in-place, as determined by Geological Survey, by a factor of almost 3, and where the record contains nothing suggesting that this party engaged in drilling practices that might have unfairly increased its production, the matter will be referred for a hearing to allow that party to show that Survey's entitlement determination is incorrect.

Sun Oil Co. et al. (Appellants), Shell Oil Co. (Appellee), 67 IBLA 80 (Sept. 10, 1982)

PATENTS OF PUBLIC LANDS

GENERALLY

So long as the legal title to public lands remains in the United States, it has the power, after proper notice and upon adequate hearing, to determine whether a millsite claim is valid, and if it be found invalid, to declare it null and void.

United States of America v. Utah International, Inc., 45 IBLA 73 (Jan. 17, 1980)

PATENTS OF PUBLIC LANDS--Continued

GENERALLY--Continued

Every patent for public lands carries with it an implied affirmation of every fact made prerequisite to its issue. No executive officer of the Government is authorized to reconsider the facts on which it was issued.

Lee E. Williamson, 48 IBLA 329 (July 3, 1980)

If the record does not contain sufficient evidence to persuade the Secretary or his authorized officers that the law has been complied with, the Department cannot legally grant the gratuity which claimants request, i.e., issuance of a mineral patent.

United States v. Ernest Higbee et al., 52 IBLA 83 (Jan. 9, 1981)

A decision holding that title to a tract of land has reverted to the United States will be affirmed where the land together with its improvements was patented to a municipality to be used only for school or other public purposes subject to reversion if the Secretary of the Interior finds the grantee has violated the conditions for a period of 1 year and where the record discloses that grantee has removed the school structures thereon and failed to use the land for 15 years thereafter.

City of Cordova, 62 IBLA 198 (Mar. 9, 1982)

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so within the time prescribed by a Bureau of Land Management decision, BLM may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 129 (May 20, 1982)

Where an applicant for a mineral patent has been required to provide additional information and documents required by the regulations in 43 CFR Part 3860, and has not done so after 10 years, the Bureau of Land Management may properly reject the mineral patent application without prejudice to applicant's right to submit a proper and complete application in the future.

Donald L. Clark, 64 IBLA 132 (May 20, 1982)

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a trade and manufacturing site in Alaska does not trigger that statutory mechanism.

United States v. Evelyn M. Bunch (On Judicial Remand), 64 IBLA 318 (June 10, 1982)

PATENTS OF PUBLIC LANDS--Continued

GENERALLY--Continued

Although sec. 7 of the Act of Mar. 3, 1891, 43 U.S.C. § 1165 (1976), provides for issuance of a patent to an entryman upon a lapse of 2 years from the date of issuance of "the receipt," when no contest or protest of the entry is then pending, the 2-year period does not commence until issuance of the receipt evincing final payment of the purchase price of the land. When the statute was enacted, "the receipt" referred to what was known as "the final receipt of the Receiver," who was then an official of the General Land Office. The issuance of an interim receipt for payment of a $10 filing fee submitted with an application to purchase a homesite in Alaska does not trigger that statutory mechanism.

United States v. Jerald H. Drapiff (On Reconsideration), 65 IBLA 94 (June 23, 1982)

BLM decisions rejecting mineral patent applications for numerous deficiencies, uncertainties, and inconsistencies therein, will be affirmed where appellant fails to point out how the decisions are in error, subject to the applicant's right to submit proper and correct applications in the future.

Donald L. Clark, 71 IBLA 169 (Mar. 10, 1983)

Where a corporation seeking a mineral patent files a certificate showing incorporation under the laws of a state, such corporation has established its citizenship within the meaning of the Mining Law of 1872, and a conclusive presumption thereby arises that all stockholders of the corporation are citizens of the United States, regardless of whether this is true or not.

In re Pacific Coast Molybdenum Co., 75 IBLA 16 (Aug. 5, 1983) 90 I.D. 352

A patent of land issued by the proper officers of the United States is presumed valid, and to pass title.

Henry J. Hudspeth, Sr., Betty A. Hudspeth, 78 IBLA 235 (Jan. 9, 1984)

A survey of public lands creates and does not merely identify the boundaries of sections of land. A patentee of public land takes according to the actual survey on the ground, even though the official survey plat may not show the tract as it is located on the ground, or the patent description may be in error as to the course or distance or the quantity of land stated to be conveyed.

Elmer L. Love, 80 IBLA 101 (Apr. 3, 1984)

A patentee's transfer of property, or use of property, for a purpose other than the one described in a patent under the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), without consent of the Department of the Interior, triggers reversion of the land to the United States; however, such reversion occurs only after due notice and an opportunity for a hearing has been provided to the patentee.

George Schultz et al., 81 IBLA 29 (May 17, 1984)

PATENTS OF PUBLIC LANDS--Continued

AMENDMENTS

Where over the course of several decades patented land has been conveyed according to the description in the patent by willing buyers and sellers in "arm's length" transactions, the subsequent grantees of the original entrymen had a duty to identify the land that they were purchasing, and the Government will not amend the patent to substitute other public land simply because the present owner believes, or even proves, that certain of the land settled by the original entryman was misdescribed by him, absent any showing of a basis for equitable relief.

George Val Snow, 46 IBLA 101 (Feb. 29, 1980)

Under sec. 316 of the Federal Land Policy and Management Act of 1976, the Secretary of the Interior has discretionary authority to correct an error in a conveyance document when the error is clearly established and equitable considerations dictate that relief be granted. BLM's rejection of an application to amend a homestead patent to change the legal description of the land patented will be affirmed where the record does not support a finding that the entryman erred in describing the lands he had entered.

Ben R. Williams, 57 IBLA 8 (Aug. 5, 1981)

Under sec. 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1976), the Secretary of the Interior has discretionary authority to correct an error in a conveyance document when the error is clearly established and equitable considerations dictate that relief be granted. Where a company establishes that it acquired a right-of-way pursuant to the Act of July 26, 1866, prior to the repeal of the right-of-way provisions of that Act by the Federal Land Policy and Management Act of 1976, a subsequent interim conveyance to a Native corporation is subject to that right-of-way, and where the conveyance does not reflect that fact, the Secretary may act to correct that error.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

Where a stranger to the original patentee acquires a certain, specific tract of land through mesne conveyances and then seeks to have the patent amended so that he can acquire other land instead, he must demonstrate first that there was an error in the patent's land description and, second, that he is deserving as a matter of equity and justice to be granted that which was actually earned by the original patentee.

George Val Snow (On Judicial Remand), IBLA 261 (Mar. 7, 1984)

Under sec. 316 of the Federal Land Policy and Management Act of 1976, the Secretary of the Interior has discretionary authority to correct an error in a conveyance document when the error is clearly established and equitable considerations dictate that relief be granted. BLM's rejection of an application to amend a homestead patent to include additional acreage will be affirmed where the record does not support a finding that the original patentees had entered those lands, nor was there ever any intent to enter such lands as part of the original homestead entry.

Elmer L. Love, 80 IBLA 101 (Apr. 3, 1984)

PATENTS OF PUBLIC LANDS--Continued

AMENDMENTS--Continued

Under sec. 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1982), the Secretary has authority to correct error in a conveyance document disposing of public land. Where the party seeking reformation is not the holder of the patent, the provision may not be applied without consent and surrender of the patent document by the patentee.

Rosander Mining Co., 84 IBLA 60 (Nov. 30, 1984)

DEPARTMENT OF THE INTERIOR INSTRUCTIONS, 44 L.D. 513 (1916)

The Federal interest retained in an authorized improvement constructed and maintained under principles of Instructions, 44 L.D. 513 (1916), is limited to the improvement itself. The exception for the improvement is inserted in a patent for the purpose of giving public notice that the improvement is there; eliminating the improvement from the conveyance; and for assuring any attendant right of the Federal Government to go onto the land for purposes consistent with its ownership in the improvement.

A notation on the land records of a 44 L.D. 513, interest must be removed, and no reservation of such interest can be included on subsequent patents, when the subject improvement is no longer needed or used for or by the United States.

Doyon, Ltd., 5 ANCAB 77 (Oct. 10, 1980) 87 I.D. 480

EFFECT

Like a patent, the effect of the issuance of a Native allotment, even if issued by mistake or inadvertence, is to transfer the legal title from the United States, and to remove from the jurisdiction of the Department the resolution of disputes concerning rights to the land.

State of Alaska, 45 IBLA 318 (Feb. 6, 1980)

In treating cases similar in all respects to those encountered by the Court in Aguilar v. United States, 474 F. Supp. 840 (1979), the Board will conform to the District Court's directions in that case.

Roy G. Denny, 46 IBLA 273 (Mar. 27, 1980)

In treating cases similar in all respects to those encountered by the court in Aguilar v. United States, 474 F. Supp. 840 (1979), the Board will conform to the District Court's directions in that case. Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for an allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements under the Native Allotment Act, BLM must notify the State of Alaska. The State, if dissatisfied, may either initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Appeals.

Ezra Jonathan Northway, 46 IBLA 326 (Apr. 4, 1980)

PATENTS OF PUBLIC LANDS--Continued

EFFECT--Continued

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from jurisdiction of the Department of the Interior. Applications for land, title to which has passed from the United States by issuance of a legal patent, must be rejected.

Robert Dale Farmton et al., 51 IBLA 115 (Nov. 20, 1980)

Cleotilde Padilla, 52 IBLA 248 (Feb. 6, 1981)

Mary A. A. Aspinwall (On Reconsideration), 66 IBLA 367 (Aug. 27, 1982)

George L. Clay Lee et al., 70 IBLA 196 (Jan. 21, 1983)

The effect of the issuance of a patent without a mineral reservation, even if issued by mistake or inadvertence, is to transfer the legal title from the United States, and to remove from the jurisdiction of this Department the consideration of all disputed questions concerning rights to the land.

Silver Spot Metals, Inc., 51 IBLA 212 (Dec. 10, 1980)

The effect of the issuance of a patent is to transfer legal title from the United States and to remove the land from jurisdiction of the Department of the Interior. Where BLM's records show lands have been patented, an Indian allotment application filed under the General Allotment Act of Feb. 8, 1887, for such lands is properly rejected.

Mary Patricia Anne Newman Gibson et al., 52 IBLA 216 (Jan. 30, 1981) 88 I.D. 244

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior.

Where BLM records show lands have been patented, an Indian allotment application filed under the General Allotment Act of Feb. 8, 1887, for such lands is properly rejected.

Samuel Lee Gifford et al., 53 IBLA 23 (Feb. 26, 1981)

Samuel Lee Gifford et al. (On Reconsideration), 55 IBLA 1 (May 21, 1981)

Lula Lorene McCracken Slover, 58 IBLA 202 (Sept. 29, 1981)

Jimmy Lorn Gibson, 59 IBLA 170 (Oct. 26, 1981)

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior.

Where BLM records show lands have been patented, an Indian allotment application filed pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), for such lands, is properly rejected.

Dorothy L. Standridge et al., 55 IBLA 131 (June 3, 1981)

PATENTS OF PUBLIC LANDS--Continued

EFFECT--Continued

The effect of the issuance to the State of Alaska of a patent without a mineral reservation is to transfer the legal title from the United States, and to remove from the jurisdiction of this Department the consideration of all disputed questions concerning rights to the land, including questions as to the alleged superiority of a mining claim to the State selection. Where the lands on which the claim is situated have been patented to the State, BLM properly refused recordation of the claim, since it has no jurisdiction over the claim.

Harry J. Pike, 67 IBLA 100 (Sept. 14, 1982)

The effect of the issuance of a legal patent is to transfer legal title from the United States and to remove the land from the jurisdiction of the Department of the Interior. Where BLM records show lands have been legally patented, an Indian allotment application for such lands is properly rejected.

Hank Patterson, 71 IBLA 109 (Feb. 28, 1983)

BLM may properly reject a mineral patent application to the extent it includes land embraced in a patent without a mineral reservation to the United States.

Nels Swanberg, Margaret Swanberg, 74 IBLA 249 (July 22, 1983)

The effect of the issuance of a patent without a mineral reservation is to transfer the legal title from the United States, and to remove from the jurisdiction of this Department the consideration of all disputed questions concerning rights to the land. Where the lands described in an oil and gas lease offer have been patented under a railroad grant BLM properly rejected the offer since it has no jurisdiction over the lands.

Amoco Production Co., 77 IBLA 27 (Oct. 31, 1983)

Mining claims located on land patented without a mineral reservation to the United States are properly declared null and void ab initio.

Ronald B. Graham, Dorothy L. Graham, 77 IBLA 174 (Nov. 17, 1983)

The Department lacks jurisdiction to adjudicate the rights of claimants to land after it is patented. Although a hearing in the Department may be required where land is patented in derogation of the rights of a conflicting applicant, no hearing is appropriate where at the time of patent the conflicting application has been relinquished and the statutory authority for such applications has been repealed.

Peter Andrews, Sr., 77 IBLA 316 (Nov. 30, 1983)

The effect of issuance of legal patent is to transfer title from the United States and to remove the lands from the jurisdiction of the Department of the Interior. When patent has been issued the Department of the Interior can exercise no further control over the lands and relief must be sought through the courts.

PATENTS OF PUBLIC LANDS--Continued

EFFECT--Continued

A patent of land issued by the proper officers of the United States is presumed valid, and to pass title.

Where a patent has been issued for the lands on which a claim is situated it is proper for BLM to refuse recordation of the claim, since it has no jurisdiction over the claim.

Henry J. Hudspeth, Sr., Betty A. Hudspeth, 78 IBLA 235 (Jan. 9, 1984)

The Department of the Interior loses jurisdiction over public land once it has been patented. Upon issuance of patent, jurisdiction to adjudicate interests in the land conveyed is lost and an appeal by a party asserting conflicting rights in the land is properly dismissed as moot.

Goodnews Bay Mining Co., et al., 81 IBLA 1 (May 14, 1984)

The effect of the issuance of a legal patent is to transfer legal title from the United States and remove the land from jurisdiction of the Department of the Interior. Applications for land, title to which has passed from the United States by issuance of a legal patent, must be rejected.

James & Gloria Eldorado, 82 IBLA 9 (July 2, 1984)

The Department lacks jurisdiction to adjudicate the rights of claimants to land after it is patented. Although a hearing in the Department may be required where land is patented in derogation of the rights of a conflicting applicant, a hearing is inappropriate where at the time of patent the conflicting application has been relinquished and the statutory authority for such applications has been repealed.

Peter Andrews, Sr. (On Reconsideration), 83 IBLA 344 (Nov. 7, 1984)

Issuance of a patent without mineral reservation divests the Department of jurisdiction and authority to inquire into disputed questions of fact relating to the patented land or to make any determination of rights to that land. Where it has not retained jurisdiction over land encompassed by a mining claim, BLM may properly reject a claimant's recordation filing for that claim.

Rosander Mining Co., 84 IBLA 60 (Nov. 30, 1984)

RESERVATIONS

Interpretations of the mineral reservation in patents issued by the United States under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), must be consistent with the established rule that land grants are to be construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it.

In determining whether scoria is included in a mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), the interpretation of the reservation must take into

PATENTS OF PUBLIC LANDS--Continued

RESERVATIONS--Continued

account the intended use for which the land was conveyed and those uses which the Government intended to reserve.

A patent of land under the Stock-Raising Homestead Act, 43 U.S.C. § 291 (1970), was not generally intended to give the grantee the right to use the land for mineral development, but mineral development was to proceed only under the mineral laws.

The mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 291 (1970), includes mineral substances which can be taken from the soil and which have a separate value, including those marketable minerals found at or near the surface, and which have no rare or exceptional character, regardless of whether they are subject to disposition under 30 U.S.C. § 601 (1976) or other existing statutory authority.

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), contemplates that the Department of the Interior retains continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 3602.1 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Under the Stock-Raising Homestead Act, 43 U.S.C. §§ 291-301 (1970), there is no equitable basis for excluding valuable deposits of scoria from the scope of a Federal mineral reservation although the Government has successfully contended in other cases that common or surface minerals are not included in mineral reservations to the United States, because the rules of construction of private conveyances differ from those which govern Federal grants, and because 30 U.S.C. § 54 (1976) provides compensation for damage to surface owners' crops, improvements and grazing values.

Scoria which is valuable for surfacing roads is a mineral reserved to the United States in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

Language excluding mineral lands which was included in a patent of railroad grant lands does not operate as a mineral reservation or diminish the estate vested in the grantee upon later discovery of minerals in the land. The issuance of a railroad grant lands patent generally constitutes a conclusive determination by the United States of the nonmineral character of the land.

Diane B. Katz, 48 IBLA 118 (May 30, 1980)

A patent issued pursuant to the Homestead Act of May 20, 1862, 43 U.S.C. § 161 (1976), reserving to the United States all coal under the Act of June 22, 1910 (36 Stat. 583) and sodium under the Act of July 17, 1914 (38 Stat. 509) in the lands described by such patent, cannot be construed as reserving to the United States other minerals, such as oil and gas, which are not specifically reserved therein.

Circular 1021, July 21, 1925, instructed the land offices to impress upon a nonmineral application a reservation of those minerals for which the land had been embraced in applications for permit or lease.

Lee E. Williamson, 48 IBLA 329 (July 3, 1980)

PATENTS OF PUBLIC LANDS--Continued

RESERVATIONS--Continued

Patents issued pursuant to the Act of Mar. 3, 1909, or the Act of June 22, 1910, 30 U.S.C. §§ 81, 83-85 (1976) reserved to the United States "all coal" and the right to prospect for, mine and remove the "coal deposits" underlying the patented lands. Congress in the 1909 and 1910 Acts intended to, and did, reserve only the coal and not other minerals found in association with coal. Accordingly, all minerals other than coal, including coalbed gas, passed to the surface owner at the time a patent was issued pursuant to the 1909 or 1910 Acts.

Should coalbed gas occur in lands in which "oil and gas" were reserved to the United States in agricultural patents issued under the Act of July 17, 1914, 30 U.S.C. § 121 (1976), that coalbed gas is reserved to the United States.

Ownership and Right to Extract Coalbed Gas in Federal Coal Deposits, M-36935 (May 12, 1981) 88 I.D. 538

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976), contemplates that the Department of the Interior retains continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976).

The mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 291 (1976), includes mineral substances which can be taken from the soil and which have a separate value, including those marketable minerals found at or near the surface, and which have no rare or exceptional character, regardless of whether they are subject to disposition under 30 U.S.C. § 601 (1976) or other existing statutory authority.

Scoria which is valuable for surfacing roads is a mineral reserved to the United States in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976). However, in a case where scoria is used no differently from common earth, the record must demonstrate that the deposit of scoria has commercial value independent of such use.

Texaco, Inc., 59 IBLA 155 (Oct. 26, 1981)

Public land may be "appropriated" to a public project or purpose by a Federal or state agency if such appropriation is under authority of law and there is a physical devotion of the land to such use on the ground. Such an appropriation does not segregate or withdraw the land, but creates an easement which is protected, and any subsequent entry, claim, or location is subject thereto. Where a free-use material site permit with a fixed date of expiration is held by a state agency and the site is later included in a homestead entry application, after the rights of the entryman are vested the free-use permit may not be converted to a material site right-of-way with an indefinite term, but the homestead entry remains subject to the permit until it expires.

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is

PATENTS OF PUBLIC LANDS--Continued

RESERVATIONS--Continued

required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

A reservation of "all minerals" in a patent of public lands pursuant to sec. 8 of the Taylor Grazing Act of June 28, 1934, as amended, 43 U.S.C.A. § 315g (repealed 1976), reserves to the United States geothermal resources underlying the patented lands. The reserved geothermal resources are subject to leasing only under the Geothermal Steam Act, 30 U.S.C. §§ 1001-1025 (1976).

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D. 496

The removal of sand and gravel for commercial purposes from land patented under the Stock-Raising Homestead Act, as amended, 43 U.S.C. § 291 (1970), constitutes a trespass since such sand and gravel has been reserved under the Act.

Browne-Tankersley (Trust), 76 IBLA 48 (Sept. 19, 1983)

Language in a patent of railroad grant lands that excludes mineral lands does not operate as a mineral reservation or diminish the estate vested in the grantee upon discovery of minerals in the land. The issuance of a railroad grant lands patent generally constitutes a conclusive determination by the United States of the nonmineral character of the land.

Joseph A. Barnes et al., 78 IBLA 46 (Dec. 13, 1983)
90 I.D. 550

Where lands were patented to a railroad under a statute which authorized the granting of nonmineral lands only, the issuance of the patent generally constituted a conclusive determination by the United States of the nonmineral character of the land so patented, and the subsequent discovery of mineral values thereon does not operate to void the conveyance by the United States. Where such land has been reconveyed to the United States subject to a reservation of all minerals to the private grantor, the land is not subject to the subsequent location of mining claims under the general mining laws.

Boise & Leon Berger, 82 IBLA 253 (Aug. 28, 1984)

Leo Crowley, Michael S. Clifton, 84 IBLA 7 (Nov. 26, 1984)

PATENTS OF PUBLIC LANDS--Continued

RESERVATIONS--Continued

Effect must be given, if possible, to every word, clause, and sentence in a statute. Therefore, the application of sec. 601(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1781(f) (1982), to mineral patent must be made in a manner which recognizes valid existing rights of a mineral claimant at the time of passage of the Act.

California Portland Cement Corp., 83 IBLA 11 (Sept. 18, 1984)

Where a village land selection conveyance under the Alaska Native Claims Settlement Act is made subject to a highway right-of-way for a maintenance site held by a state agency, the Department of the Interior retains jurisdiction to determine whether the right-of-way should continue or be canceled.

Bering Straits Native Corp., Council Native Corp., 83 IBLA 280 (Oct. 25, 1984)

Sec. 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1982), provides that the Secretary may make corrections of errors in any document of conveyance previously issued by the Federal Government to dispose of public lands. "Error" is defined in 43 CFR 1865.0-5(b) as "the inclusion of erroneous * * * reservations * * * in their entirety or in part, in a patent or document of conveyance as a result of factual error. This term is limited to mistakes of fact and not of law."

Applications for correction of patents are properly denied where the applicant is seeking to have coal rights transferred to it which were reserved in patents pursuant to the Act of Mar. 3, 1909, 30 U.S.C. § 81 (1982), or the Act of June 22, 1910, 30 U.S.C. §§ 83-85 (1982). Such reservations were not a product of mistake or error. The Department of the Interior was required by those Acts to include the reservations.

Walter & Margaret Bales Mineral Trust, 84 IBLA 29 (Nov. 27, 1984)

SUITS TO CANCEL

The effect of issuance of legal patent is to transfer title from the United States and to remove the lands from the jurisdiction of the Department of the Interior. When patent has been issued the Department of the Interior can exercise no further control over the lands and relief must be sought through the courts.

Henry J. Hudspeth, Sr., Betty A. Hudspeth, 78 IBLA 235 (Jan. 9, 1984)

Absent fraud, a suit by the United States to annul or vacate a patent of public land is barred by 43 U.S.C. § 1166 (1982) where more than 6 years have elapsed since issuance of the patent.

Rosander Mining Co., 84 IBLA 60 (Nov. 30, 1984)

PAYMENTS
(See also Accounts--if included in this Index.)

GENERALLY

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of the payment subsequently.

Superior Energy Corp., et al., 46 IBLA 181 (Mar. 21, 1980)

A sight draft is an acceptable form of remittance to satisfy 43 CFR 3112.2-1(a)(1) governing filing fees for simultaneous oil and gas lease offers.

William E. Jeffers, Jr., 46 IBLA 322 (Apr. 4, 1980)

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental due is $1,863, the offer will be disqualified under 43 CFR 3112.4-1 when the offeror submits a check for only $1,836 within the time required, but fails to submit the $27 deficiency within the allowed time.

Edward Goodman, 48 IBLA 152 (June 9, 1980)

Where an offer is drawn No. 1 in a simultaneous oil and gas lease drawing and the offeror is notified by BLM that the rental is due within 15 days from the receipt of notice that such payment is due, the offer will be disqualified under 43 CFR 3112.4-1 when the rental is not received in the proper office within 15 days from the receipt of notice that such payment is due.

Where payment must be accomplished within a specific number of days from receipt of notice, that number includes holidays and weekends which occur in the interim unless it is provided otherwise.

Gordon E. Jacober, 49 IBLA 91 (July 22, 1980)

Placing a check for annual rental for oil and gas leases in the mails does not constitute "payment" of annual rental. Rather, the lessee must cause the rental to be received by the office administering her leases, and, until such time as it is received, no "payment" of annual rental has occurred. Placing a check for annual rental for oil and gas leases in the mails does not constitute a tender of payment of annual rental within the meaning of 43 CFR 3108.2-1(c). Rather, a lessee makes a tender of payment only when she submits payment to the BLM office administering her leases and when BLM has the opportunity either to receive or decline it.

Rose M. Koegel, 49 IBLA 106 (July 28, 1980)

Where Geological Survey did not expressly state otherwise, under its policy established and in effect since 1958, royalty payments are accepted subject to post audit and correction and do not necessarily constitute payments in full of royalty obligations. The Area Supervisor's silence does not imply acceptance; nor does his inaction bar the Government from asserting the incorrectness of payment subsequently.

Superior Energy Corp., Atlantic Richfield Co., 55 IBLA 314 (June 26, 1981)

PAYMENTS--Continued

GENERALLY--Continued

A bank personal money order is an acceptable form of payment in satisfaction of the filing fee to accompany simultaneous oil and gas lease offers according to 43 CFR 3112.2-2.

W. W. Priest, Michael Manduca, 55 IBLA 398 (June 30, 1981)

Maria C. Cayley, John J. Cayley, 61 IBLA 205 (Jan. 26, 1982)

A personal check is not an acceptable form of remittance under 43 CFR 3120.1-4(b) requiring a successful bidder to submit one-fifth of the amount bid as a deposit and must result in rejection of the competitive bid.

Delco Petroleum Corp., 57 IBLA 3 (Aug. 5, 1981)

Where an application is drawn first in a simultaneous oil and gas lease drawing and the applicant is notified by the Bureau of Land Management that the rental due is $61, the application will be disqualified and rejected under 43 CFR 3112.4-1 and 3112.6-1, when the applicant submits a payment of $60 within the specified time, but fails to submit the $1 deficiency within the allowed time.

J. Gene Everette, 68 IBLA 225 (Nov. 15, 1982)

30 CFR 250.49 authorizes Minerals Management Service to impose a late payment interest charge where royalty payments for offshore oil and gas leases are untimely or improper. The authority of the United States to enforce a public right or to protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

Amoco Production Co., 78 IBLA 93 (Dec. 19, 1983)

The Secretary may reinstate leases terminated on or after Jan. 12, 1983, if certain conditions are met and a petition for reinstatement plus required back rentals are filed the earlier of 60 days after lessee has received notice of termination or 15 months after lease termination. The submission of a rental check which is later dishonored by the drawee bank because of insufficient funds is neither a payment nor a tender of payment.

John F. Clifton, 82 IBLA 126 (July 24, 1984)

REFUNDS

Where BLM has unilaterally imposed special stipulations in issuing oil and gas leases and the lessee accepts such leases without protest for 7-1/2 months, she may not thereafter "withdraw" from or relinquish such leases and recover the annual advance rentals paid therefor on the ground that she did not consent to the imposition of the special stipulations, although she might have been permitted to do so had she protested promptly.

Frances Kunkel, 75 IBLA 199 (Aug. 22, 1983)

PHOSPHATE LEASES AND PERMITS
(See also Mineral Leasing Act--if included in this Index.)

GENERALLY

When an assignment of a phosphate lease has been approved and there is a controversy as to the validity of the assignment, the Department will not rescind approval of the assignment where no error or irregularity is shown therein, and will maintain the status quo where the parties have instituted litigation to resolve their dispute.

John D. and Elizabeth Archer, 46 IBLA 203 (Mar. 24, 1980)

LEASES

Where a regulation authorizes BLM's request for certain information regarding a competitive phosphate lease application and a notice to the applicant states that failure to file such information within 60 days will subject the application to rejection, BLM may reject the application at the conclusion of the 60-day term in the absence of a filing extension.

GeoResources, Inc., 74 IBLA 236 (July 19, 1983)

Allegations that stipulations included in a notice of a competitive phosphate lease offer improperly favored one bidder over all other potential bidders will not serve as a basis for disturbing the lease sale where the record does not support such allegations, but does, in fact, support a finding that the stipulations were reasonably directed toward environmental protection.

Where, on appeal, the fair market valuation of an area involved in a competitive phosphate lease offer is challenged in general terms, but no specific evidence of error is presented, and the record supports the evaluation, that evaluation will not be disturbed.

John D. Archer, 74 IBLA 323 (July 28, 1983)

PERMITS

Limitation of a phosphate prospecting permit to "unclaimed, undeveloped" lands restricts it to lands without valid, vested rights, existing at the time of issuance of the permit, which are adverse to the prospecting permit which is sought, and any preference right lease which may be earned pursuant to such a permit.

A prospecting permit may be issued for phosphate for which there is no valid, adverse claim at the time of issuance, notwithstanding the existence then of non-adverse claims, entries, or leases.

Issuance of a prospecting permit is presumed to be regular if no valid, adverse interest appeared in the land office records at the time of issuance of the permit.

The Effect of Mining Claims on Secretarial Authority to Issue Prospecting Permits and Preference Right Leases for Coal and Phosphate (Modifying Solicitor's Opinion M-36893 of Aug. 2, 1977, and its Supplement of Nov. 19, 1979, upon the same subject): The "Unclaimed, Undeveloped" Issue, M-36893 (Supp. II) (Jan. 8, 1981)
88 I.D. 247

PHOSPHATE LEASES AND PERMITS--Continued

PERMITS--Continued

The filing of a phosphate prospecting permit application creates no vested rights in the applicant, and the application must be rejected if the land described therein is determined to be within a known phosphate leasing area subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the phosphate bed underlying the applied for land, which finding requires competitive leasing of the land.

It is unnecessary to demonstrate the workability of a mineral deposit by an actual physical examination of the deposit in the land sought by means of drilling or actual exploratory work on the ground. Competent evidence to establish the fact that exploration is unnecessary to determine the existence or workability of a phosphate deposit may consist of proof of the existence of minerals in adjacent lands and of geological and other surrounding external conditions.

Christian F. Huker, 57 IBLA 333 (Sept. 1, 1981)

The filing of a phosphate prospecting permit application creates no vested rights in the applicant and the application must be rejected if the land described therein is determined by Geological Survey to be within a known phosphate leasing area and to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the underlying phosphate bed, which finding requires competitive leasing of the land.

J. R. Simplot Co., 58 IBLA 305 (Oct. 14, 1981)

John D. Archer et al., 75 IBLA 128 (Aug. 15, 1983)

Earth Sciences, Inc., 80 IBLA 28 (Mar. 28, 1984)

Where there is no regulatory requirement that issuance of an application for a phosphate prospecting permit is contingent upon the filing of an exploration plan, a BLM decision rejecting an application for a permit because no exploration plan was first filed will be reversed.

GeoResources, Inc., 67 IBLA 297 (Sept. 29, 1982)

The filing of a phosphate prospecting permit application creates no vested rights in the applicant, and the application must be rejected if the land described therein is determined to be within a known phosphate leasing area subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the phosphate bed underlying the applied for land, which finding requires competitive leasing of the land.

Christian F. Huker, 75 IBLA 232 (Aug. 23, 1983)

Extension of a prospecting permit may be properly denied where application is not timely filed and no showings are made, as required by 43 CFR 3511.3-2, as to the reasons why additional time is needed to complete prospecting work.

Inverness Mining Co., 81 IBLA 78 (May 23, 1984)

PHOSPHATE LEASES AND PERMITS--Continued

PERMITS--Continued

BLM must reject a phosphate prospecting permit application filed pursuant to sec. 9(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 211(b) (1982), where the land is determined to be within a known phosphate leasing area.

An applicant for a phosphate prospecting permit under sec. 9(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 211(b) (1982), acquires no vested right to a permit by virtue of an inordinate delay in adjudication of the application, even where a permit might have issued when the application was originally filed.

In rejecting a phosphate prospecting permit application because the land is within a known phosphate leasing area, and thus no longer subject to issuance of a permit, BLM may rely on proof of the existence or workability of minerals in adjacent lands and geological and other surrounding external conditions, and need not engage in drilling or other exploratory work on the ground.

In rejecting a phosphate prospecting permit application, BLM may properly consider a recommendation of the Forest Service that issuance of a permit would not be in the public interest. However, ultimate rejection must be supported by facts of record and a reasoned explanation.

Elizabeth B. Archer et al., 82 IBLA 14 (July 5, 1984)

ROYALTIES

Where the Secretary has decided that production from phosphate leases should be valued in accordance with a particular method and what the value should be, the Board's review authority is limited to determining whether the Geological Survey Area Supervisor who issues orders to the phosphate lessees has properly followed the Secretary's instructions. No hearing is required as a prerequisite to the order.

Where the Department has not formally adopted any methodology for determining the value of production from phosphate leases, but has instead allowed lessees simply to pay royalty based on the minimum value specified in the lease after having advised them that a new method of determining a realistic value was being developed, it may assert that royalty was incorrect even after it has accepted these royalty payments, and may impose the method as approved by the Secretary.

Stauffer Chemical Co. et al., 49 IBLA 381 (Sept. 5, 1980)

POTASSIUM LEASES AND PERMITS
(See also Mineral Leasing Act--if included in this Index.)

GENERALLY

Failure to pay full annual rental on or before the anniversary date for a potassium prospecting permit results in automatic termination of the permit.

Apex Chemical Corp., 45 IBLA 335 (Feb. 6, 1980)

A natural brine containing water and ions of sodium, potassium, calcium, magnesium, and chlorine may be considered a valuable deposit of a sodium compound within the meaning of 30 U.S.C. § 262 (1976) if

POTASSIUM LEASES AND PERMITS--Continued

GENERALLY--Continued

either of two contingencies occur. First, sodium must be present in sufficient quantity as to be commercially valuable. Second, sodium must be essential to the molecular structure of the valuable mineral.

Land is "known to be valuable" for a mineral subject to the Mineral Leasing Act of Feb. 25, 1920, as amended, when "known conditions at the time [of location] were plainly such as to engender the belief that the land contained mineral deposits of such quality and in such quantity as would render their extraction profitable and justify expenditures to that end." United States v. Southern Pacific Co., 251 U.S. 1, 13-14 (1919); Diamond Coal Co. v. United States, 233 U.S. 236, 239-40 (1914). In determining whether mineral deposits are such as to render their extraction profitable and justify expenditures, extrinsic factors, such as the cost of extraction, processing, transportation, and marketing must be considered.

Where sodium ions are commingled in a brine with calcium, potassium, and chlorine ions and no valuable deposit of a sodium or potassium compound is present, contestees' evaporation of such brine does not violate the Multiple Mineral Development Act, 30 U.S.C. §§ 521-531 (1976).

The Administrative Law Judge gave proper weight to Government testimony in dismissing the Government's contest complaint where the evidence supported a finding of the existence of a sodium-calcium-chloride brine, but did not support a finding that such brine was "known to be valuable" for a Leasing Act mineral.

The existence of a "related product" within the meaning of 30 U.S.C. § 262 (1976) presumes the existence of a valuable sodium compound deposit.

United States v. Leron Bardsley (Trustee), Marlene H. Bardsley, Individually and as Administratrix of the Estate of Donald H. Bardsley (Deceased), 45 IBLA 367 (Feb. 7, 1980)

LEASES

Where a potassium lease issued under the provisions of sec. 3 of the Act of Feb. 7, 1927, as amended, 30 U.S.C. § 283 (1976), provides that the Secretary may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease and thereafter at the end of each succeeding 20-year period during the continuance of the lease, notice to the lessee of readjustment in the royalties and other terms and conditions must be made when the 20-year period expires and not at some later time.

International Minerals & Chemical Corp., 69 IBLA 114 (Nov. 30, 1982)

Noranda Exploration, Inc., 69 IBLA 317 (Dec. 27, 1982)

Noranda Exploration, Inc., 71 IBLA 9 (Feb. 10, 1983)

PERMITS

Failure to pay full annual rental on or before the anniversary date for a potassium prospecting permit results in automatic termination of the permit.

Apex Chemical Corp., 45 IBLA 335 (Feb. 6, 1980)

POWERSITE LANDS

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

Harold M. Yorks, 48 IBLA 206 (June 16, 1980)

Lolly D. Brookshire et al., 56 IBLA 73 (July 15, 1981)

Ronald D. McLean, 77 IBLA 380 (Dec. 7, 1983)

When a Native allotment application has been rejected because the applicant failed to complete 5 years of qualifying use and occupancy prior to the filing of an application for withdrawal for powersite purposes, the case will be remanded for readjudication under sec. 905 of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435-37 (1980), unless the described land is included as part of a project licensed under part I of the Federal Power Act of June 10, 1920 (41 Stat. 24), as amended, or is presently utilized for purposes of generating or transmitting electrical power or for any other project authorized by act of Congress. If the allotment applicant commenced the qualifying use of the land after its withdrawal or classification, the allotment shall be made subject to the right of reentry provided the United States.

William Carlo, Sr. (On Reconsideration), 53 IBLA 168 (Mar. 12, 1981)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

John C. Farrell, 55 IBLA 42 (May 28, 1981)

Lincoln Resources, Inc., 66 IBLA 310 (Aug. 24, 1982)

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James M. Cressaty, 61 IBLA 376 (Feb. 17, 1982)

A Native allotment application describing land within a powersite withdrawal may be approved pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435-37 (1980), subject to protests filed within 180 days of enactment of the statute, where the land is not part of a project licensed under the Federal Power Act of June 10, 1920, as amended, or presently used for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress. Where the allotment applicant's use of the land commenced after the withdrawal, the allotment shall be subject to the right or reentry provided the United States by sec. 24 of the Federal Power Act, as amended.

Marian Stevens, 64 IBLA 69 (May 10, 1982)

POWERSITE LANDS--Continued

Although land reserved for powersite purposes by a 1910 Executive Order issued pursuant to the "Pickett Act" of June 25, 1910, remained open to the location of mining claims for metalliferous minerals, that Act was superseded by sec. 24 of the Federal Power Act of June 10, 1920, which closed such lands to all mineral location until enactment of the Mining Claim Rights Restoration Act of Aug. 11, 1955.

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

George L. Hawkins, Wallace G. Heath, 66 IBLA 390 (Aug. 31, 1982)

Under the decision in Reeves v. Andrus, 465 F. Supp. 1065 (D. Alaska 1979), upon a determination of the Federal Power Commission that the value of land withdrawn for power purposes would not be injured by the allowance of entries under the public land laws, the Secretary of the Interior is required to restore the land to entry, at least insofar as the powersite withdrawal is concerned, within a reasonable time thereafter. Such land, however, does not become available until an order of restoration is issued. No rights may be acquired by a settler on the public land who initiates settlement at a time when the records of the Department indicate that the land is not open to entry.

Where the Department issues a decision finally adjudicating rights to the public land adverse to an appellant and the appellant does not seek judicial review of that decision, the Department will bar reconsideration of that decision, even if arguably erroneous, where a third party has initiated adverse rights to the land originally sought.

Carmel J. McIntyre (On Judicial Remand), 67 IBLA 317 (Oct. 1, 1982)

A mining claim located prior to Aug. 11, 1955, on land withdrawn for a powersite is null and void ab initio.

Mackay Bar Corp., 69 IBLA 148 (Dec. 13, 1982)

In accordance with sec. 24 of the Federal Power Act of 1920, as amended, 30 U.S.C. § 818 (1976), and sec. 2(a) of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1976), the Bureau of Land Management properly declares the portion of a placer mining claim located within the boundaries of a preexisting power project to be null and void ab initio.

W. G. Singleton, 75 IBLA 168 (Aug. 19, 1983)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a power project is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

J. M. Roberts, Jean Roberts, 79 IBLA 279 (Mar. 16, 1984)

POWERSITE LANDS--Continued

Where Congress has provided in 16 U.S.C. § 818 (1982) that lands sought for a proposed power project shall from the date of the filing of an application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Federal Power Commission or by Congress, and thereafter has further withdrawn these same lands for selection pursuant to sec. 16 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1615 (1976), BLM may properly convey such lands to a Native corporation selecting same, all else being regular.

Federal land occupied by a municipally operated utility pursuant to a license from the Federal Power Commission may be conveyed to a Native corporation selecting such land, subject to such license. Lands occupied by the utility are not excluded from the interim conveyance describing them.

Ketchikan Public Utilities, 79 IBLA 206 (Mar. 20, 1984)

PRACTICE BEFORE THE DEPARTMENT
(See also Rules of Practice--if included in this Index.)

PERSONS QUALIFIED TO PRACTICE

Qualifications to practice before the Department of the Interior are prescribed by regulations. Where an appeal is brought by a corporation that does not appear to fall within any of the categories of persons authorized to practice, the appeal is subject to dismissal.

Allyn Duncan, 53 IBLA 101 (Mar. 4, 1981) 88 I.D. 345

An appeal brought by a person who does not fall within any of the categories of persons authorized by regulation to practice before the Department is subject to dismissal.

Vuerdo G. Lord, 57 IBLA 263 (Aug. 28, 1981)

Thomas L. Tuttle, 71 IBLA 265 (Mar. 22, 1983)

William L. Dunbar, 72 IBLA 62 (Apr. 12, 1983)

J. C. Trahan, 74 IBLA 15 (June 29, 1983)

Anthony O'Brien, 77 IBLA 154 (Nov. 16, 1983)

An appeal brought on behalf of another by a person who does not qualify under 43 CFR 1.3 to practice before the Department is subject to dismissal.

John H. Trull, 74 IBLA 52 (June 28, 1983)

Walter Edwards, Jr., 75 IBLA 55 (Aug. 5, 1983)

An appeal filed for an appellant by an attorney-in-fact who is not himself qualified to practice before the Department under 43 CFR 1.3 is subject to summary dismissal.

Anthony Chiaverra et al., 74 IBLA 350 (July 28, 1983)

An owner of a mining claim who purports to represent the interests of other co-owners may only properly represent the interests of other claim holders if such owner meets one of the qualifications set out in 43 CFR 1.3(b).

United States v. Norman Montgomery et al., 75 IBLA 358 (Aug. 31, 1983)

PRACTICE BEFORE THE DEPARTMENT--Continued

PERSONS QUALIFIED TO PRACTICE--Continued

Where a simultaneous oil and gas lease application is submitted by a filing service on behalf of a client, and such application is subsequently rejected by the Bureau of Land Management for being improperly completed, the filing service is not authorized under 43 CFR 1.3 to represent the client in an appeal to the Board.

Donald E. Hook, 76 IBLA 367 (Oct. 25, 1983)

Qualifications to practice before the Department of the Interior are prescribed by regulations. Where an appeal is brought by an individual who does not appear to fall within any of the categories of persons authorized to practice, the appeal is subject to dismissal.

Robert N. Caldwell, 79 IBLA 141 (Feb. 22, 1984)

When an Indian tribe or member of an Indian tribe appears before the Board of Indian Appeals represented by a person not qualified to appear before the Department of the Interior under 43 CFR 4.1, the party will be informed that the unqualified person may not appear, but will not be penalized for choosing an unqualified representative. Once informed that the chosen representative is unqualified, the Indian party must choose a qualified representative or appear pro se in order for filings to be accepted.

Estate of Benjamin Kent, Sr. (Dan Nawanowsy), 13 IBIA 21 (Aug. 29, 1984)

PRESIDENT OF THE UNITED STATES

Withdrawals remain in force until specifically revoked or modified by competent authority. The Alaska National Interest Lands Conservation Act, P.L. 96-478 (94 Stat. 2371), does not affect the existence or validity of Public Land Order No. 5250.

Larry McMaster et al., 76 IBLA 370 (Oct. 25, 1983)

PRIVATE EXCHANGES
(See also Exchanges of Land--if included in this Index.)

GENERALLY

Lands the title to which has been conveyed to the United States pursuant to a private exchange authorized by sec. 8 of the Taylor Grazing Act do not become available for oil and gas leasing upon acceptance of title on behalf of the United States, but only when an order is issued opening the lands to such disposition.

Endras E. Hartley, 58 IBLA 329 (Oct. 16, 1981)

While there is no Departmental policy absolutely forbidding multiparty exchanges under sec. 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716 (1976), no such exchange can be approved unless the land ultimately acquired by the United States benefits a Federal natural resource management program.

Harry M. Bailey, 79 IBLA 362 (Mar. 23, 1984)

PRIVATE EXCHANGES--Continued

PUBLIC INTEREST

The fact that land sought in a private exchange is within a known geothermal resource area and is actually under lease is normally sufficient to support a finding that the land sought by the private party is more valuable for public purposes than the land which is being exchanged.

Harry M. Bailey, 79 IBLA 362 (Mar. 23, 1984)

PUBLIC LANDS
(See also Accretion, Avulsion, Boundaries, Reliction, Surveys of Public Lands--if included in this Index.)

GENERALLY

Adverse possession cannot be asserted against the United States. Mere occupancy of public lands and the making of improvements thereon give no vested right against the United States. An occupant of Federal land must show that he occupies the same under some proceeding or law that at least authorized his right of possession.

Lillian Harlow, 58 IBLA 385 (Oct. 21, 1981)

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard A. Tingley, 62 IBLA 315 (Mar. 19, 1982)

Sec. 7(c) of the Paiute Indian Tribe of Utah Restoration Act of 1980, 25 U.S.C. § 761 et seq. (Supp. IV 1980), contains the phrase "available public...lands" which must be construed as those lands administered by the BLM which are available for disposal; that is, lands which are not withdrawn, appropriated or reserved.

National Forest lands are not "available public... lands." As such, they are not intended by Congress to be included within the Paiute's proposed reservation enlargement plan under the Paiute Restoration Act.

Proposed Paiute Restoration Plan, M-36944 (May 7, 1982) 89 I.D. 403

Where an Act of Congress authorizes the setting aside of lands for particular public purposes, and does not either expressly continue or prohibit the operation of the general mining laws, the intent of Congress in that respect must be gathered from the Act itself, or by historical interpretation of this Department of that Act and similar Acts relating to lands of the same status.

Land within the Grand Canyon Game Preserve is not open to the location of mining claims, and mining claims located on land after it was included in the preserve are properly declared null and void ab initio.

Pathfinder Mines Corp., 70 IBLA 264 (Jan. 26, 1983) 90 I.D. 10

PUBLIC LANDS--Continued

GENERALLY--Continued

An island within the public domain in a navigable stream and actually in existence at the time of the admission to the Union of the state within which it is situated remains the property of the United States.

Once an island in a navigable stream which is public land washes away totally and then after statehood a new island forms in the same place, title to the new land is in the state.

David A. Brownlee, 78 IBLA 85 (Dec. 16, 1983)

The term "public lands," often used synonymously with "public domain," generally refers to lands which are open and available for various forms of disposition or disposal to the general public and state or local governments.

State Selections of Offshore Lands Underlying Navigable Waters in the Geographic Area of Revoked Public Land Order 82, M-36949 (Aug. 22, 1983) 91 I.D. 67

ADMINISTRATION

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), contemplates that the Department of the Interior retains continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 3602.1 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Pacific Power & Light Co., 65 IBLA 127 (Jan. 23, 1980)

Where appellant disagrees with BLM's decision to designate an area for limited use by off-road vehicles and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

John Schandelmeier, 56 IBLA 284 (July 28, 1981)

Where appellant disagrees with BLM's decision to designate an area as permanently closed for use by off-road vehicles and seeks to have its judgment substituted for that of the decisionmaker, the appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Magic Valley Trail Machine Ass'n, Inc., 57 IBLA 284 (Aug. 31, 1981)

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976), contemplates that the Department of the Interior retains continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes

PUBLIC LANDS--Continued

ADMINISTRATION--Continued

mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976).

Texaco, Inc., 59 IBLA 155 (Oct. 26, 1981)

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

The Federal Land Policy and Management Act of 1976 requires the Secretary of the Interior to manage public lands under principles of "multiple use" and "sustained yield," and the statutory definition of these concepts recognizes the need for latitude and discretion in their implementation. As the Secretary's delegate, BLM has the responsibility of administering such policies and programs, and BLM must be accorded correlative powers of reasoned discretion in discharging these duties. Therefore, so long as the BLM policy or implementing action is based on a consideration of all relevant factors and is supported by the record, the Board will not disturb it absent a clear showing that it is contrary to statute or regulation or otherwise erroneous.

A.C.O.T.S., 60 IBLA 1 (Nov. 12, 1981)

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

Susan Bolles et al., 66 IBLA 407 (Aug. 31, 1982)

The Board of Land Appeals must defer to the Secretary's decision to approve the granting of a contract, where such approval implicitly ratifies the entire process which led up to issuance of the contract itself, including compliance with the National Environmental Protection Act of 1969, 42 U.S.C. §§ 4321-4361 (1976). The Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

Donald Fay, 68 IBLA 26 (Oct. 21, 1982)

The Secretary of the Interior is not estopped by the principles of res judicata or finality of administrative action from correcting, reversing, or overruling an erroneous decision by subordinates or predecessors in interest. The Board of Land Appeals, in exercising the Secretary's review authority as fully and finally as might the Secretary, is not required to accept as precedent erroneous decisions made by the Secretary's subordinates.

Pathfinder Mines Corp., 70 IBLA 264 (Jan. 26, 1983)
90 I.D. 10

PUBLIC LANDS--Continued

ALASKA

Under sec. 6(b) of the Alaska Statehood Act, the term "public lands" means those lands in Federal ownership that are not withdrawn or otherwise reserved.

State Selections of Onshore Lands Underlying Navigable Waters in the Geographic Area of Revoked Public Land Order 982, A-36949 (Aug. 22, 1983) 91 I.D. 67

APPRAISALS

Where BLM appraises a parcel of land subject to a communication site right-of-way for direct sale to the holder of the grant pursuant to sec. 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1713 (1982), it is proper for BLM to appraise the parcel as if unencumbered, since the right-of-way is extinguished upon the right-of-way holder's acquisition of the fee title.

Cole Industries, Inc., 82 IBLA 289 (Aug. 31, 1984)

CLASSIFICATION

Where BLM classifies a 4-acre tract as suitable for disposal under the Small Tract Act, thereby segregating it from acquisition under other public land laws, then grants an individual a lease thereon with option to purchase, pursuant to which the lessee constructs buildings and occupies the tract, the protest and application of an Alaska Native, made for the first time 12 years later, will be rejected, as a matter of law and equity where the Native was claiming 160 acres of different land during the preceding 6 years, and had made no assertion of interest in the small tract, but rather had expressly acknowledged the existence of the leasehold.

Evelyn Alexander, 45 IBLA 28 (Jan. 14, 1980)

Where the Secretary by appropriate notice in the Federal Register has classified certain lands for multiple use management and such lands are thereby segregated from desert land entry, which classification has not been terminated by either a reclassification or publication in the Federal Register of termination of classification, an application for desert land entry is properly denied.

Bill K. Yearsley, Nikolay M. Yearsley, 67 IBLA 97 (Sept. 13, 1982)

When lands have been classified under a final order of the Secretary of the Interior as being unsuitable for disposal under the desert land laws, a desert land entry petition-application will not be allowed.

Duella B. Adams, Lyle B. Adams, 70 IBLA 63 (Jan. 10, 1983)

Mining claims located on land which has been classified for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), and subsequently leased pursuant thereto, are properly declared null and void ab initio because the land was segregated from mineral entry, even where the lease contained a mineral reservation to the United States.

The Board of Land Appeals has no jurisdiction to hear an appeal by a mining claimant from a BLM decision classifying land for lease or sale pursuant to the Recreation and Public Purposes Act, as amended.

PUBLIC LANDS--Continued

CLASSIFICATION--Continued

43 U.S.C. §§ 869 to 869-4 (1976), which has become a final order of the Secretary.

In order to establish that a notice of location of a mining claim is an amended location which relates back prior to a BLM decision which classified the land for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), the mining claimant must submit proof of a chain of title to him. In the absence of such proof, the purported amendment must be treated as a relocation.

Ronald R. Graham, Dorothy L. Graham, 77 IBLA 174 (Nov. 17, 1983)

Lands segregated on the public records by a Recreational and Public Purposes lease are not available for the location of mining claims, but a claimant may establish the exterior boundaries of a lode claim on land under a Recreation and Public Purposes lease, with the permission of the lessee, for the purpose of making end lines parallel so as to obtain extralateral rights to a vein or lode discovered on lands available for location.

Santa Fe Mining, Inc., 79 IBLA 48 (Feb. 9, 1984)

Where a lode mining claim is located partially on withdrawn or patented land, it is not null and void ab initio to the extent of its inclusion of such lands. A locator whose discovery is on lands open to location may extend the end lines and side lines of his claim across withdrawn or patented land to define the extralateral rights to lodes or veins which apex within the claim.

Western Nuclear, Inc., 82 IBLA 67 (July 12, 1984)

The Board of Land Appeals has no jurisdiction to hear appeals from BLM decisions denying petitions for classification.

State of Utah, Division of Wildlife Resources, 83 IBLA 298 (Oct. 26, 1984)

Where a lode mining claim is located partially on withdrawn land, it is not null and void ab initio to the extent of its inclusion of such lands. A locator whose discovery is on lands opened to location may extend the end lines and side lines of his claim across withdrawn or patented land to define the extralateral rights to lodes or veins which apex within the claim.

Conoco American, Inc., 84 IBLA 209 (Dec. 27, 1984)

DISPOSALS OF

Generally

Sec. 7(c) of the Paiute Indian Tribe of Utah Restoration Act of 1980, 25 U.S.C. § 761 et seq. (Supp. IV 1980), contains the phrase "available public...lands" which must be construed as those lands administered by the BLM which are available for disposal; that is, lands which are not withdrawn, appropriated or reserved.

Proposed Paiute Restoration Plan, M-36944 (May 7, 1982) 89 I.D. 403

PUBLIC LANDS--Continued

DISPOSALS OF--Continued

Generally--Continued

The Secretary of the Interior has the discretionary authority to grant an application for public lands under the Recreation and Public Purposes Act, 43 U.S.C. §§ 869 to 869-4 (1982). A decision rejecting such an application for land to be used for wildlife habitat management will be affirmed where it is based on a policy reasonably related to the public interest and appellant has shown no error therein.

State of Utah, Division of Wildlife Resources, 83 IBLA 298 (Oct. 26, 1984)

Costs of a survey must be paid by a person authorized by a private law to purchase public lands.

Jerry L. Crow, 84 IBLA 119 (Dec. 10, 1984)

JURISDICTION OVER

So long as the legal title to public lands remains in the United States, it has the power, after proper notice and upon adequate hearing, to determine whether a millsite claim is valid, and if it be found invalid, to declare it null and void.

United States of America v. Utah International, Inc., 45 IBLA 73 (Jan. 17, 1980)

The Act of May 23, 1908, 35 Stat. 267, as amended, 16 U.S.C. § 671 (1976), providing for the establishment of the National Bison Range, terminated the status of the land included therein as land reserved for Indian use.

Hingeline Overthrust Oil & Gas, Inc., 80 IBLA 4 (Mar. 27, 1984)

BLM has the jurisdiction to determine whether the terms of a mineral reservation in a deed to the United States has operated to vest title to the mineral estate in the United States by virtue of a failure to comply with an annual production requirement found in the reservation. However, where the record indicates that BLM has not fully considered whether production within a production unit which includes the reserved land serves to extend the reservation, the case will be remanded to BLM for consideration of that question.

Doris A. Sleeter et al., 81 IBLA 282 (June 12, 1984)

LEASES AND PERMITS

A hardrock prospecting permit application is properly rejected where the deed conveying the subject lands to the United States expressly excepts therefrom all minerals and rights thereunder outstanding of record in third parties.

Exxon Corp., 45 IBLA 260 (Feb. 4, 1980)

An airport lease issued under the Act of May 24, 1928, is properly canceled where the lessee fails to use the leased land as a public airport. It is irrelevant that the lessee has been unable to arrange financing for reinitiation of airport service, as the terms of the Act, regulations, and lease require that the lands

PUBLIC LANDS--Continued

LEASES AND PERMITS--Continued

be used as an airport and provide for no dispensation of this requirement.

Jose Rodriguez, 49 IBLA 258 (Aug. 18, 1980)

Public domain land withdrawn or reserved is presumed to be available for oil and gas leasing unless the withdrawal or reservation specifically provides otherwise.

Where public domain land is withdrawn or reserved for administration by another agency for a particular purpose, BLM should properly consider the recommendations of the surface management agency regarding lease issuance and any required stipulations, but this does not relieve BLM of the need to make an independent determination supported by the record of whether and under what conditions a lease may issue in the public interest consistent with multiple use values.

Endras A. Hartley, 54 IBLA 38 (Apr. 9, 1981)
88 I.D. 437

Western Interstate Energy, Inc., 71 IBLA 19 (Feb. 15, 1983)

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

Edward Seggerson, Jr., 67 IBLA 189 (Sept. 22, 1982)

BLM may properly cancel a public airport lease issued pursuant to the Act of May 24, 1928, as amended, 49 U.S.C. §§ 211-214 (1982), where the lessee fails to complete construction of airport facilities within 6 months of the date of the lease, as required by the terms of the lease.

Alfred Gerstler, 84 IBLA 155 (Dec. 13, 1984)

RIPARIAN RIGHTS

Where riparian public land has been eroded away entirely by the actions of a navigable river and the river subsequently returns to its original banks, restoring the eroded land through accretion, title to the accreted land is deemed to be in the remote riparian owner to whose land the accretion attaches, rather than the United States.

Ralph P. Rosenbaum et al., 66 IBLA 374 (Aug. 30, 1982)
89 I.D. 415

Generally, the meander line of a river is not to be treated as a boundary and when the United States conveys a tract of land by patent referring to an official plat which shows the tract to be riparian to a river, the patent conveys all the rights to the water line of that river, if navigable, or to the center of the stream if nonnavigable, except where there is fraud, gross error shown in the survey, or an intention to limit a grant or conveyance to the actual meander lines as disclosed in the facts or circumstances.

Donald W. Hoar, 81 IBLA 74 (May 23, 1984)

PUBLIC LANDS--Continued

RIPARIAN RIGHTS--Continued

Where riparian public land has been completely eroded away by the actions of a navigable river, title is lost to the United States and, where said land is subsequently restored through accretion by the continued action of the river, title belongs to the riparian owner.

David A. Provinse, 81 IBLA 148 (May 31, 1984)

It is a general rule that a meander line is not a line of boundary but one designed to point out the sinuosity of the bank or shore and as a means of ascertaining the quantity of the land in the fractional lot, the boundary line being the waterline itself. The "Basset exception" to this rule is that if, at the time a homestead entry is made, a large body of land previously formed by accretion existed between the meander line and the waters of the stream, then the meander line will be treated as the boundary line of the grant, and the patent will be construed to convey only the lands within the meander line. In determining the applicability of the "Basset exception," consideration must also be given to equitable factors, including unjust enrichment.

Eldin L. E. Johnson, Marilyn Johnson, 82 IBLA 135 (July 27, 1984)

SPECIAL GRANTS

Costs of a survey must be paid by a person authorized by a private law to purchase public lands.

Jerry L. Crow, 84 IBLA 119 (Dec. 10, 1984)

SPECIAL USE PERMITS

The issuance of special use permits is discretionary, and BLM may properly reject a permit application for commercial river rafting where the proposed use would exceed the river's carrying capacity and would be inconsistent with the objectives, responsibilities, or programs for the management of the public lands involved.

Whitewater Expeditions & Tours, 52 IBLA 80 (Jan. 9, 1981)

The issuance of special use permits is discretionary, and BLM may properly reject a permit application for an organized off-road motorcycle race where the proposed use would adversely affect critical deer winter range and would be inconsistent with the objectives, responsibilities, or programs for the management of the public lands involved.

Cascade Motorcycle Club, 56 IBLA 134 (July 20, 1981)

The Bureau of Land Management may properly charge fees for special recreation permits authorizing commercial rafting on the Rogue River, a designated wild and scenic river, under sec. 4(c) of the Land and Water Conservation Fund Act, 16 U.S.C. § 460l-6a(c), and Departmental regulations at 43 CFR Part 8372.

Where, on appeal, commercial outfitters protesting the imposition and increase of special recreation permit fees for commercial raft trips on the Rogue River,

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PUBLIC LANDS--Continued

SPECIAL USE PERMITS--Continued

fail to demonstrate that the Bureau of Land Management's actions did not comport with its regulations or that the new fee levels have no reasonable basis under the regulations, a decision denying the protest will be affirmed.

Departmental regulations at 43 CFR Subpart 8372 require that, when the Bureau of Land Management issues special recreation permits authorizing use of special areas such as a designated wild and scenic river, fees must be charged for noncommercial as well as commercial users engaging in the same activity, except to the extent that a user is exempted from paying fees by 43 CFR 8372.4(d).

Rogue River Outfitters Ass'n, Dave Helfrich River Outfitters, Inc., 63 IBLA 373 (Apr. 30, 1982)

An applicant for a special recreation use permit for river rafting will be considered as seeking a "commercial use" of the river, within the meaning of 43 CFR 8372.0-5(a), where the applicant or the applicant's employee makes a salary from or for services rendered to customers or participants in the permitted activity.

Wilderness/Challenge, Inc., 64 IBLA 44 (May 6, 1982)

The issuance of special use permits is discretionary, and BLM may accept or reject a permit application depending upon its consistency with the objectives, responsibilities, or programs for the management of the public lands involved. Where a duly authorized officer has exercised this responsibility, his actions will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

National Public Lands Task Force, Nevada Outdoor Recreation Ass'n, Inc., 70 IBLA 214 (Jan. 24, 1983)

Use fees for special recreation use permits for competitive use in areas other than developed recreational sites are calculated pursuant to 43 CFR 8372.4(b)(2). This section provides for a use fee of 5 percent of the gross receipts (with certain minimums). However, there is no definition of the term "gross receipts" in the pertinent regulations or enabling legislation. Therefore, if a permittee appeals from a determination of the use fee owing under a special recreation use permit, the permittee must ordinarily demonstrate that: (1) The fee calculation contained mathematical errors or errors with respect to the amount, in fact, received; (2) the fee calculation was made using a formula which differed from that specifically agreed upon or contained in the permit; or (3) the fee calculation was not the same as had been previously applied to the permit and the permittee had no reason to believe that the formula would not be the same.

Score International, 78 IBLA 142 (Dec. 29, 1983)

The exercise of Secretarial discretion involved in the issuance of special use permits includes the authority to set permit conditions and establish penalties for violation of permit conditions. A temporary suspension of a permit imposed by the authorized officer for violations of permit conditions is found to be proper where it is shown the permit holder failed to make required reports and failed to mark boats to identify the permit holder as required by the permit conditions.

Osprey River Trips, Inc., 83 IBLA 98 (Oct. 1, 1984)

PUBLIC LANDS--Continued

SPECIAL USE PERMITS--Continued

Collection of user fee pursuant to 43 CFR 8372.4 is proper where the commercial user was obligated to pay a fee for river rafting trips conducted in a special area under duly promulgated Departmental regulations even though Bureau of Land Management officials have not collected a user fee from noncommercial users of the same area.

Rogue River Outfitters Ass'n, 83 IBLA 151 (Oct. 10, 1984)

PUBLIC RECORDS
(See also Administrative Procedure, Confidential Information--if included in this Index.)

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected land to the extent indicated in the notice, and applications for such land must be rejected.

Robert Dale Harston et al., 51 IBLA 115 (Nov. 20, 1980)

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected lands to the extent indicated in the notice, and subsequent Indian allotment applications for such lands must be rejected.

Samuel Lee Gifford et al., 53 IBLA 23 (Feb. 26, 1981)

Wanda Lois Lee McKinney et al., 53 IBLA 279 (Mar. 24, 1981)

Jan Christian Sykes, 55 IBLA 23 (May 26, 1981)

Terry Burl Fryrear, 58 IBLA 94 (Sept. 24, 1981)

Marvin Coy Gifford et al., 58 IBLA 98 (Sept. 24, 1981)

Lula Lorene McCracken Slowey, 58 IBLA 202 (Sept. 29, 1981)

Betsy Bonsing Bevill, 58 IBLA 260 (Oct. 6, 1981)

William Milton, Jr., Cordell Eldon Eugene Morgan, Myrna June Morgan, Jackie Lavern Jarman, 59 IBLA 182 (Oct. 27, 1981)

Publication in the Federal Register of a classification for multiple use management pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. § 1411 (1976), will segregate the affected land to the extent indicated in the notice, and applications for such land pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), must be rejected.

Dorothy L. Standridge et al., 55 IBLA 131 (June 3, 1981)

Gladys Lee Cardwell Gifford, Betty Ann Gifford Jarman, 55 IBLA 332 (June 26, 1981)

Where the Bureau of Land Management file pertaining to a particular mining claim group contains information showing the claims to be null and void, the assignee who has failed to check the file runs the risks which flow from failure to so check that public record.

Gary Willis, 56 IBLA 217 (July 22, 1981)

PUBLIC RECORDS--Continued

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the Federal Register.

Mary Frances Stiles et al., 64 IBLA 361 (June 16, 1982)

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

Estoppel will not lie against the United States where there is no evidence of an affirmative misrepresentation or an affirmative concealment of a material fact by the Government and the party asserting the estoppel cannot claim ignorance of the true facts because the facts are a matter of public record.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982) 89 I.D. 496

Harry S. Hills, 71 IBLA 302 (Mar. 22, 1983)

Frederick W. Lovey, 76 IBLA 195 (Oct. 6, 1983)

If land has been withdrawn from mining, an erroneous public land record does not open the land to entry. A mining claim located on withdrawn land is null and void even if the land records erroneously indicate that the land is open.

Pathfinder Mines Corp., 70 IBLA 264 (Jan. 26, 1983) 90 I.D. 10

BLM must reject an Indian allotment application filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), where the land has been segregated from all forms of entry under the public land laws pursuant to sec. 3 of the Act of Mar. 6, 1958, P.L. 85-339, 72 Stat. 31 (1958), and reserved for acquisition by the Colorado River Commission of the State of Nevada. The land remains segregated even where the segregation has expired by its terms, but it is still reflected on the public land records of BLM.

Regina Anne Jones, Claudia Lee Jones, 76 IBLA 17 (Sept. 6, 1983)

PUBLIC SALES

APPLICATIONS

Bureau of Land Management properly rejects an application for the sale of public land pursuant to the Unintentional Trespass Act, 43 U.S.C. §§ 1431-1435 (1976), where the applicant refuses to pay related damages for unauthorized use of the land. Where BLM assesses trespass damages based on the reasonable value, extent, and duration of an unauthorized use of the public lands, this assessment will not be disturbed unless the trespasser submits convincing evidence that it is incorrect.

Boyd L. Asay, 55 IBLA 157 (June 9, 1981)

PUBLIC SALES--Continued

APPLICATIONS--Continued

An application to purchase public land under the Omitted Lands Act of May 31, 1962, P.L. 87-469, 76 Stat. 89, is properly rejected where the land has not been offered for public sale based on a finding that retention of the land is in the public interest.

H. Allen Sellers, 62 IBLA 328 (Mar. 23, 1982)

APPRAISALS

Where BLM appraises a parcel of land subject to a communication site right-of-way for direct sale to the holder of the grant pursuant to sec. 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1713 (1982), it is proper for BLM to appraise the parcel as if unencumbered, since the right-of-way is extinguished upon the right-of-way holder's acquisition of the fee title.

Cole Industries, Inc., 82 IBLA 289 (Aug. 31, 1984)

PREFERENCE RIGHTS

An assertion of a preference right to purchase public land offered for public sale pursuant to the Unintentional Trespass Act of Sept. 26, 1968, 82 Stat. 870 (43 U.S.C. §§ 1431-1435 (1976)) (now covered by the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701, 1722 (1976)), is improperly rejected when the applicant submits satisfactory equitable proof of his "ownership" of contiguous lands by showing that he has contracted to purchase such land, has made at least partial payment therefor, and is in possession thereof.

J. Burton Tuttle, 49 IBLA 278 (Aug. 18, 1980) 87 I.D. 350

The exercise of a right of first refusal pursuant to sec. 214 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1722 (1976), by one having a preference right to purchase public land in accordance with sec. 2 of the Unintentional Trespass Act of 1968, 43 U.S.C. § 1432 (1976), is properly rejected when the preference right holder fails to submit satisfactory evidence of the ownership of contiguous lands within the time specified by the authorized officer as provided by regulation.

Lorraine Lawler (Trust), 52 IBLA 227 (Jan. 30, 1981)

SALES UNDER SPECIAL STATUTES

An application to purchase public land under the Omitted Lands Act of May 31, 1962, P.L. 87-469, 76 Stat. 89, is properly rejected where the land has not been offered for public sale based on a finding that retention of the land is in the public interest.

H. Allen Sellers, 62 IBLA 328 (Mar. 23, 1982)

RAILROAD GRANT LANDS

Language excluding mineral lands which was included in a patent of railroad grant lands does not operate as a mineral reservation or diminish the estate vested in the grantee upon later discovery of minerals in the land. The issuance of a railroad grant lands patent

RAILROAD GRANT LANDS--Continued

generally constitutes a conclusive determination by the United States of the nonmineral character of the land.

A noncompetitive oil and gas lease offer for lands patented under a railroad land grant must be rejected because the United States does not own the mineral deposits in the lands.

Diane B. Katz, 48 IBLA 118 (May 30, 1980)

Pursuant to 43 CFR 2631.1, the Bureau of Land Management may properly require an applicant for patent under sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1976), to provide specific proofs of conveyances and transfers of title.

Where land has long been devoted to a particular public purpose such as inclusion in a forest reserve, laches may bar an application filed pursuant to the Transportation Act of 1940, 49 U.S.C. § 65(b) (1976).

Southern Pacific Transportation Co., R. K. Herndon, 54 IBLA 174 (Apr. 21, 1981)

To establish the mineral character of railroad grant lands under the Act of July 1, 1862, 12 Stat. 489 as amended by the Act of July 2, 1864, 13 Stat. 356, it must be shown that known conditions--which may include geological conditions, discoveries of minerals in adjacent land, and other observable external conditions upon which prudent and experienced men are known to be accustomed to act--are such as reasonably to engender the belief that the land contains mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end.

One will not be considered an innocent purchaser for value under sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1976), when the evidence presented at a hearing supports a finding that the lands in question were of known mineral character on the date of the original sale by the railroad, and the purchaser should have known at the time of purchase that such lands were excepted from the grant to the railroad.

United States v. Southern Pacific Transportation Co. & Donald K. Lee, 66 IBLA 191 (Aug. 13, 1982)

Where there is a deficiency of indemnity land to satisfy losses in place land, the right of a railroad vests to select indemnity under a grant in aid of construction. That right can be conveyed to an innocent purchaser for value and is not affected by a subsequent release filed pursuant to sec. 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1976).

A railroad's right to select indemnity land under the Act of July 27, 1866, which had vested, was a claim which was required to be recorded with the Department within 2 years from the effective date of the Act of Aug. 5, 1955, 69 Stat. 534. Failure to present a claim within the time established by the Act barred acquisition of lands. A list of innocent purchasers for value filed with the Department in 1940 pursuant to sec. 321(b) of the Transportation Act, 49 U.S.C. § 65(b) (1976), did not constitute compliance with the 1955 recordation requirement.

Santa Fe Pacific Railroad Co., 72 IBLA 197 (Apr. 19, 1983)

RAILROAD GRANT LANDS--Continued

Language in a patent of railroad grant lands that excludes mineral lands does not operate as a mineral reservation or diminish the estate vested in the grantee upon discovery of minerals in the land. The issuance of a railroad grant lands patent generally constitutes a conclusive determination by the United States of the nonmineral character of the land.

Joseph A. Barnes et al., 78 IBLA 46 (Dec. 13, 1983) 90 I.D. 550

Where lands were patented to a railroad under a statute which authorized the granting of nonmineral lands only, the issuance of the patent generally constituted a conclusive determination by the United States of the nonmineral character of the land so patented, and the subsequent discovery of mineral values thereon does not operate to void the conveyance by the United States. Where such land has been reconveyed to the United States subject to a reservation of all minerals to the private grantor, the land is not subject to the subsequent location of mining claims under the general mining laws.

Hoiss & Leon Berger, 82 IBLA 253 (Aug. 28, 1984)

Leo Crowley, Michael G. Clifton, 84 IBLA 7 (Nov. 26, 1984)

RECLAMATION HOMESTEADS
(See also Homesteads (Ordinary)--if included in this Index.)

GENERALLY

Where a homestead entry is on land within a second-form reclamation withdrawal, and compliance with the provisions of the reclamation laws is still required, the mere filing of ordinary homestead final proof is not sufficient to vest the entryman with equitable title.

The revocation of a second-form reclamation withdrawal is effective upon the date specified in the order of revocation, regardless of whether the land had ever been suitable for the purpose for which it was withdrawn. Where an entryman has complied with all the requirements of the ordinary homestead law, but not with the requirements of the reclamation law, the revocation of the reclamation withdrawal does not operate retroactively to vest equitable title in the entryman as of the time final proof under the ordinary homestead law was submitted. Such equitable title cannot be deemed to have vested prior to the effective date of the revocation of the withdrawal.

A waiver of mineral rights pursuant to 30 U.S.C. §§ 121-123 (1976) is properly required where there is a finding that land within a reclamation homestead entry is valuable for one of the minerals specified in that Act prior to the submission of reclamation final proof and other compliance with the law, even though ordinary homestead final proof was accepted many years before. Where the entryman or his successor in interest executed the waiver rather than appeal the decision requiring it, the waiver is binding on all successors in interest.

Vincent Barnard, 66 IBLA 100 (Aug. 4, 1982)

RECLAMATION LANDS
(See also Irrigation Claims, Rights-of-Way--if included in this Index.)

GENERALLY

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Water and Power Resources Service has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Florence Atkinson, 47 IBLA 121 (Apr. 28, 1980)

A desert land application filed for lands which are withdrawn for reclamation purposes at the time of the filing of the application must be rejected. It cannot be suspended pending the lifting of the withdrawal. Even where the purpose of the withdrawal cannot be met, the withdrawal is nevertheless effective to bar the disposal of the land.

Robert A. Adams, 57 IBLA 370 (Sept. 8, 1981)

A land owner is properly assessed annual operation and maintenance charges with respect to his lands within the boundaries of the Yuma Valley Reclamation Project.

David J. Stoddard, 4 OHA 204 (Oct. 26, 1981)

Where a homestead entry is on land within a second-form reclamation withdrawal, and compliance with the provisions of the reclamation laws is still required, the mere filing of ordinary homestead final proof is not sufficient to vest the entryman with equitable title.

The revocation of a second-form reclamation withdrawal is effective upon the date specified in the order of revocation, regardless of whether the land had ever been suitable for the purpose for which it was withdrawn. Where an entryman has complied with all the requirements of the ordinary homestead law, but not with the requirements of the reclamation law, the revocation of the reclamation withdrawal does not operate retroactively to vest equitable title in the entryman as of the time final proof under the ordinary homestead law was submitted. Such equitable title cannot be deemed to have vested prior to the effective date of the revocation of the withdrawal.

A waiver of mineral rights pursuant to 30 U.S.C. §§ 121-123 (1976) is properly required where there is a finding that land within a reclamation homestead entry is valuable for one of the minerals specified in that Act prior to the submission of reclamation final proof and other compliance with the law, even though ordinary homestead final proof was accepted many years before. Where the entryman or his successor in interest executed the waiver rather than appeal the decision requiring it, the waiver is binding on all successors in interest.

Vincent Bernard, 66 IBLA 100 (Aug. 4, 1982)

A decision rejecting an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration of lands within a reclamation withdrawal to mineral entry and location will be reversed on appeal where the record fails to disclose any objection to granting the application or any way in which it is contrary to the public interest.

Joe Ashburn, 66 IBLA 328 (Aug. 25, 1982)

RECLAMATION LANDS--Continued

RIGHTS-OF-WAY

Where a reclamation withdrawal is modified by public land order to authorize a public highway right-of-way pursuant to sec. 8 of the Act of July 26, 1866 (repealed 1976, formerly codified at 43 U.S.C. § 932), the nature and extent of the rights authorized are controlled by the express terms of the public land order restoring the land. A decision to close a road built on a right-of-way within a reclamation withdrawal which is expressly conditioned upon noninterference with the operation and maintenance of a dam and related facilities will be affirmed where the record supports a determination by reclamation officials that public access is substantially interfering with operations and maintenance and the road has been replaced by a new highway open to the public.

A state retains extensive jurisdiction over Federal lands within its boundary, but Congress is authorized to enact legislation regarding the use and occupancy of the Federal lands. Provisions of state law regarding abandonment of a right-of-way within a reclamation withdrawal must recede where implementation thereof would interfere with the effort of reclamation officials to operate and maintain reclamation facilities as directed by Act of Congress.

County of Imperial, 5 OHA 286 (Mar. 16, 1984)

RECREATION AND PUBLIC PURPOSES ACT

The rejection of an application for a lease under the Recreation and Public Purposes Act for land to be used as a rifle range is a proper exercise of the Secretary's discretion where the facts show that size and topography of the land are not suitable for such range and the site is not safe, notwithstanding the fact that the land had been classified for lease under the Recreation and Public Purposes Act.

Town of Kremmling, 46 IBLA 213 (Mar. 27, 1980)

An Indian allotment application is properly rejected where it requests lands which are not available for entry because they have previously been noted on BLM plats under a recreational and public purposes classification pursuant to 43 U.S.C. § 869 (1976).

Marjorie M. Underwood, 58 IBLA 21 (Sept. 16, 1981)

Where the Bureau of Land Management has transferred lands to the National Park Service for inclusion in a national recreation area, the lands are not subject to disposition under the Recreation and Public Purposes Act.

General M. B. W. Corp., 59 IBLA 320 (Nov. 4, 1981)

Land segregated pursuant to a Recreation Public Purpose Act classification was not available for the location of mining claims, and claims thereafter located are null and void ab initio.

Gloria Ann Sandvik, Judy Neff, 73 IBLA 82 (May 18, 1983)

RECREATION AND PUBLIC PURPOSES ACT--Continued

Mining claims located on land which has been classified for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), and subsequently leased pursuant thereto, are properly declared null and void ab initio because the land was segregated from mineral entry, even where the lease contained a mineral reservation to the United States.

The Board of Land Appeals has no jurisdiction to hear an appeal by a mining claimant from a BLM decision classifying land for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), which has become a final order of the Secretary.

In order to establish that a notice of location of a mining claim is an amended location which relates back prior to a BLM decision which classified the land for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), the mining claimant must submit proof of a chain of title to him. In the absence of such proof, the purported amendment must be treated as a relocation.

Ronald R. Graham, Dorothy L. Graham, 77 IBLA 174 (Nov. 17, 1983)

A mining claim lying entirely on lands previously patented under the Recreation and Public Purposes Act is null and void ab initio because such lands are not open to mineral entry.

Cruz G. Velasquez, Arsenio Sanchez, 78 IBLA 355 (Jan. 25, 1984)

Lands segregated on the public records by a Recreational and Public Purposes lease are not available for the location of mining claims, but a claimant may establish the exterior boundaries of a lode claim on land under a Recreation and Public Purposes lease, with the permission of the lessee, for the purpose of making end lines parallel so as to obtain extralateral rights to a vein or lode discovered on lands available for location.

Santa Fe Mining, Inc., 79 IBLA 48 (Feb. 9, 1984)

The Recreation and Public Purposes Act makes reserved minerals subject to disposition only under applicable laws and such regulations as the Secretary may prescribe. In the absence of such regulations, land under patent pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 - 869-4 (1976), is not open to location under the mining laws.

A patentee's transfer of property, or use of property, for a purpose other than the one described in a patent under the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), without consent of the Department of the Interior, triggers reversion of the land to the United States; however, such reversion occurs only after due notice and an opportunity for a hearing has been provided to the patentee.

George Schultz et al., 81 IBLA 29 (May 17, 1984)

The Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 - 869-4 (1982), makes reserved minerals subject to disposition only under applicable laws and such regulations as the Secretary may prescribe. In the absence of such regulations,

RECREATION AND PUBLIC PURPOSES ACT--Continued

land classified for disposition and under lease pursuant to the Recreation and Public Purposes Act is not open to location under the mining laws.

E. D. Topashr, 82 IBLA 162 (Aug. 6, 1984)

The Secretary of the Interior has the discretionary authority to grant an application for public lands under the Recreation and Public Purposes Act, 43 U.S.C. §§ 869 to 869-4 (1982). A decision rejecting such an application for land to be used for wildlife habitat management will be affirmed where it is based on a policy reasonably related to the public interest and appellant has shown no error therein.

State of Utah, Division of Wildlife Resources, 83 IBLA 298 (Oct. 26, 1984)

REGULATIONS
(See also Administrative Procedure--it included in this Index.)

GENERALLY

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

Willene Minnier, 45 IBLA 1 (Jan. 8, 1980)

Robert W. Hansen, Federal Bentonite Co., 46 IBLA 93 (Feb. 28, 1980)

M. E. Rogers, 47 IBLA 196 (May 7, 1980)

Floyd Zaiger, 47 IBLA 204 (May 7, 1980)

Edwin Forsberg, 47 IBLA 235 (May 13, 1980)

Ror Tremayne, 47 IBLA 289 (May 15, 1980)

William J. Walker, Lewis Sandberg, 47 IBLA 389 (May 22, 1980)

Paul B. Rhodes, 48 IBLA 90 (May 29, 1980)

Helen E. Wallace, 48 IBLA 127 (May 30, 1980)

James E. Cooper, 48 IBLA 175 (June 9, 1980)

A. J. Grady, 48 IBLA 218 (June 16, 1980)

Joe Rapic, 48 IBLA 255 (June 26, 1980)

Morrill A. Nielson, 48 IBLA 398 (July 11, 1980)

Rose M. Keegel, 49 IBLA 106 (July 28, 1980)

Ross Weaver, 49 IBLA 111 (July 28, 1980)

Glen Hocking, 49 IBLA 217 (Aug. 11, 1980)

Margaret J. Wilson, 49 IBLA 228 (Aug. 12, 1980)

Nila Tyrrel, 49 IBLA 267 (Aug. 18, 1980)

Tod Anderson, 50 IBLA 66 (Sept. 17, 1980)

Michael Jon McFarland, 51 IBLA 173 (Nov. 26, 1980)

Edward W. Kramer, 51 IBLA 294 (Dec. 17, 1980)

Robert W. Miller, Marjorie Sipper Miller, 51 IBLA 364 (Dec. 29, 1980)

William H. Fevis, 52 IBLA 125 (Jan. 13, 1981)

Henri Guzek, 52 IBLA 200 (Jan. 26, 1981)

Kenneth G. Walker, 52 IBLA 214 (Jan. 30, 1981)

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Lloyd A. Duttweiler, 52 IBLA 363 (Feb. 19, 1981)

Robert G. Sunder, Jeremy F. A. Sunder, 52 IBLA 375 (Feb. 19, 1981)

James B. Pauley, 53 IBLA 1 (Feb. 26, 1981)

Clayton W. Curtin, 54 IBLA 184 (Apr. 22, 1981)

D. L. Richard, R. W. Tompkins, 57 IBLA 114 (Aug. 25, 1981)

Walter Adenius, 67 IBLA 177 (Sept. 21, 1982)

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations, including OCS regulations pertaining to the submittal of production and development plans, have the force and effect of law and are binding on the Department.

Kerr-McGee, U.S.A., 45 IBLA 313 (Feb. 6, 1980)

where it benefits the affected party to do so, and where there are no intervening rights which will be adversely affected, a mining claim recordation regulation which is amended while the matter is pending may be applied in its amended form.

James E. Strong, 45 IBLA 386 (Feb. 13, 1980)

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations regardless of their actual knowledge of what is contained in such regulations.

Phillip Wood et al., 46 IBLA 309 (Apr. 4, 1980)

Ray F. Coffey, 47 IBLA 217 (May 13, 1980)

Robert Alameda et al., 48 IBLA 178 (June 9, 1980)

Lawrence Jacob, Freeda Jacob, 49 IBLA 137 (July 28, 1980)

Garrett Stillman, 49 IBLA 150 (July 30, 1980)

Brewery Hill Mining Co., Inc., 49 IBLA 197 (Aug. 6, 1980)

Clayton E. Read, Gerald A. Sykes, 49 IBLA 271 (Aug. 18, 1980)

John J. O'Loughlin, 50 IBLA 50 (Sept. 15, 1980)

Overthrust Oil and Gas Corp., 52 IBLA 119 (Jan. 13, 1981) 88 I.D. 38

Martin Exploration Management Corp., 63 IBLA 287 (Apr. 22, 1982)

Earth Sciences, Inc., 80 IBLA 28 (Mar. 28, 1984)

All persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations regardless of their actual knowledge of what is contained in such statutes and regulations.

Eric Bartay, 47 IBLA 112 (Apr. 28, 1980)

REGULATIONS--Continued

GENERALLY--Continued

All persons dealing with the Government are presumed to have knowledge of statutes and duly promulgated regulations.

Ruth Mallory, 47 IBLA 296 (May 19, 1980)

All persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations.

Kenneth E. Parker, 48 IBLA 129 (May 30, 1980)

Don and Mary L. Clark, 49 IBLA 11 (July 15, 1980)

Canyon View Mining Co., 49 IBLA 184 (July 31, 1980)

Alfred Leicher, 49 IBLA 193 (Aug. 6, 1980)

John Lincoln, Jr., 49 IBLA 335 (Aug. 25, 1980)

Gordon L. Cooper, 51 IBLA 191 (Dec. 5, 1980)

Santa Monica Hospital Medical Center Foundation, 51 IBLA 194 (Dec. 5, 1980)

Philip I. Grimm, 52 IBLA 179 (Jan. 26, 1981)

Abram M. Kreider, 57 IBLA 68 (Aug. 18, 1981)

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

John F. Sherwood, 48 IBLA 180 (June 9, 1980)

Armando Bejalca, 48 IBLA 351 (July 11, 1980)

Vernon G. & Shirley E. Nichols, 50 IBLA 1 (Sept. 5, 1980)

Nolark, Inc., 52 IBLA 5 (Jan. 5, 1981)

Dale E. Hopkins, 52 IBLA 9 (Jan. 5, 1981)

Pearl C. Barrett, 52 IBLA 273 (Feb. 6, 1981)

Joe Pastore, 52 IBLA 288 (Feb. 9, 1981)

Lowell L. Potter, 52 IBLA 299 (Feb. 10, 1981)

Colorado Oil Co., 52 IBLA 308 (Feb. 10, 1981)

L. L. Foltyn, John E. Weeks, 52 IBLA 313 (Feb. 10, 1981)

James C. Frebelich, 53 IBLA 34 (Feb. 26, 1981)

W. Keith Howard, 53 IBLA 92 (Mar. 2, 1981) 88 I.D. 341

St. Francis Mining Co., 53 IBLA 133 (Mar. 5, 1981)

Clyde W. Luke, Betty J. Luke, 53 IBLA 136 (Mar. 9, 1981)

Paula Trocster Saragosa et al., 53 IBLA 247 (Mar. 19, 1981)

John Platt, Jr., et al., 53 IBLA 313 (Mar. 25, 1981)

Joseph Ojurovich, 54 IBLA 100 (Apr. 15, 1981)

Bill C. Ross, 54 IBLA 116 (Apr. 16, 1981)

Charles W. McGowan III, 54 IBLA 119 (Apr. 16, 1981)

Rescot Silver-Lead Mines, Inc., 54 IBLA 121 (Apr. 16, 1981)

James W. Quakenbush, 54 IBLA 155 (Apr. 21, 1981)

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Dell Hakken, 54 IBLA 159 (Apr. 21, 1981)

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Emery Crowley et al., 54 IBLA 229 (Apr. 27, 1981)

William Adolph Yodice et al., 54 IBLA 232 (Apr. 27, 1981)

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Sidney Hodges, John Golden, 55 IBLA 17 (May 26, 1981)

Earl Kreniller, 55 IBLA 28 (May 27, 1981)

Joe Bunham, 55 IBLA 45 (May 29, 1981)

Betty L. Henry, 55 IBLA 47 (May 29, 1981)

Vincent M. D'Amico, Walt C. Stempel, 55 IBLA 116 (June 3, 1981)

Mark I. Gilmore, 55 IBLA 128 (June 3, 1981)

Margaret E. Peterson, 55 IBLA 136 (June 4, 1981)

Alberta E. Roseclo, 55 IBLA 140 (June 4, 1981)

Joseph Olutovich, 55 IBLA 182 (June 15, 1981)

W. LeGrande Law, 55 IBLA 193 (June 16, 1981)

Thomas Williams, 56 IBLA 55 (July 10, 1981)

Gary E. Greenlaw, Ronald D. Sharp, 56 IBLA 109 (July 16, 1981)

Walter D. Condon, 56 IBLA 112 (July 16, 1981)

Stephen G. Rudisill, Evelyn J. Rudisill, 56 IBLA 158 (July 20, 1981)

Rolland Marshall, 56 IBLA 187 (July 20, 1981)

Allen Turner, 56 IBLA 280 (July 28, 1981)

Timothy Edward Monte, 56 IBLA 315 (July 29, 1981)

Fred W. Croxen III, 56 IBLA 318 (July 29, 1981)

Caroline E. Brown, 56 IBLA 334 (July 30, 1981)

Donald E. Black, 56 IBLA 354 (Aug. 3, 1981)

Estate of Mary E. Ritchie, 56 IBLA 361 (Aug. 3, 1981)

Edith Gion, 56 IBLA 375 (Aug. 3, 1981)

Lola J. Fillmore, 56 IBLA 385 (Aug. 3, 1981)

Norman L. Moon, 57 IBLA 1 (Aug. 5, 1981)

Dave E. Newman, 57 IBLA 23 (Aug. 6, 1981)

Robert F. Wilson, 57 IBLA 40 (Aug. 10, 1981)

L. Grace Wadsworth, 57 IBLA 242 (Aug. 27, 1981)

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Intermountain Exploration Co., 57 IBLA 274 (Aug. 31, 1981)

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Kathryn Mackenzie, 58 IBLA 64 (Sept. 22, 1981)

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Grant Kirkham, Roberta Kirkham, 58 IBLA 131 (Sept. 24, 1981)

Albert L. Fillerup, 58 IBLA 194 (Sept. 29, 1981)

Tom Applegarth, 58 IBLA 224 (Sept. 30, 1981)

Heirs of Raymond D. Carson et al., 58 IBLA 265 (Oct. 7, 1981)

Richard W. Thom, 58 IBLA 291 (Oct. 13, 1981)

Bernard E. Packard et al., 58 IBLA 308 (Oct. 16, 1981)

Lee R. Newman, 58 IBLA 325 (Oct. 16, 1981)

Wayne Cook, 58 IBLA 350 (Oct. 19, 1981)

Lloyd P. Webster, 58 IBLA 363 (Oct. 20, 1981)

Ben S. Powell III, 59 IBLA 146 (Oct. 26, 1981)

Bruce A. DeRosier, 59 IBLA 283 (Oct. 30, 1981)

John W. Baccus, 59 IBLA 288 (Oct. 30, 1981)

Anton J. Meyer, 59 IBLA 311 (Nov. 4, 1981)

Vivian Sullivan Karlson, 60 IBLA 10 (Nov. 13, 1981)

Frank E. Evans, 60 IBLA 44 (Nov. 17, 1981)

Dr. Jose Trabal, 60 IBLA 97 (Nov. 19, 1981)

Robert G. Milton, 60 IBLA 104 (Nov. 20, 1981)

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Carl E. Andersen, 61 IBLA 4 (Dec. 29, 1981)

Cimarron Corp., 61 IBLA 90 (Dec. 31, 1981)

Herman Piltz, 61 IBLA 133 (Jan. 6, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Hooper, 61 IBLA 210 (Jan. 26, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Otar Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Sanedan Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

Martin Sliaco et al., 62 IBLA 260 (Mar. 15, 1982)

Cheryl E. Cockser, 62 IBLA 307 (Mar. 18, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Martha E. Ehrecht, 62 IBLA 387 (Mar. 24, 1982)

Calabo Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Copper Camp Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

Charles I. Neff, 64 IBLA 234 (May 27, 1982)

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Marvin E. Nukala, 64 IBLA 313 (June 10, 1982)

Charles L. Roberts, 65 IBLA 67 (June 23, 1982)

W. A. Shepherd, Viola M. Shepherd, 65 IBLA 72 (June 23, 1982)

J. Barry Van Hooser, 65 IBLA 175 (June 29, 1982)

William Scott Olsen, 65 IBLA 274 (July 12, 1982)

Viola Rock Whitney, 65 IBLA 361 (July 20, 1982)

Joe Barnes, Sr., et al., 65 IBLA 387 (July 23, 1982)

Dennis M. Joy, 66 IBLA 260 (Aug. 17, 1982)

Eugene J. Curless, 67 IBLA 135 (Sept. 16, 1982)

Keith E. Purcell, 67 IBLA 181 (Sept. 21, 1982)

Robert J. Bahr et al., 67 IBLA 370 (Oct. 8, 1982)

Gregory A. Yostanh, Sr., 69 IBLA 124 (Dec. 8, 1982)

Richard M. Rowe, 69 IBLA 135 (Dec. 8, 1982)

Dee Wright, 69 IBLA 309 (Dec. 23, 1982)

Ezra Julian, Suzanne M. Marco, 70 IBLA 29 (Jan. 6, 1983)

Gervin Blake Riding, 70 IBLA 59 (Jan. 10, 1983)

Nicholas J. Murphy, 71 IBLA 368 (Mar. 28, 1983)

Eleanor A. Pelger, 72 IBLA 232 (Apr. 26, 1983)

Inez McDorman, Audrey Pilger, 72 IBLA 383 (May 5, 1983)

James D. Ross, Marie J. Ross, 72 IBLA 395 (May 5, 1983)

Adobe Oil & Gas Corp., 73 IBLA 263 (June 7, 1983)

Harold L. Lobi, 73 IBLA 280 (June 7, 1983)

Ray McKee, Cheryl McKee, 73 IBLA 311 (June 7, 1983)

Barbara Payne, 73 IBLA 381 (June 15, 1983)

Jacqueline Baleo, 73 IBLA 383 (June 15, 1983)

United Ventures, 74 IBLA 31 (June 24, 1983)

Raje Investment Co., 74 IBLA 163 (July 12, 1983)

Shirley Poperinko, 74 IBLA 210 (July 18, 1983)

Hughes Minerals, Inc., 74 IBLA 217 (July 18, 1983)

Josephine Sloper, 74 IBLA 234 (July 19, 1983)

Paul T. Bragg, Melvin V. Lunt, 75 IBLA 76 (Aug. 10, 1983)

Feick Associates, 76 IBLA 292 (Oct. 18, 1983)

Our Lucs Nav Ass'n, 77 IBLA 24 (Oct. 31, 1983)

Harriet C. Shaffer, 79 IBLA 228 (Feb. 29, 1984)

Mac A. Stevens, 83 IBLA 164 (Oct. 15, 1984)

Where a bidder submits with his bid one-fifth of the amount due in the form of a personal money order payable to the Bureau of Land Management pursuant to the provisions of the applicable regulation, 43 CFR 3120.1-4(b), and statements on the sale notice allowing money orders, his bid may not be rejected for not being in conformity with the intent of the regulations.

Ross L. Kinnear, 48 IBLA 239 (June 17, 1980)

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations regardless of their actual knowledge of what is contained in such regulations or statutes.

George L. Harrison, 49 IBLA 157 (July 30, 1980)

All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations.

Hugh A. Johnson, 50 IBLA 47 (Sept. 9, 1980)

John F. Schaelzer, 51 IBLA 188 (Dec. 2, 1980)

Those who deal with the Government are presumed to have knowledge of the law and regulations duly adopted pursuant thereto.

Don Seymour, Perry Adkison, Ward I. Jones, 50 IBLA 84 (Sept. 17, 1980)

D. E. Bailey, 57 IBLA 120 (Aug. 25, 1981)

Mrs. Walter E. Bolles, 58 IBLA 257 (Oct. 6, 1981)

Eugene M. Goetcher, 58 IBLA 337 (Oct. 19, 1981)

An amended regulation restricting transfer of oil and gas interests governs where an offeror has not sought approval of a transfer of a pending offer to lease and lease (if issued) prior to June 16, 1980, the effective date of the amendment. Accordingly, under this regulation, BLM cannot consider any application for approval of such a transfer until after issuance of the lease.

D. E. Weedon, Jr., et al., 51 IBLA 378 (Dec. 31, 1980)

The Boards of Appeal of the Department of the Interior have no authority to declare invalid a duly promulgated regulation of this Department. Where, however, the regulation was not properly promulgated, is lacking in statutory basis, and has been consistently ignored in actual practice, that regulation will be accorded no force or effect.

Garland Coal & Mining Co., 52 IBLA 60 (Jan. 9, 1981)
88 I.D. 24

The regulations controlling transfer of oil and gas interests were amended on June 16, 1980, and the amended regulations govern where the interest holder has not sought approval of a transfer of his interest prior to this date. Under these amended regulations, BLM cannot consider any application for approval of a transfer of a lease interest until after the lease is issued.

Estate of Glenn F. Coy, Resource Service Co., Inc., 52 IBLA 182 (Jan. 26, 1981) 88 I.D. 236

REGULATIONS--Continued

GENERALLY--Continued

Under 43 CFR 3112.2-2(b) (1980), a single remittance is acceptable for a group of filings of drawing entry cards. However, if the remittance was insufficient to meet the $10 filing fee per card, BLM properly determined that the entire group was unacceptable and returned the filings to the offerors.

Stewart Capital Corp., 53 IBLA 369 (Mar. 30, 1981)

Regulations should be so clear that there is no basis for an oil and gas lease offeror's noncompliance with them before they are interpreted so as to deprive him of a statutory preference right to a lease.

Walter R. Wilson, Jr., 55 IBLA 96 (June 1, 1981)

The Board is bound by duly promulgated Departmental regulations as well as by Departmental policy expressed in Secretarial Orders published in the Federal Register or set forth in the Departmental Manual.

Oregon Portland Cement Co., 6 ANCAB 65 (Aug. 25, 1981) 88 I.D. 760

Albert Hanan et al; J. A. Jack and Sons, Inc.; and Heaphill Brothers, Inc., 6 ANCAB 111 (Sept. 29, 1981)

Persons dealing with the Government are presumed to have knowledge of pertinent rules and regulations, regardless of their actual knowledge of what is contained in such regulations.

Jeff Co., 61 IBLA 74 (Dec. 31, 1981)

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations have the force and effect of law and are binding on the Department.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The presumption of abandonment under sec. 314 of FLPMA need not have been preceded by any particular notice from BLM, because the public is deemed to know the content of relevant statutes and regulations.

David and Reirdon Dorenus, 61 IBLA 367 (Feb. 17, 1982)

REGULATIONS--Continued

GENERALLY--Continued

The Boards of Appeals of the Department of the Interior do not have the authority to declare duly promulgated Departmental regulations invalid or unconstitutional.

Garrett Conpovichnab v. Acting Area Director, Anadarko Area Office, Bureau of Indian Affairs, 9 IBIA 179 (Feb. 19, 1982) 89 I.D. 71

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

The Department's mining claim filing regulation providing for filing of information by owners of unpatented mining claims on public domain, and providing consequences for failing to file, does not violate any provision of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Francis Skav et al., 63 IBLA 235 (Apr. 19, 1982)

The Board is bound by duly promulgated Departmental regulations as well as by Departmental policy expressed in Secretarial Orders published in the Federal Register or set forth in Departmental manuals.

United States Steel Corp., 7 ANCAB 106 (June 17, 1982) 89 I.D. 293

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

Edward Seggerson, Jr., 67 IBLA 189 (Sept. 22, 1982)

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations, and are not entitled to rely on interpretations thereof used in another state office.

Fon F. Tzeng, 68 IBLA 381 (Nov. 23, 1982)

The Board has no authority to treat as insignificant or to declare invalid a duly promulgated regulation of this Department.

Energy Exploration, Inc., 70 IBLA 25 (Jan. 6, 1983)

REGULATIONS--Continued

GENERALLY--Continued

Where it benefits the affected party to do so, a mining claim recordation regulation which is amended while the matter is pending may be applied in its amended form only where there are no intervening right which will be adversely affected.

Joseph L. Bush, Betty Bush, 71 IBLA 324 (Mar. 23, 1983)

The Board of Indian Appeals does not have authority to declare a duly promulgated Departmental regulation invalid or to declare an act of Congress unconstitutional.

Diane Dark v. Acting Deputy Director, Office of Indian Education Programs, 11 IBIA 174 (Apr. 21, 1983) 90 I.D. 172

An essential element of a claim for estoppel is that the party asserting it must be ignorant of the material facts. Since all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations, a party cannot successfully plead ignorance of the rules governing oil and gas rental payment procedures without presentation of extraordinary circumstances which overcome the presumption.

Francis X. Furlong II, 73 IBLA 67 (May 16, 1983)

The Board of Indian Appeals has no authority to declare duly promulgated Departmental regulations invalid.

Native Americans for Community Action v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 214 (July 1, 1983) 90 I.D. 283

The Board of Indian Appeals does not have authority to declare a duly promulgated Departmental regulation invalid.

United Indians of All Tribes Foundation v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 226 (July 5, 1983)

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations, regardless of their actual knowledge of what is contained in such regulations. Failure to receive a copy of a regulation does not provide a valid reason for reinstating with original priority an over-the-counter oil and gas lease offer which had been rejected for failure to comply with the regulation.

Ron W. Howard, 75 IBLA 133 (Aug. 15, 1983)

The Board of Indian Appeals does not have the authority to declare duly promulgated Departmental regulations invalid.

In re Attorney's Fees Request of DNA--People's Legal Services, Inc., 11 IBIA 285 (Sept. 9, 1983) 90 I.D. 389

REGULATIONS--Continued

GENERALLY--Continued

Where in a previous appeal the Board has considered and decided appellant's objections to several provisions incorporated in the readjusted terms of a coal lease, a second appeal based upon appellant's objection to still another provision in the same lease readjustment will be dismissed as untimely. Also, where the appeal concerns only potential adverse effects which might result if certain regulation changes were promulgated in the future, the appeal will be dismissed for want of appellant's standing to appeal.

Lone Star Steel Co., 77 IBLA 96 (Nov. 14, 1983)

The provisions of 43 CFR 4170.1-3 are clearly punitive in nature. Punitive damages have for their purpose the punishment of the defendant in a civil action for wrongful and aggravated conduct and to serve as a warning to others to deter.

Houghland Farms, Inc. v. Bureau of Land Management, 77 IBLA 245 (Nov. 30, 1983)

An essential element of a claim for estoppel is that the party asserting it must be ignorant of the true facts. Since, however, all persons are presumed to have knowledge of relevant statutory and regulatory provisions, an individual may not premise a claim of estoppel on information or advice contrary to such a provision, since the individual is properly charged with knowledge of the true facts.

Tom Hurd, 80 IBLA 107 (Apr. 3, 1984)

The Board of Land Appeals has no authority to declare invalid 43 CFR Subpart 3566, a duly promulgated regulation of this Department.

Steve D. Harberry, Bobbie Jennings, Mark Jennings, 82 IBLA 339 (Sept. 12, 1984)

The mere fact that a readjusted coal lease expressly provides that regulations adopted subsequent thereto may be applied does not, ipso facto, make the provisions of the lease fatally indefinite, since it is further provided that express provisions of the lease are not subject to alteration by later regulatory amendments. The applicability to the lease of any specific regulatory provision, however, can only be determined where such regulations have been promulgated and a lessee can show injury in fact in their application.

Mid-Continent Coal & Coke Co., 83 IBLA 56 (Sept. 25, 1984)

APPLICABILITY

Where the holder of a coal prospecting permit completes his exploration and applies for a preference right coal lease in 1973, the application must be adjudicated on the basis of the applicant's subsequent conformity with regulations amended in 1976 with retroactive effect. However, where the application is summarily rejected solely for the reason that the applicant's supplemental submission is "inadequate," without identifying the deficiency, the decision will be vacated and the case remanded for readjudication.

Kin-Ark Corp., 45 IBLA 159 (Jan. 23, 1980) 87 I.D. 14

REGULATIONS--Continued

APPLICABILITY--Continued

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, the increased rate is applicable to leases to be issued subsequent to that date for over-the-counter offers filed prior to the effective date of the regulation.

Thomas Connell, 46 IBLA 331 (Apr. 4, 1980)

Thomas Connell, 56 IBLA 23 (June 30, 1981)

BLM properly applied the regulations set forth in 43 CFR Subparts 3520-21, effective May 7, 1976, to preference right lease applications pending on the effective date of such regulations.

John S. Wold, Eugene V. Simons, 48 IBLA 106 (May 30, 1980)

BLM properly applied amended regulations, the effective date for which is June 16, 1980, to a drawing of simultaneous noncompetitive lease offers held in July 1980.

Federal Energy Corp., 51 IBLA 144 (Nov. 24, 1980)

An ambiguous regulation relating to "the proper office" in which to file a relinquishment of a coal lease should not be interpreted to the detriment of a coal lessee who sought to comply with its provisions.

Garland Coal & Mining Co., 52 IBLA 60 (Jan. 9, 1981)
88 I.D. 24

A final Departmental appellate decision construing a regulation will be applied with prospective effect only where it materially alters the interpretation given the regulation by earlier administrative decisions and where it would be unfair or prejudicial to apply such decision retroactively.

William L. Hough, Jr., 52 IBLA 174 (Jan. 26, 1981)

Where the holder of a coal prospecting permit completes his exploration and applies for a preference right coal lease in 1971, the application must be adjudicated on the basis of the applicant's subsequent conformity with regulations, amended in 1976 and 1979, with retroactive effect.

Jesse H. Knight, 53 IBLA 300 (Mar. 24, 1981)

Where regulations allowed the grantee of a highway right-of-way granted pursuant to sec. 8 of the Act of July 26, 1866, 43 U.S.C. § 932 (1976), otherwise known as R.S. § 2477, to authorize within its highway right-of-way a right-of-way for "facilities usual to a highway," a subsequent regulation change properly limited that highway grant to require one seeking, after the effective date of that regulation, a right-of-way for buried telephone cables to apply to the Bureau of Land Management for authorization.

Where regulations allowed the grantee of a highway right-of-way pursuant to sec. 17 of the Federal Aid Highway Act of 1921, 23 U.S.C. § 317 (1976), to authorize within its highway right-of-way a right-of-way for "facilities usual to a highway," a subsequent regulation change properly limited that highway grant to require one seeking, after the effective date of

REGULATIONS--Continued

APPLICABILITY--Continued

the regulation, a right-of-way for buried telephone cables to apply to the Bureau of Land Management for authorization.

Pecanco Valley Telephone Cooperative, Inc., 55 IBLA 360 (June 26, 1981)

Where an oil and gas lease offer, unaccompanied by statements as required by D. F. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978), was filed prior to Nov. 9, 1978, the Pack holding will not retroactively be applied to the offer.

Cleo Chapelle, 57 IBLA 398 (Sept. 14, 1981)

Patricia Ann DeSalvo, 58 IBLA 1 (Sept. 15, 1981)

Generally, new procedural regulations may be promulgated with retroactive effect and applied to a holder of preexisting interests. However, the present revised regulations in 43 CFR Part 2800 were not written with such effect. Therefore, where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), regulation 43 CFR 2803.1-2(d), which allows rental adjustment without a prior hearing, is not applicable.

Mountain States Telephone & Telegraph, 60 IBLA 221 (Nov. 30, 1981)

Where an applicant files an over-the-counter oil and gas lease offer for less than 640 acres and does not include adjacent land for which an exchange application was then pending because of his reliance on Departmental decisions, a BLM Information Memorandum, and a BLM State Office decision, all interpreting a regulation to mean that an exchange application segregates the selected land from mineral leasing, a subsequent reinterpretation of the salient regulation which holds that such lands are available for leasing will not compel rejection of the offer. A regulation should be so clear that there is no basis for an applicant's noncompliance with it before it may be interpreted and applied with retroactive effect so as to deprive him of a statutory priority.

Lane Lasrich, 63 IBLA 192 (Apr. 8, 1982)

An alleged ambiguity in a regulation can excuse compliance with the terms of the regulation only where the failure to comply has been caused by the alleged ambiguity.

Hickory Creek Oil Co., 63 IBLA 313 (Apr. 27, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and

REGULATIONS--Continued

APPLICABILITY--Continued

the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

Where a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976) (repealed), and was not conformed to a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), the regulation at 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA right-of-way was not issued pursuant to Title V of FLPMA.

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Where the Department, through a duly promulgated regulation, has increased a rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease applications were drawn with first priority before the regulation became effective.

Peter K. Walstrom, 66 IBLA 269 (Aug. 17, 1982)

Where an applicant is to be deprived of a statutory right because of a failure to comply with the requirements of a regulation, that regulation should be so clearly set forth that there is no basis for noncompliance.

Brian D. Haas, 66 IBLA 353 (Aug. 27, 1982)

Audrey Jean Boston, 67 IBLA 117 (Sept. 16, 1982)

Where the regulation, 43 CFR 3102.2-7, requiring the offeror for an oil and gas lease to file a copy of an agreement under which a royalty interest in the lease will be conveyed to a third party is repealed, it is not proper to reject the offer for failure to comply with the repealed regulation unless there was a proper conflicting offer filed for the same land prior to the date of the repeal, which was Feb. 26, 1982.

Richard S. Gaddy, W. D. Newberry, 67 IBLA 373 (Oct. 8, 1982)

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1784 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), regulation 43 CFR 2803.1-2(d), which allows rental adjustment without a prior hearing, is not applicable.

U.S. Steel Corp., 71 IBLA 88 (Feb. 24, 1983)

Denver & Rio Grande Western Railroad Co., 71 IBLA 352 (Mar. 28, 1983)

REGULATIONS--Continued

APPLICABILITY--Continued

A regulation is effective and binding only until amended or repealed.

Bonny Sealock v. Bureau of Land Management, 75 IBLA 44 (Aug. 5, 1983)

A decision of the Board of Land Appeals holding that the signature requirement of 43 CFR 3111.1-1(a) is met when the offeror signs one offer form in ink and photocopies four exact reproductions of the front page of the offer form, including the signature, is not an abrupt departure from other Board rulings nor a retroactive application of a new rule, but is merely the initial interpretation and application of an existing regulation to this specific factual circumstance.

Richard E. Carroll (On Reconsideration), 76 IBLA 151 (Sept. 27, 1983) 90 I.D. 432

Penalties in civil cases should not be imposed except in cases that are clear and free from doubt. In application of penalties, all questions in doubt must be resolved in favor of the party from whom the penalty is sought.

Houghland Farms, Inc. v. Bureau of Land Management, 77 IBLA 245 (Nov. 30, 1983)

In the absence of specific rules governing reevaluation of an Indian school construction funding application, the Bureau of Indian Affairs will be held to the rules governing the initial evaluation of such an application, in order to avoid the appearance and reality of arbitrary, ad hoc decisionmaking.

Pueblo of Laguna v. Assistant Secretary for Indian Affairs, 12 IBIA 80 (Dec. 7, 1983) 90 I.D. 521

Where BLM granted appellant's rights-of-way for communication sites under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1976), subject to a future appraisal, application of 43 CFR 2803.1-2(b) providing that BLM establish an estimated rental fee, collect the fee in advance, and adjust the advance rental fee upon receipt of an approved fair market appraisal, is not a prohibited imposition of a retroactive rental.

The preferred method for appraising the fair market value of nonlinear rights-of-way, including microwave transmission sites, is the comparable lease method of appraisal where there is sufficient comparable rental data and appropriate adjustments are made for differences between the subject sites and other leased sites.

Mountain States Telephone & Telegraph Co., 79 IBLA 5 (Feb. 2, 1984)

An administrative regulation will not be construed to operate retroactively unless the intention to that effect unequivocally appears.

Leo Rhea Partnership, 80 IBLA 1 (Mar. 27, 1984)

REGULATIONS--Continued

APPLICABILITY--Continued

Where a Departmental regulation governing surface mining provides that no change to state laws or regulations shall be effective for purposes of a state program until approved by the Department as an amendment, new state laws governing surface coal mining reclamation requirements may not be implemented until such approval is given.

Shamrock Coal Co., Inc. v. Office of Surface Mining Reclamation & Enforcement, 81 IBLA 374 (June 28, 1984)

Where 43 CFR 4110.3-2 was amended to require supporting data prior to decision in certain cases involving changes in grazing use of the public lands, and the amended regulation became effective prior to decision by the Administrative Law Judge assigned to consider the decision on appeal, the amended rule was properly applied where the basis for the declared policy of the Department respecting grazing decisions rests upon a determination that the amended rule is required by known facts.

A regulation promulgated following decision by the Bureau of Land Management in 1982 is applicable to require use of trend studies to supplement a 1978 range survey where the 1978 survey alone, without trend studies made in intervening years, is an inadequate basis for decision pursuant to 43 CFR 4110.3-2(c) (1983).

Where the Bureau of Land Management uses a 1978 range survey as the sole basis for a 1982 decision limiting range cattle carrying capacity, the decision is not adequately supported where circumstances indicate the single survey may be inconclusive as to the true condition of the range under 42 CFR 4110.3-2(c) (1983).

Clyde L. Perkins, Douglas L. Bowd v. Bureau of Land Management, 83 IBLA 29 (Sept. 24, 1984)

Under 30 U.S.C. § 188(c) (1982), a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justifiable. Where it benefits the affected party to do so, and there are no countervailing public policies or intervening rights which will be adversely affected, an oil and gas lease regulation which is amended while the matter is pending may be applied in its amended form. Under the reinstatement regulations as amended (Aug. 22, 1983), a rental payment postmarked on or before the anniversary date and received within 20 days thereafter may be construed as reasonably diligent.

Hugh L. Scott, 83 IBLA 184 (Oct. 16, 1984)

BINDING ON THE SECRETARY

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations, including OCS regulations pertaining to the submittal of production and development plans, have the force and effect of law and are binding on the Department.

Exxon Co., U.S.A., 45 IBLA 313 (Feb. 6, 1980)

REGULATIONS--Continued

BINDING ON THE SECRETARY--Continued

The Secretary of the Interior is bound by his duly promulgated regulations, and such regulations have the force and effect of law.

David V. Udy, 45 IBLA 389 (Feb. 13, 1980)

Geosearch, Inc., 48 IBLA 333 (July 3, 1980)

Geosearch, Inc., 49 IBLA 19 (July 15, 1980)

Geosearch, Inc., 50 IBLA 347 (Oct. 14, 1980)

The Department of the Interior, as an agency of the Executive Branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

The Boards of Appeals of the Department of the Interior do not have the authority to declare a duly promulgated regulation invalid.

Colorado-Ute Electric Ass'n, Inc., 46 IBLA 35 (Feb. 20, 1980)

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations have the force and effect of law and are binding on the Department.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

Sierra Club, Alaska Chapter, et al., 79 IBLA 112 (Feb. 21, 1984)

Once a regulation is adopted by the Department, and so long as it remains extant, the Secretary and his representatives are bound by it and it has the force and effect of law.

Aleutian/Pribilof Islands Ass'n, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 254 (Apr. 9, 1982) 89 I.D. 196

Duly promulgated regulations have the force and effect of law and are binding upon the Department.

United Indians of All Tribes Foundation v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 226 (July 5, 1983)

Estate of Richard Evans Walker, 12 IBIA 44 (Oct. 28, 1983)

Timothy Tarabochia v. Deputy Ass't Secretary--Indian Affairs (Operations), 12 IBIA 269 (June 6, 1984) 91 I.D. 243

Procedures promulgated by the Department of the Interior specifically to provide uniformity in decisionmaking are "rules" within the meaning of 5 U.S.C. § 551(4) (1976) and are binding upon the Department, whether or not they are codified in the Code of Federal Regulations.

Pueblo of Laguna v. Assistant Secretary for Indian Affairs, 12 IBIA 80 (Dec. 7, 1983) 90 I.D. 521

REGULATIONS--Continued

BINDING ON THE SECRETARY--Continued

The Boards of Appeal of the Department of the Interior do not have the authority to declare a duly promulgated regulation invalid.

Earth Sciences, Inc., 80 IBLA 28 (Mar. 28, 1984)

A duly promulgated Departmental regulation has the force and effect of law and is binding upon all officials of the Department, including the Board of Land Appeals and the Secretary, and may not be waived.

A. Z. Shaw, 82 IBLA 86 (July 17, 1984)

FORCE AND EFFECT AS LAW

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations, including OCS regulations pertaining to the submittal of production and development plans, have the force and effect of law and are binding on the Department.

Exxon Co., U.S.A., 45 IBLA 313 (Feb. 6, 1980)

The Secretary of the Interior is bound by his duly promulgated regulations, and such regulations have the force and effect of law.

David V. Udy, 45 IBLA 389 (Feb. 13, 1980)

Geosearch, Inc., 48 IBLA 333 (July 3, 1980)

Geosearch, Inc., 49 IBLA 19 (July 15, 1980)

Geosearch, Inc., 50 IBLA 347 (Oct. 14, 1980)

The Department of the Interior, as an agency of the Executive Branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

The Boards of Appeals of the Department of the Interior do not have the authority to declare a duly promulgated regulation invalid.

Colorado-Ute Electric Ass'n, Inc., 46 IBLA 35 (Feb. 20, 1980)

Guidelines issued under BLM Manual sec. 1791 relating to preparation of an environmental analysis record with regard to a proposed timber sale are not the type of material required by 5 U.S.C. § 552(a)(1)(D) to be published in the Federal Register and as such are not binding on BLM.

Lane County Audubon Society, 55 IBLA 171 (June 11, 1981)

While the Bureau of Land Management may suspend action on applications for recordable disclaimers of interest filed pursuant to sec. 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1745 (1976), where no implementing regulations have been issued and where there is no contrary policy directive, an application may be properly rejected where the statutory criteria have not been met.

Edward C. Miller, 56 IBLA 388 (Aug. 3, 1981)

REGULATIONS--Continued

FORCE AND EFFECT AS LAW--Continued

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations have the force and effect of law and are binding on the Department.

Altex Oil Corp., 61 IBLA 270 (Jan. 29, 1982)

Sierra Club, Alaska Chapter, et al., 79 IBLA 112 (Feb. 21, 1984)

Chugach Natives, Inc., The Grouse Creek Corp., 80 IBLA 89 (Mar. 30, 1984)

Once a regulation is adopted by the Department, and so long as it remains extant, the Secretary and his representatives are bound by it and it has the force and effect of law.

Aleutian/Pribilof Islands Ass'n, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 254 (Apr. 9, 1982) 89 I.D. 196

A Bureau of Land Management instruction memorandum is merely a document for internal use by BLM employees. Such documents are not regulations and have no legal force or effect.

United States v. Kaycee Bentonite Corp., et al., 64 IBLA 183 (May 27, 1982) 89 I.D. 262

The Board of Land Appeals has no authority to treat as insignificant or to declare invalid duly promulgated regulations of this Department. Such regulations have the force and effect of law and are binding on the Department.

Sam P. Jones, 71 IBLA 42 (Feb. 17, 1983)

Duly promulgated regulations have the force and effect of law and are binding upon the Department.

United Indians of All Tribes Foundation v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 226 (July 5, 1983)

Estate of Richard Evans Walker, 12 IBIA 44 (Oct. 28, 1983)

Timothy Tarabochia v. Deputy Ass't Secretary--Indian Affairs (Operations), 12 IBIA 269 (June 6, 1984) 91 I.D. 243

A regulation is effective and binding only until amended or repealed.

Homer Spelser v. Bureau of Land Management, 75 IBLA 44 (Aug. 5, 1983)

Duly promulgated Departmental regulations have the force and effect of law.

Estate of Ralph James (Fleer) Hail, 12 IBIA 62 (Nov. 10, 1983)

REGULATIONS--Continued

FORCE AND EFFECT AS LAW--Continued

The Boards of Appeal of the Department of the Interior do not have the authority to declare a duly promulgated regulation invalid.

Earth Sciences, Inc., 80 IBLA 28 (Mar. 28, 1984)

Duly promulgated regulations have the force and effect of law and are binding on the Department.

Shamrock Coal Co., Inc. v. Office of Surface Mining Reclamation & Enforcement, 81 IBLA 374 (June 28, 1984)

A duly promulgated Departmental regulation has the force and effect of law and is binding upon all officials of the Department, including the Board of Land Appeals and the Secretary, and may not be waived.

Joseph J. C. Paine, 83 IBLA 145 (Oct. 9, 1984)

BLM may approve a petition for reinstatement, filed under sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 188(d), (e) (1982), for a noncompetitive oil and gas lease, which terminated automatically prior to Jan. 12, 1983, for failure to pay the annual rental on or before the lease anniversary date where the lessee has complied with the statutory requirements for reinstatement. In cases where petitions have been filed prior to publication of the requirement to pay back rentals at the new rate of $5 per acre, or notification of that requirement by BLM, petitioner is properly given an opportunity to tender the additional amount required.

Robert P. Creson, 83 IBLA 362 (Nov. 15, 1984)

INTERPRETATION

Where it benefits the affected party to do so, and where there are no intervening rights which will be adversely affected, a mining claim recordation regulation which is amended while the matter is pending may be applied in its amended form.

James E. Strong, 45 IBLA 386 (Feb. 13, 1980)

Where an oil and gas lease has inadvertently been issued for land, part of which was the subject of a forest exchange application, the cancellation of that part of the lease will be reversed if the exchange application did not include the mineral estate and has been withdrawn by the proponent, and no other obstacle or objection to the lease exists.

Kerr-McGee Corp., 46 IBLA 156 (Mar. 19, 1980)

When an offeror prints her name on the front of a drawing entry card oil and gas lease offer as "Reagan, Mavis K.," and signs her name on the back of the card as "Kay Reagan," the card may not be rejected because she violated no regulation by signing the offer in that manner, and she properly followed instructions on the face of the card by inserting her full name, last name first, then first name and initial.

Clarisse G. Percell, 49 IBLA 275 (Aug. 18, 1980)

REGULATIONS--Continued

INTERPRETATION--Continued

An assertion of a preference right to purchase public land offered for public sale pursuant to the Unintentional Trespass Act of Sept. 26, 1968, 82 Stat. 870 (43 U.S.C. §§ 1431-1435 (1976)) (now covered by the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701, 1722 (1976)), is improperly rejected when the applicant submits satisfactory equitable proof of his "ownership" of contiguous lands by showing that he has contracted to purchase such land, has made at least partial payment therefor, and is in possession thereof.

J. Burton Tuttle, 49 IBLA 278 (Aug. 18, 1980)
87 I.D. 350

An ambiguous regulation relating to "the proper office" in which to file a relinquishment of a coal lease should not be interpreted to the detriment of a coal lessee who sought to comply with its provisions.

Garland Coal & Mining Co., 52 IBLA 60 (Jan. 9, 1981)
88 I.D. 24

Where a regulation allows land description by legal subdivision, section, township and range, by metes and bounds, and by "tract acquisition numbers," but is insufficiently clear to allow a determination as to when one, rather than another of these methods of description should be used, an oil and gas lease offeror who has described the lands sought by tract acquisition numbers will not be held to have lost his statutory preference right for failure to comply with the regulation if the description afforded is accurate for the purpose.

Regulations should be so clear that there is no basis for an oil and gas lease offeror's noncompliance with them before they are interpreted so as to deprive him of a statutory preference right to a lease.

Walter R. Wilson, Jr., 55 IBLA 96 (June 1, 1981)

A regulation should be sufficiently clear that there is no reasonable basis for an oil and gas lease applicant's noncompliance with the regulation before it is interpreted to deprive an applicant of a preference right to a lease. A regulation specifying a bank money order as an acceptable form of remittance requires the acceptance of a personal money order issued by a bank.

Charles J. Rydzewski, 55 IBLA 373 (June 29, 1981)
88 I.D. 625

George W. Metz, 56 IBLA 97 (July 15, 1981)

Robert L. Andersen et al., 56 IBLA 182 (July 20, 1981)

"Right-of-way grant" is defined in the regulations, 43 CFR 2800.0-5(h), as an instrument issued pursuant to Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761 (1976). By implementing regulation, 43 CFR 2803.4, the Secretary has limited the applicability of sec. 506 of FLPMA, 43 U.S.C. § 1766 (1976), to "right-of-way grants."

James W. Smith (On Reconsideration), 55 IBLA 390 (June 30, 1981)

REGULATIONS--Continued

INTERPRETATION--Continued

Regulations should be so clear that there is no basis for an oil and gas applicant's noncompliance with them.

W. W. Priest, Michael Manduca, 55 IBLA 398 (June 30, 1981)

A regulation specifying a bank money order as an acceptable form of remittance requires the acceptance of a personal money order issued by a bank.

John L. Messinger, Morris C. Delamore, Jr., 56 IBLA 1 (June 30, 1981)

Departmental regulations at 43 CFR 2653.5, insofar as they prescribe a specified course of action including publication, referral, investigation, conferring, reporting, etc., by the Department with regard to selections of public lands made pursuant to § 14(h)(1) of the Alaska Native Claims Settlement Act, cannot apply when the selected lands are not public lands and the selection applications must be rejected at the outset.

Doyon, Ltd., 6 ANCAB 95 (Sept. 28, 1981) 88 I.D. 886

Doyon, Ltd., 6 ANCAB 129 (Oct. 22, 1981)

Regulations should be so clear that there is no basis for a simultaneous oil and gas applicant's noncompliance with them, and this Board will not enforce a prohibition against bank personal money orders under 43 CFR 3112.2-2 where the regulation does not specifically exclude such from the term bank money order.

Maria C. Cayley, John J. Cayley, 61 IBLA 205 (Jan. 26, 1982)

Where an applicant files an over-the-counter oil and gas lease offer for less than 640 acres and does not include adjacent land for which an exchange application was then pending because of his reliance on Departmental decisions, a BLM Information Memorandum, and a BLM State Office decision, all interpreting a regulation to mean that an exchange application segregates the selected land from mineral leasing, a subsequent reinterpretation of the salient regulation which holds that such lands are available for leasing will not compel rejection of the offer. A regulation should be so clear that there is no basis for an applicant's noncompliance with it before it may be interpreted and applied with retroactive effect so as to deprive him of a statutory priority.

Lane Lasrich, 63 IBLA 192 (Apr. 8, 1982)

It is proper to reject an oil and gas lease submitted for less than an entire tract of acquired land, not surveyed under the rectangular system of public land surveys, where the boundary of the tract is not described by course and distance between the successive angle points of the boundary of the tract. Where there is an exclusion of an area within the boundary of the tract, the exclusion must likewise be described by course and distance between its angle points.

Chevron, U.S.A., Inc., 67 IBLA 266 (Sept. 27, 1982)

Katherine C. Thoney, 69 IBLA 391 (Jan. 4, 1983)

REGULATIONS--Continued

INTERPRETATION--Continued

It is proper to reject an acquired lands oil and gas lease offer submitted for less than an entire tract of acquired lands, not surveyed under the rectangular system of public land surveys, where the boundary of the land sought is not described by course and distance between each successive pair of angle points of the boundary of the tract.

Thomas Connell, 70 IBLA 289 (Jan. 27, 1983)

It is proper to reject oil and gas lease offers for less than an entire tract of acquired lands that are not surveyed under the rectangular system of public land surveys, where the desired lands are neither described in the offers by metes and bounds, as in the deed by which the United States acquired title to them, nor described by courses and distances between successive angle points, tying by course and distance into the description of the lands in the deed.

Mapco Production Co., Inc., 70 IBLA 339 (Feb. 2, 1983)

A regulation may not be strictly applied unless it is sufficiently clear so as to preclude any reasonable basis for an oil and gas lease applicant's noncompliance with it.

Elmer T. Stonecipher, 71 IBLA 203 (Mar. 14, 1983)

Where it benefits the affected party to do so, a mining claim recordation regulation which is amended while the matter is pending may be applied in its amended form only where there are no intervening right which will be adversely affected.

Joseph L. Bush, Betty Bush, 71 IBLA 324 (Mar. 23, 1983)

Under 43 CFR 3101.2-3(c) an offer or application for accreted lands not described in the deed to the United States, must include a description by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions appertain.

Paul C. Kohlman, Lee E. McDonald, 71 IBLA 357 (Mar. 28, 1983)

The Bureau of Indian Affairs will be presumed to have knowledge of decisions of the Board of Indian Appeals interpreting its regulations, and when regulations are revised without specific change in response to such a Board decision, the Bureau of Indian Affairs will further be presumed to have accepted that interpretation.

United Indians of All Tribes Foundation v. Acting Deputy Assistant Secretary--Indian Affairs (Operations) [On Reconsideration], 11 IBIA 276 (Aug. 15, 1983)
90 I.D. 376

The provisions of 43 CFR 4170.1-3 are clearly punitive in nature. Punitive damages have for their purpose the punishment of the defendant in a civil action for wrongful and aggravated conduct and to serve as a warning to others to deter.

Penalties in civil cases should not be imposed except in cases that are clear and free from doubt. In application of penalties, all questions in doubt must

REGULATIONS--Continued

INTERPRETATION--Continued

be resolved in favor of the party from whom the penalty is sought.

Houghland Farms, Inc. v. Bureau of Land Management, 77 IBLA 245 (Nov. 30, 1983)

Regulations should be so clear that there is no basis for an oil and gas lessee's noncompliance with them, or they should not be interpreted to deprive him of his lease.

James M. Chudnow, 82 IBLA 262 (Aug. 29, 1984)

Under 30 U.S.C. § 188(c) (1982), a lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that lack of diligence was justifiable. Where it benefits the affected party to do so, and there are no countervailing public policies or intervening rights which will be adversely affected, an oil and gas lease regulation which is amended while the matter is pending may be applied in its amended form. Under the reinstatement regulations as amended (Aug. 22, 1983), a rental payment postmarked on or before the anniversary date and received within 20 days thereafter may be construed as reasonably diligent.

Hugh L. Scott, 83 IBLA 184 (Oct. 16, 1984)

PUBLICATION

Under 5 U.S.C. § 552(a)(1) (1976) and the Supreme Court's holding in Morton v. Ruiz, 415 U.S. 199 (1974), an individual may not be deprived of benefits solely on the basis of an eligibility standard published only in the BIA manual.

Matthew Allen v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 146 (Oct. 15, 1982) 89 I.D. 508

Wilbur Barton v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 173 (Oct. 15, 1982)

Henry W. Begay v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 189 (Oct. 15, 1982)

Johnny Begay v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 205 (Oct. 15, 1982)

Bessie Benally v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 221 (Oct. 15, 1982)

Arletta Bischoff v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 237 (Oct. 15, 1982)

Irving Clark v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 253 (Oct. 15, 1982)

Pearlene Dayzie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 269 (Oct. 15, 1982)

Janet Gordon v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 285 (Oct. 15, 1982)

Leo Green v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 301 (Oct. 15, 1982)

Francis Harvey v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 318 (Oct. 15, 1982)

REGULATIONS--Continued

PUBLICATION--Continued

June Jones v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 334 (Oct. 15, 1982)

Thomas Kee v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 350 (Oct. 15, 1982)

Lester Kelwood v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 366 (Oct. 15, 1982)

Juanita Paddock v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 382 (Oct. 15, 1982)

Irma Shirley v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 399 (Oct. 15, 1982)

Charity Tsosie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 416 (Oct. 15, 1982)

Leo Willie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 432 (Oct. 15, 1982)

Francis Yazzie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 448 (Oct. 15, 1982)

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

Estate of Eugene Patrick Dupuis, 11 IBIA 11 (Dec. 28, 1982)

United Indians of All Tribes Foundation v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 226 (July 5, 1983)

Estate of Richard Evans Walker, 12 IBIA 44 (Oct. 28, 1983)

The Bureau of Indian Affairs has promulgated regulations in 25 CFR Part 23 setting forth criteria for the allocation of limited grant funds under the Indian Child Welfare Act. These regulations, including the requirement that tribes be responsible for seeking funding for those tribal members living off the reservation but within areas designated "near reservation" by publication in the Federal Register, are reasonable attempts to conserve limited funds and ensure that duplication of benefits does not occur.

Native Americans for Community Action v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 214 (July 1, 1983) 90 I.D. 283

Procedures promulgated by the Department of the Interior specifically to provide uniformity in decisionmaking are "rules" within the meaning of 5 U.S.C. § 551(4) (1976) and are binding upon the Department, whether or not they are codified in the Code of Federal Regulations.

When an appellant personally received documents supplementing and amending a document previously published in the Federal Register, acknowledges that it knew the later documents would be used in deciding its case, and does not allege failure of publication, the Board of Indian Appeals will apply the procedures established in the later documents in deciding the appeal.

Pueblo of Laguna v. Assistant Secretary for Indian Affairs, 12 IBIA 80 (Dec. 7, 1983) 90 I.D. 521

REGULATIONS--Continued

PUBLICATION--Continued

Because the list of specific types of assistance provided by the Bureau of Indian Affairs under the general assistance program is not a rule within the meaning of 5 U.S.C. § 551(4) (1976), the general assistance eligibility criteria published in 25 CFR Part 20 may be used in determining eligibility for custodial care assistance, even though Part 20 does not specifically indicate custodial care as a type of assistance available through the general assistance program.

Wilbur Barton v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 110 (Dec. 9, 1983) 90 I.D. 536

Esther Allen v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 116 (Dec. 9, 1983)

Individuals may not be deprived of custodial care benefits provided by the Bureau of Indian Affairs solely on the basis of eligibility requirements set forth only in the Bureau of Indian Affairs Manual.

Henry W. Begay v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 119 (Dec. 9, 1983) 90 I.D. 539

BLM may approve a petition for reinstatement, filed under sec. 401 of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. § 188(d), (e) (1982), for a noncompetitive oil and gas lease, which terminated automatically prior to Jan. 12, 1983, for failure to pay the annual rental on or before the lease anniversary date where the lessee has complied with the statutory requirements for reinstatement. In cases where petitions have been filed prior to publication of the requirement to pay back rentals at the new rate of $5 per acre, or notification of that requirement by BLM, petitioner is properly given an opportunity to tender the additional amount required.

Robert P. Crouch, 83 IBLA 362 (Nov. 15, 1984)

VALIDITY

The Boards of Appeal of the Department of the Interior have no authority to declare invalid a duly promulgated regulation of this Department. Where, however, the regulation was not properly promulgated, is lacking in statutory basis, and has been consistently ignored in actual practice, that regulation will be accorded no force or effect.

Garland Coal & Mining Co., 52 IBLA 60 (Jan. 9, 1981) 88 I.D. 24

The Board has no authority to treat as insignificant or to declare invalid a duly promulgated regulation of this Department.

Research Exploration, Inc., 70 IBLA 25 (Jan. 6, 1983)

The Board of Land Appeals has no authority to treat as insignificant or to declare invalid duly promulgated regulations of this Department. Such regulations have the force and effect of law and are binding on the Department.

Sam P. Jones, 71 IBLA 42 (Feb. 17, 1983)

REGULATIONS--Continued

VALIDITY--Continued

The Board of Indian Appeals does not have authority to declare a duly promulgated regulation of the Department to be invalid.

Transwestern Pipeline Co. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 49 (Oct. 28, 1983) 90 I.D. 474

Timothy Tarabochia v. Deputy Asst Secretary--Indian Affairs (Operations), 12 IBIA 269 (June 6, 1984) 91 I.D. 243

The Board of Land Appeals has no authority to declare duly promulgated regulations invalid. Such regulations have the force and effect of law and are binding on the Department.

Sierra Club, Alaska Chapter, et al., 79 IBLA 112 (Feb. 21, 1984)

Chugach Natives, Inc., The Groups Creek Corp., 80 IBLA 89 (Mar. 30, 1984)

WAIVER

Even if it be established that the Department had not applied in previous years regulation 43 CFR 4115.2-1(e)(8) (1975), which requires termination of grazing privileges upon loss of ownership or control of base property, such failure to apply the regulation is not authority to further disregard the regulation.

Jimmie and Leona Ferrara, 47 IBLA 335 (May 21, 1980)

Although under the Departmental regulations a competitive bidder in an oil and gas lease sale must certify as to the acreage limitations and must submit a statement of citizenship or of corporate qualifications under 43 CFR 3120.1-4, failure to comply with the regulations does not require rejection of the bid. In competitive lease offers, where price rather than priority of filing is the primary criterion, certain deviations from mandatory requirements are curable defects.

Rockford, Inc., 55 IBLA 275 (June 25, 1981)

The Board of Indian Appeals does not have the authority to extend the period for filing a notice of appeal or to waive a properly promulgated Departmental regulation.

Oliver Redfield v. Deputy Asst Secretary--Indian Affairs (Operations), 12 IBIA 190 (Mar. 2, 1984)

REINSTATEMENT

GENERALLY

When an oil and gas lessee submits the amount of rental stated in a bill rendered by an authorized officer and the amount is found to be in error resulting in a deficiency, generally such lease shall not have automatically terminated for failure to pay the annual rental timely and new offers to lease the lands must be rejected.

Lucinda E. Boggs, 45 IBLA 60 (Jan. 14, 1980)

REINSTATEMENT--Continued

GENERALLY--Continued

Failure to pay rental timely for an oil and gas lease is neither justifiable nor not due to a lack of reasonable diligence where the rental is mailed 9 days after the lease anniversary date and the delay in mailing is caused by the fact that the envelope containing the rental apparently slipped from a group of letters appellant was taking to the post office for mailing.

Elizabeth A. Hanson, 65 IBLA 204 (June 29, 1982)

RENT

Idaho Economically Homogeneous Area survey failed to conform to 5 U.S.C. § 5911 (1976) and implementing regulations when values from urban and rural areas were averaged to reach rental values for an entire state without regard to difference in rents between cities and rural or small town localities. The rental rate figures derived from mere averaging of values does not result in reasonable values required by law.

Duane H. Edvenson, D-79-9 (Mar. 3, 1980)

The automatic termination provision of 30 U.S.C. § 188(b) (1976) is applicable to a lease whose lands formed part of a unit upon which production has at all times been maintained, but were thereafter eliminated therefrom and simultaneously segregated by reason of their inclusion in a second unit, since terminated.

Bass Enterprises Production Co., 47 IBLA 53 (Apr. 14, 1980)

Pursuant to 5 U.S.C. § 5911 (1976), the appraisal of Government-furnished quarters at the Polacca Day School, Hopi Indian Agency, by the Bureau of Indian Affairs, Phoenix Area Office, and the resulting adjustment of basic rental rates were based upon the reasonable value of the quarters to the employees in the circumstances under which provided, occupied, or made available.

Daniel L. Clavio, 4 OHA 54 (Sept. 11, 1980)

Where a communications site right-of-way has been issued for a television translator site to provide improved television reception to a remote area, the holder of the right-of-way does not qualify for a waiver of the fair market rental as providing a "valuable benefit to the public" without charge under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), and 43 CFR 2803.1-2.

New Mexico Broadcasting Co., 60 IBLA 163 (Nov. 24, 1981)

An upward amenity adjustment of 2 percent to basic rental rate is correctly calculated in accordance with the economically homogeneous area survey method, IMPR 114-52.303(b), when the number of amenities present for Government-furnished quarters is one more than the average number of amenities present in the private

RENT--Continued

rental survey of comparable private housing in an economically homogeneous area in which the Government rental quarters are located.

Appeal of Mary T. Foss, 5 OHA 15 (Sept. 30, 1982)

Where a 7 percent limitation on increases in net basic rental rates was not applied to the rate previous to the one resulting from a survey of an economically homogeneous area, the case will be remanded for a determination of what amount should be credited to the employee for overpayment of rates in accordance with 41 CFR 114-52.602(a)3.

Where the record contains unreconciled allegations concerning facts necessary for the determination of the proper monthly basic rental rate, the case will be remanded for findings of fact.

Where improper guidelines were used to calculate the amenity adjustment for a particular quarters unit, and application of the correct standards to the record indicates that the contested amenities did not exist for that unit, the case will be remanded for a determination of the amenity adjustment in accordance with the correct standards.

The Consumer Price Index adjustment is correctly applied against an employee's biweekly rental payroll deduction.

Appeal of Robert W. Jones, 5 OHA 21 (Oct. 12, 1982)

The 7 percent limitation on rental rate increases imposed by Secretary Andrus to rental increases effective after Dec. 13, 1978, was properly restricted by implementing instructions of the Deputy Assistant Secretary--Policy, Budget, and Administration, to increases in the "net basic rental rate" and did not apply to any passthrough charge collected by the Government for utilities, furnishings, or related services that by law must reflect prevailing community rates.

There is no duplicative charge for furnishings where the monthly basic rental rate is calculated after deducting standard amounts for these items.

Tube City Housing Appeals Ass'n, 5 OHA 33 (Oct. 12, 1982)

When appealing tenants fail to show that there was anything improper or contrary to stated policy about the compilation of data for and the conclusions of the Regional Survey of an Economically Homogeneous Area affecting the tenants' rentals, in particular with respect to exclusion of rental figures from certain communities in the area, the correct square footage used for tenants' quarters, additional charges for quarters' features not otherwise reflected in the survey's figures for comparable rentals, and incorrect deductions for lack of amenities, then the tenants may have no relief based only on the allegation of faults in the survey.

Where the relevant statements of law and policy require an annual adjustment in rentals for Government-furnished quarters according to a Consumer Price Index factor, there is no error when the Government increases rentals based upon that factor.

The deduction from rental for excessive heating costs is not constituted so as to provide a disincentive to conserve utility commodities; any successful conservation effort results in the loss of some portion of the

RENT--Continued

excessive heating costs deduction but it also results in a higher out-of-pocket savings, thus normally creating a net savings.

The deduction from rentals for unusual transportation costs is a creation of law; the Government has no authority to set a deduction amount other than that prescribed by the relevant legal authority even though that authority has decreased over the years the amount allowable for the same distance of isolation..

A proper measure of the appropriateness of a rental charge is that it be set so as to create no barrier to the recruitment or retention of employees; nevertheless, that principle is merely a yardstick against which to measure whether the Government in setting rents has adhered to the principle of comparability and, in the absence of proof that such a barrier has been created while rentals otherwise appear to be comparable, appellants may obtain no relief on the mere allegation of the creation of such a barrier.

The Government reaps no "profit," as the authorities understand that term, when it charges a quarters rental which is otherwise comparable to the private housing market.

Appeal of Jan Perschon et al., 5 OHA 65 (Dec. 21, 1982)

Where the reasonable rental value of Government-furnished quarters has been determined in accordance with accepted appraisal procedures pursuant to Departmental directives, and the occupant alleges that his rent is excessive in relation to rates prevailing in the local community, the burden is on the occupant to prove by positive, specific, and substantial evidence that the appraisal is in error.

Barry G. Wilson, 5 OHA 79 (Jan. 18, 1983)

Jack T. Matuska, 5 OHA 346 (Aug. 24, 1984)

Rental rates for Government-furnished quarters located in one state may not be set by reference to an economically homogenous area survey compiled with respect to an area of three states none of which is the state of the Government-furnished quarters for which the review of rental rate setting is being had; setting rates in such a prohibited manner is erroneous and any rates so set will be set aside.

In the Matters of Lewis A. Guthrie et al., 5 OHA 108 (Mar. 15, 1983)

Increase of quarters rental rates must, under Departmental rules, reflect reasonable value consistent with rates charged for similar private housing in the locality.

Randal L. Andrews, Delbert L. McGuire, & Virgil A. Ruckdashel, 5 OHA 113 (Mar. 21, 1983)

Jean Rodgers et al., 5 OHA 178 (Sept. 19, 1983)

OMB Circular No. A-45 allows agencies to employ one of two alternative approaches to establish comparable rentals as a step in setting rental rates for Government-furnished quarters when the quarters are more than 5 miles away from an established community: either use the comparable rentals in a nearby representative community or conduct an economically homogeneous area survey; the Department, by regulation,

RENT--Continued

has required the use of the latter of these alternatives when both are available. Thus, tenants' findings about rental rates in one particular community are irrelevant when the economically homogeneous area survey approach is used.

When an agency makes a downward adjustment to the basic rental rate for a lack of amenities in particular quarters as compared to the average number of amenities present in the comparable market, there is no surcharge to the basic rates for the amenities that are present.

The various authorities governing rental ratesetting clearly contemplate that some utility services to Government-furnished quarters will not be measured or metered; by providing that charges for such services in those circumstances will be established by reference to the average of such charges in the survey community, the authorities have insured that any resulting inequities to tenants will be kept to a minimum.

Although the Departmental handbook specifically requires ratesetting officials to deny the unusual transportation costs (UTC) deduction for quarters located less than 30 miles from the nearest established community, when quarters are 29.4 miles away from such a community and the proportionate increase in rentals is as great as in this case, it is conceivable that it could be demonstrated that the new rental rate would be unreasonable if not adjusted for transportation costs; under the circumstances of this case, ratesetting officials should treat this appeal as a request to the appropriate Departmental official under 400 DM 5.2B (1), for a determination regarding application of the UTC deduction.

The regulations governing the rental ratesetting process suggest permitting the participation of tenants in certain parts of the process but accord tenants no right to participate; insofar as the regulations provide no relief for the failure to allow participation and as tenants here neither allege nor prove any prejudice resulting from that failure, no relief may be granted.

The principle of comparability, which forms the basis for the ratesetting process, requires that the charge for an item of service be comparable to the charge for a comparable service in the comparison community. When the service is not provided or when some "service" is provided but it is so different from the comparison community service that it is inaccurate to term it comparable, then charging the rate for a comparison community service is inappropriate.

The principle of comparability, which forms the basis for the ratesetting process, requires that a basic rental rate for Government-furnished quarters be established by reference to private market rental housing in a similar state of maintenance and repair; when the private market average is for housing somewhere between fair and good condition and the Government housing to which the average applies is in fair or worse condition, a downward adjustment in the private market average should be made when applied to the particular Government unit.

Where a floor plan of a Government rental unit discloses on its face only ordinary patterns, finding that the unit is possessed of the "unusual design features" amenity is inappropriate unless the involved agency can demonstrate the amenity's presence; in the absence of such a showing, a 2 percent decrease in the basic rental rate, is in order.

Appeal of Horace Traylor II et al., 5 OHA 117 (Mar. 22, 1983)

RENT--Continued

While meetings with employees are encouraged under the provisions of 41 CFR 114-52.601 to assure employee understanding of the process for establishing rental rates for Government-furnished quarters, such meetings are not mandated by these provisions.

Under limitations imposed by the Office of Management and Budget, the rental rate for Government-furnished quarters cannot be reduced to reflect unusual transportation costs by more than the maximum amount authorized by the Department's regulations at 41 CFR 114-52.302.

Under the provisions of 41 CFR 114-52.303, an adjustment to the basic rental rate of Government-furnished quarters is to be made to reflect the difference in the number of "amenities," as defined in 41 CFR 114-52.105(f), associated with the Government-furnished quarters as compared with the number of amenities associated with comparable private dwellings.

Under the provisions of 41 CFR 114-52.207, charges are to be added to the basic rental rate of Government-furnished quarters for furnishings provided by the Government.

To successfully challenge an element of a regional quarters survey used in calculating the basic rental rate for Government-furnished quarters, the employee/occupant must assert more than unsupported conclusions of fact.

Appeal of the Henry Mountain Resource Area Employees, 5 OHA 127 (Mar. 31, 1983)

The unusual transportation costs deduction for quarters located more than 30 miles from the nearest established community is the only permissible way to credit an employee for remoteness.

When appropriate, the Government may credit an employee with 90 percent of the heating costs in excess of $50 over the average seasonal heating costs in the area.

The principle of comparability, which forms the basis for the ratesetting process, requires that a basic rental rate for Government-furnished quarters be established by reference to private market rental housing in a similar state of maintenance and repair; when the private market average is for housing somewhere between fair and good condition and the Government housing to which the average applies is in fair or worse condition, a downward adjustment in the private market average should be made when applied to the particular Government unit.

Appeal of Agnes Wales, 5 OHA 215 (Oct. 26, 1983)

The unusual transportation costs deduction for quarters located more than 30 miles from the nearest established community is the only permissible way to credit an employee for remoteness. Where the maximum authorized deduction has already been provided, no further transportation deduction is available.

Appeal of Pamela D. Doyle, 5 OHA 219 (Nov. 2, 1983)

When quarters rental rate appeals arise in remote areas where it is not practical to hold hearings, the parties have a special obligation to assist in the resolution of the appeal by prompt and detailed responses to the Board's inquiries concerning the allegations presented to it.

Even if the appellant and the Area Director provide their telephone numbers for use by the Board in connection with an appeal, it is not proper under 4 CFR 4.27 for the Board to become involved in oral (ex parte) communications with either party except in the presence of the other party. Decisions by the Board can be made only on the basis of the appeal record, which includes the parties' initial submissions plus subsequent letters, memoranda, or documents from either side that have been made available to the other side.

Where there is no requirement in the law or regulations, and no other reasonable explanation is offered, for using different bases in making the various adjustments needed to calculate the net monthly basic rental rate for Government-furnished quarters, a consistent basis must be used, even if the instructions for calculating such adjustments on the Department's rental computation worksheet appear to indicate otherwise.

Where date stamps on correspondence indicate that mailing time is only 3 to 5 days one way, a period of 2 months is a sufficient time for the Board to await a reply to its inquiry from an agency respondent. At the end of that time, in the absence of sufficient rebuttal, the allegations of an appellant who claims below-average electrical consumption may be taken as true, and an appellant's monthly electricity bill may be adjusted by the Board accordingly, provided that the claims are not unreasonable.

Walter W. Duncan, 5 OHA 256 (Feb. 8, 1984)

Where a counsel moves to reopen a Board decision and the motion is granted, and the parties are given a period substantially in excess of the time requested in which to submit additional evidence but both fail to do so, the Board is entitled to dispose of the case by a summary affirmation of the original decision.

Jean Rodgers et al. (On Reconsideration), 5 OHA 266 (Feb. 24, 1984)

Where the BLM granted a communications site right-of-way pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), subject to future appraisal, collection of a rental deposit at the time of the grant with a later adjustment in the annual rental charges upon receipt of an approved fair market value appraisal is not a prohibited imposition of a retroactive rental.

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show convincing evidence that the charges are excessive.

Mountain States Telephone & Telegraph Co., 80 IBLA 128 (Apr. 5, 1984)

REORGANIZATION PLANS

There is no authority pursuant to which a pro rata or set-off formula can be read into 43 CFR 3503.3-1. Nor do the regulations require BLM to accept all tenders of rental against an anticipated unavailability of some or all of the lands included in a hardrock prospecting application, which may or may not materialize. In the event that some or all of the lands applied for are unavailable, the applicant's remedy is a refund of excess rental paid, and not a set-off against deficiencies.

Duval Corp., Apex Exploration, Inc., 45 IBLA 355 (Feb. 7, 1980)

RES JUDICATA

A decision in 1959 withdrawing charges of lack of discovery is not res judicata as to subsequent inquiry. The earlier decision merely established that claimants' possessory interest in claims had not been extinguished by Act of May 27, 1955, 69 Stat. 67, withdrawing lands from all forms of mining activity. Unless and until patent issues, title to the claims in controversy remains in the United States, and it may inquire into the extent and validity of rights claimed against it.

United States v. Richard G. Clemans et al., 45 IBLA 64 (Jan. 17, 1980)

Where a United States district court has ordered a lessee to adopt a dual accounting method of determining value and has ordered the Department to require this dual accounting from the lessee, the question of the propriety of the Area Supervisor's order doing so is apparently res judicata, the only question being whether the order is the court's final action.

Superon Energy Corp. et al., 46 IBLA 181 (Mar. 21, 1980)

Where an individual is named as an "adverse party" in a BLM decision which is favorable to that person, who then is duly served with copies of a notice of appeal and statement of reasons challenging the validity of BLM's decision before the Board of Land Appeals and seeking reversal of that decision, but decides not to participate in the appellate proceedings before the Board, the matter becomes res judicata upon the rendering of the Board's decision, and the party may not subsequently challenge this decision by filing a new appeal or his own before the Board for readjudication of the same matter.

Donald W. Coyer, Fred L. Engle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondents) (On Judicial Remand), 50 IBLA 306 (Oct. 14, 1980)

Where a decision by an officer of the Department has become final, the principle of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and same issues, absent compelling legal or equitable reasons for reconsideration.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

While res judicata and collateral estoppel may be appropriately applied by the Board in its decisions, those doctrines need not be employed where the effect would be to impair the correctness and consistency of the Board's decisions and prevent the effectuation of statutory and regulatory policy. Where the Board has overruled part of an earlier Board decision that had reversed a BLM decision for invalidating appellants' mining claims upon an improper basis, res judicata will not protect appellants' claims from a subsequent BLM decision of invalidity grounded on a correct statement of appellants' violation of the recording laws.

Hollis McLaughlin, General Electric Co., 61 IBLA 347 (Feb. 11, 1982)

Where an individual, named as an adverse party in a proceeding before the Board of Land Appeals, is duly served with notice of that fact, and is given the opportunity to participate in the proceeding but fails to do so, the matter becomes res judicata upon the rendering of the Board's decision and the party may not subsequently challenge the decision in a new appeal

RES JUDICATA--Continued

before the Board from the Bureau of Land Management's ministerial action implementing the decision.

Bay Bay, Tackle Productions, Inc., 63 IBLA 357 (Apr. 29, 1982)

A prior decision of the Department will not be overturned by the Board of Land Appeals where the claimant has failed to appeal such decision and in essence acquiesced to the decision for a prolonged period of time.

Ida Mae Ross, Leo G. Comer, 73 IBLA 97 (May 23, 1983)

A settlement agreement is final and conclusive of all issues relating to the controversy.

Johnny Begay v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 12 IBIA 107 (Dec. 9, 1983)

The classification of land as Supplement A, B, or C, by the Oregon Supreme Court in State v. Hyde, 88 Or. 1, 169 P. 757 (1918), is not binding on the United States as to the factual predicates thereof, particularly as the United States was not a party to the case.

State of Oregon et al., I, 78 IBLA 255 (Jan. 10, 1984) 91 I.D. 14

RIGHTS-OF-WAY

(See also Indian Lands, Reclamation Lands--if included in this Index.)

GENERALLY

Public Land Order No. 2676 (1962), requires the approval of an authorized officer of the Department of the Army before the Secretary of the Interior can grant a right-of-way over lands subject to the public land order. The Department of the Interior has no authority to grant a right-of-way where the approval is withheld.

In reviewing a decision to grant a right-of-way based upon an environmental analysis report, the decision will be upheld where the record evidences consideration of all available information and a reasoned analysis of the factors involved, made in due regard for the public interest.

City of Anchorage, Alaska, and Jack G. Fisher, et al., a.k.a. Concerned Chugach Citizens v. Chugach Electric Ass'n, Inc., 45 IBLA 171 (Jan. 30, 1980) 87 I.D. 21

The grant of a right-of-way over public lands, authorizing the construction of a roadway involving some 6 acres of public lands in an area of approximately 5,700 acres, does not require the preparation of an environmental impact statement, as no major Federal action is present within the terms of 42 U.S.C. § 4332(c) (1976).

Oregon Wilderness Coalition, 45 IBLA 347 (Feb. 7, 1980)

The Bureau of Land Management can recover the full cost of providing a service to an identifiable beneficiary regardless of the incidental public benefits flowing from that service. Charges may be made for

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

environmental studies deemed appropriate for the proper consideration of the application.

Recognizing the principle of stare decisis, the Board nevertheless declines to follow a decision of the same district court involving the same statute where a circuit court decision, although arising under a different statute, is of more recent vintage, takes specific cognizance of the district court decision, and the circuit court decision comports with Departmental policies.

A pending right-of-way application does not create any vested right in the applicant; therefore, the application is subject to the regulations in effect when it is adjudicated.

Management overhead costs are not recoverable from right-of-way applicants under 43 CFR 2802.1-2.

Colorado-Ute Electric Ass'n, Inc., 46 IBLA 35 (Feb. 20, 1980)

Appraisals of rights-of-way for communication sites will be upheld where an appellant fails to demonstrate by convincing evidence that the appraisal methods used by the Bureau of Land Management are in error or that the charges are excessive.

Pursuant to 43 CFR 2802.1-7(3) increased charges may not be imposed retroactively, but are only to be imposed by the authorized officer after reasonable notice and opportunity for hearing, beginning with the next charge year after the officer's decision.

A grantee of a communications site right-of-way is properly held in default and his right-of-way is properly cancelled pursuant to 43 CFR 2802.1-7(d) where grantee has failed to pay proper amount of rental for 4 years.

James M. Smith, 46 IBLA 233 (Mar. 27, 1980)

Where the bases of decisions rejecting rights-of-way applications for domestic water facility are contradicted by the Environmental Analysis Report on the project and alternatives enumerated therein, and where BLM failed to consider possible mitigating actions suggested by appellant, the decisions will be vacated and remanded for further consideration.

East Canyon Irrigation Co., 47 IBLA 155 (May 6, 1980)

The comparable lease method of appraisal of communication sites, which compares rental data from comparable leased sites with data from the subject site, is the preferred method of determining the fair market rental value of the right-of-way where there is sufficient comparable data available.

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

B & B Service, Inc., 48 IBLA 233 (June 17, 1980)

Northwestern Colorado Broadcasting Co., 49 IBLA 23 (July 15, 1980)

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

The grant of a right-of-way over public lands, authorizing the construction of a roadway to provide access to a uranium mining property, where such grant is made contingent upon the necessary licenses being obtained prior to commencement of any mining activity, does not require the preparation of an environmental impact statement, as no major Federal action is present within the terms of 42 U.S.C. § 4332(C) (1976).

James I. Thompson, 51 IBLA 154 (Nov. 26, 1980)

An appeal from an appraisal of a communication site right-of-way will not be accorded favorable consideration where it does not show with some particularity adequate reason for appeal and support the allegations with evidence showing error.

Rocky Mountain Natural Gas Co., Inc., 55 IBLA 3 (May 26, 1981)

Where regulations allowed the grantee of a highway right-of-way granted pursuant to sec. 8 of the Act of July 26, 1866, 43 U.S.C. § 932 (1976), otherwise known as R.S. § 2477, to authorize within its highway right-of-way a right-of-way for "facilities usual to a highway," a subsequent regulation change properly limited that highway grant to require one seeking, after the effective date of that regulation, a right-of-way for buried telephone cables to apply to the Bureau of Land Management for authorization.

Where regulations allowed the grantee of a highway right-of-way pursuant to sec. 17 of the Federal Aid Highway Act of 1921, 23 U.S.C. § 317 (1976), to authorize within its highway right-of-way a right-of-way for "facilities usual to a highway," a subsequent regulation change properly limited that highway grant to require one seeking, after the effective date of the regulation, a right-of-way for buried telephone cables to apply to the Bureau of Land Management for authorization.

Penasco Valley Telephone Cooperative, Inc., 55 IBLA 360 (June 26, 1981)

An oil and gas lease offer for lands in a reservoir right-of-way from other than the owner of the right-of-way is properly rejected pursuant to the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976), and 43 CFR 3100.0-3(d)(1) which limit the right to lease deposits of oil and gas in and under rights-of-way to the owner of the right-of-way or his assignees.

Under the "notation rule," where a reservoir right-of-way affecting certain land is noted on the official records of the Bureau of Land Management, that notation is effective to bar leasing of the oil and gas therein under the Mineral Leasing Act of 1920. This result follows even if the reservoir right-of-way should have been terminated.

BDM Interests, 57 IBLA 163 (Aug. 27, 1981)

An appraisal of a right-of-way for a natural gas pipeline, granted pursuant to the Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), will be upheld on appeal if no error is shown in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive. However, where the Bureau has determined the highest and best use of the land in order to evaluate the comparability of other lands, and an appellant raises sufficient doubt as to the accuracy of that determination, the case may be remanded for the

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

Bureau to reconsider whether a further appraisal or adjustments in the appraised values should be made.

Western Slope Gas Co., 61 IBLA 57 (Dec. 31, 1981)

Where a subdivision builder is granted a right-of-way for an access road and bridge pursuant to the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976), with the understanding that a county or town will take over the right-of-way, but an assignment to the county or town has not been approved by BLM, the builder is liable for the rental, and the exemption from payment of rental for a local government under 43 CFR 2803.1-2(c)(1) does not apply.

Carpentry Unlimited, Inc., 62 IBLA 203 (Mar. 9, 1982)

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive.

Francis H. Gifford, 62 IBLA 393 (Mar. 24, 1982)

Analysis of the environmental impact of the design of a segment of a proposed highway crossing public domain land does not constitute an improper narrowing of the scope of the project for purposes of environmental review where the route of the entire project has already been determined after completion of an environmental impact statement, the portion of the highway across land administered by the Bureau of Land Management has logical termini and a substantial independent utility regardless of whether the balance of the project is constructed, and construction of the highway on BLM land does not foreclose significant alternatives with respect to the balance of the highway project.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

Lands under a railroad right-of-way issued pursuant to the Act of Mar. 3, 1875, 18 Stat. 482, are not properly leased under the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (1976), but instead must be leased under the exclusive authority of the Act of May 21, 1930, 30 U.S.C. §§ 301-306 (1976), and 43 CFR 3100.0-3(d)(1).

Champlin Petroleum Co., 68 IBLA 142 (Oct. 29, 1982)
89 I.D. 561

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show convincing evidence that the charges are excessive.

Donald R. Clark, 70 IBLA 39 (Jan. 10, 1983)

An appraisal of a right-of-way for a powerline will be upheld where no error is shown in the appraisal method used by the Bureau of Land Management. Where, however, sufficient doubt exists as to the validity of BLM's determination, the case may be remanded to the

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

Bureau to reconsider whether a further appraisal or adjustment in the appraisal value should be made.

Black Hills Power & Light Co., 73 IBLA 199 (May 26, 1983)

Where, while a petition for reconsideration is pending before the Board of Land Appeals, BLM acknowledges petitioner's contention that there are conflicting and inconsistent practices within BLM as to the appraisal method used to determine fair market rental values for natural gas pipeline rights-of-way, granted pursuant to the Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), and BLM proposes to resolve the conflicts and inconsistencies by means of a study team to develop and recommend an acceptable method for arriving at the estimated fair market annual rental for BLM rights-of-way grants, the Board may set aside its prior decision and the BLM decisions under appeal and remand the cases to BLM to apply the approved appraisal method adopted following the completion of the study team report.

Northwest Pipeline Corp. (On Reconsideration), 77 IBLA 46 (Nov. 1, 1983)

Suspension of the right to construct facilities on a right-of-way granted pursuant to the Act of Feb. 1, 1905, ch. 288, § 4, 33 Stat. 628 (repealed 1976), is tantamount to cancellation of the right-of-way. Such a right-of-way may be canceled only after notice and an opportunity for a hearing have been afforded the holder of the right-of-way.

Cities of Colorado Springs & Aurora, 77 IBLA 395 (Dec. 9, 1983)

Where BLM granted appellant's rights-of-way for communication sites under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1976), subject to a future appraisal, application of 43 CFR 2803.1-2(b) providing that BLM establish an estimated rental fee, collect the fee in advance, and adjust the advance rental fee upon receipt of an approved fair market appraisal, is not a prohibited imposition of a retroactive rental.

The preferred method for appraising the fair market value of nonlinear rights-of-way, including microwave transmission sites, is the comparable lease method of appraisal where there is sufficient comparable rental data and appropriate adjustments are made for differences between the subject sites and other leased sites.

Mountain States Telephone & Telegraph Co., 79 IBLA 5 (Feb. 2, 1984)

Where a reclamation withdrawal is modified by public land order to authorize a public highway right-of-way pursuant to sec. 8 of the Act of July 26, 1866 (repealed 1976, formerly codified at 43 U.S.C. § 932), the nature and extent of the rights authorized are controlled by the express terms of the public land order restoring the land. A decision to close a road built on a right-of-way within a reclamation withdrawal which is expressly conditioned upon noninterference with the operation and maintenance of a dam and related facilities will be affirmed where the record supports a determination by reclamation officials that public access is substantially interfering with operations

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

and maintenance and the road has been replaced by a new highway open to the public.

County of Imperial, 5 OHA 286 (Mar. 16, 1984)

Where BLM grants a right-of-way for a haul road under sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1976), subject to a future appraisal, BLM may subsequently appraise the land included in the right-of-way, and the rental charges imposed from the date of the right-of-way grant will not be considered retroactive.

Lone Star Steel Co., 79 IBLA 345 (Mar. 22, 1984)

An appellant seeking reversal of a decision denying a protest against issuance of a right-of-way across land in a wilderness study area to state-owned land must show that the decision was premised either on a clear error of law or a demonstrable error of fact. Where state land is encircled by Federal land within a wilderness study area, the state's lessee has a right of access across Federal land pursuant to 16 U.S.C. § 3210(b) (Supp. V 1981) adequate to secure the reasonable use and enjoyment of the leasehold. Because the BLM may not deny such access by requiring the lessee to use helicopters, BLM need not examine the feasibility of helicopter access in its consideration of a right-of-way application.

Utah Wilderness Ass'n, 80 IBLA 64 (Mar. 30, 1984)
91 I.D. 165

Where there is no appraisal to support a readjusted rental rate for a water pipeline right-of-way, a decision imposing the readjusted rate must be reversed.

A. Keith Barben, 81 IBLA 332 (June 19, 1984)

An appraisal of fair market rental for a communication site right-of-way will not be set aside on appeal if an appellant fails to show error in the appraisal methods used or fails to show by convincing evidence that the charges are excessive.

Southern California Gas Co., 81 IBLA 358 (June 27, 1984)

R.S. 2477 does not provide for the construction of the grant according to the law of the state in which the land subject to the grant is situated; rather, its construction is a question of Federal law. By the time of the R.S. 2477 Idaho grant, Congress had already determined that telephone cables were not within the scope of an R.S. 2477 highway right-of-way. Thus, a telephone cable buried along an R.S. 2477 highway with a right-of-way from the State of Idaho but without the requisite BLM right-of-way is in trespass.

Mountain Bell, 83 IBLA 67 (Sept. 26, 1984)

Upon the filing of a proper class 1 color-of-title application, the applicant's right to purchase the land described in the application vests. Subsequent to such filing, BLM lacks authority to diminish the estate applied for, and, therefore, may not grant a right-of-way to any party, including an agency of the Federal Government.

Benton C. Cavin, 83 IBLA 107 (Oct. 5, 1984)

RIGHTS-OF-WAY--Continued

GENERALLY--Continued

Where the Bureau of Land Management proposes to resolve the conflicts and inconsistencies in its appraisal method used to determine fair market rental values for natural gas pipeline rights-of-way, granted pursuant to the Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1982), the Board will not rule on the legality of the going rate method of appraisal, since the Bureau of Land Management should be allowed to explore the full range of options available in developing the proper appraisal method.

During the interim period until the Bureau of Land Management develops an approved appraisal method to determine fair market value for natural gas pipeline rights-of-way, new rights-of-way should not be appraised using the going rate method of appraisal. The Bureau of Land Management should proceed to charge a reasonable estimate of the fair market value subject to subsequent appraisal in accordance with 43 CFR 2803.1-2(b).

During the interim period until the Bureau of Land Management develops an approved appraisal method to determine fair market value for natural gas pipeline rights-of-way, reappraisal of existing rights-of-way should be deferred, and the Bureau of Land Management should continue to charge the original rental fee or last uncontested rental fee.

Northwest Pipeline Corp. (On Reconsideration), 83 IBLA 204 (Oct. 18, 1984)

R.S. 2477 does not provide for the construction of the grant according to the law of the state in which the land subject to the grant is situated; rather, it is a question of Federal law. Rights-of-way obtained by a state pursuant to R.S. 2477 do not contain a legal right on the part of the state to grant third-party rights-of-way. Thus, appellant was required to obtain a right-of-way under 43 U.S.C. § 1761 (1982) to bury cable along an R.S. 2477 highway even though appellant had already obtained permission to bury the cable from the county.

Mountain States Telephone & Telegraph Co., 84 IBLA 1 (Nov. 21, 1984)

ACT OF FEBRUARY 15, 1901

A decision rejecting an application for an access road and canal right-of-way will be affirmed when the record shows that the appellant has failed to file a statement of the proper State official, or other evidence showing that he has a right to the use of the water.

Andrew A. Harrower, 51 IBLA 390 (Dec. 31, 1980)

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a water pipeline right-of-way will ordinarily be affirmed when

RIGHTS-OF-WAY--Continued

ACT OF FEBRUARY 15, 1901--Continued

the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown. Where the Bureau of Land Management denies a right-of-way application because of the imminent conveyance of the land sought to a Native corporation which opposes the right-of-way and the record satisfactorily rebuts the substance of the opposition and identifies overriding public interest considerations such that the sole reason for the denial becomes the imminence of the conveyance and concern that the Native corporation control its own land, the BLM decision must be reversed. The problem of a Native corporation's control of the use of land conveyed to it is provided for in sec. 14(g) of the Alaska Native Claims Settlement Act and 43 CFR 2650.4-1 and should be addressed apart from the grant or denial of a right-of-way on its own merits.

Bolbro Packing Co., 83 IBLA 178 (Apr. 8, 1982)

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of reservoirs, pipelines, and ditches on public land and continued use without prior authorization earns an applicant a right to a right-of-way under these statutes.

Double Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

An appraisal of a right-of-way for a powerline will be upheld where no error is shown in the appraisal method used by the Bureau of Land Management. Where, however, sufficient doubt exists as to the validity of BLM's determination, the case may be remanded to the Bureau to reconsider whether a further appraisal or adjustment in the appraisal value should be made.

Black Hills Power & Light Co., 72 IBLA 199 (May 26, 1983)

ACT OF FEBRUARY 1, 1905

Suspension of the right to construct facilities on a right-of-way granted pursuant to the Act of Feb. 1, 1905, ch. 288, § 4, 33 Stat. 628 (repealed 1976), is tantamount to cancellation of the right-of-way. Such a right-of-way may be canceled only after notice and an opportunity for a hearing have been afforded the holder of the right-of-way.

Cities of Colorado Springs & Aurora, 77 IBLA 305 (Dec. 8, 1983)

ACT OF MARCH 4, 1911

Sec. 504 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1764 (1976), affords certain due process procedural protections to the holder of a right-of-way; however, sec. 504 is not applicable to the holder of a pre-FLPMA easement for a right-of-way granted under the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), who has not conformed the right-of-way to a FLPMA right-of-way pursuant to sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976).

RIGHTS-OF-WAY--Continued

ACT OF MARCH 4, 1911--Continued

because such an easement for a right-of-way was not granted, issued, or renewed pursuant to Title V of FLPMA.

James H. Smith (On Reconsideration), 55 IBLA 390 (June 30, 1981)

A communications site right-of-way issued pursuant to the Act of Mar. 4, 1911, 43 U.S.C. § 961 (1976), which expires after the effective date, Oct. 21, 1976, of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976), may not be renewed under the Act of Mar. 4, 1911, because that Act was repealed by FLPMA.

Donald B. Clark, 56 IBLA 167 (July 20, 1981)

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to a Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), right-of-way in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA easement for a right-of-way was not issued pursuant to Title V of FLPMA.

American Telephone and Telegraph Co., 57 IBLA 215 (Aug. 27, 1981)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle Ba, Inc., 36 IBLA 260 (1978).

American Telephone and Telegraph Co. (On Reconsideration), 59 IBLA 183 (Nov. 5, 1981)

Generally, new procedural regulations may be promulgated with retroactive effect and applied to a holder of preexisting interests. However, the present revised regulations in 43 CFR Part 2800 were not written with such effect. Therefore, where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), regulation 43 CFR 2803.1-2(d), which allows rental adjustment without a prior hearing, is not applicable.

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural

RIGHTS-OF-WAY--Continued

ACT OF MARCH 4, 1911--Continued

parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Mountain States Telephone & Telegraph, 60 IBLA 221 (Nov. 30, 1981)

Where a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976) (repealed), and was not conformed to a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), the regulation at 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA right-of-way was not issued pursuant to Title V of FLPMA.

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 343 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to a Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), right-of-way in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), 43 CFR 2803.1-2(d), allowing rental adjustment without a prior hearing, is not applicable because such a pre-FLPMA easement for a right-of-way was not issued pursuant to Title V of FLPMA.

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), regulation 43 CFR 2803.1-2(d), which allows rental adjustment without a prior hearing, is not applicable.

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure. A BLM decision informing appellant of its right to file a request for a hearing with the Board of Land Appeals after BLM has determined the rental does not meet the requirements of 43 CFR 2802.1-7(e) (1979).

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State

RIGHTS-OF-WAY--Continued

ACT OF MARCH 4, 1911--Continued

Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).
U.S. Steel Corp., 71 IBLA 88 (Feb. 24, 1983)

Where an easement for a right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and was not conformed to the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976), in accordance with sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), regulation 43 CFR 2803.1-2(d), which allows rental adjustment without a prior hearing, is not applicable.

Under 43 CFR 2802.1-7(e) (1979), which provided that charges for use and occupancy of a communication site on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

The requirement of 43 CFR 2802.1-7(e) (1979), for notice and opportunity for a hearing may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

Denver & Rio Grande Western Railroad Co., 71 IBLA 352 (Mar. 28, 1983)

The preferred method for appraising the fair market value of nonlinear rights-of-way, including microwave transmission sites, is the comparable lease method of appraisal where there is sufficient comparable rental data and appropriate adjustments are made for differences between the subject site and other leased sites.

American Telephone & Telegraph Co. et al., 77 IBLA 110 (Nov. 14, 1983)

Where the BLM granted a communications site right-of-way pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), subject to future appraisal, collection of a rental deposit at the time of the grant with a later adjustment in the annual rental charges upon receipt of an approved fair market value appraisal is not a prohibited imposition of a retroactive rental.

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show convincing evidence that the charges are excessive.

Mountain States Telephone & Telegraph Co., 80 IBLA 128 (Apr. 5, 1984)

Under 43 CFR 2802.1-7(e) (1974), which provided that charges for use and occupancy of a right-of-way may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure where the right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and has not been conformed to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1982).

RIGHTS-OF-WAY--Continued

ACT OF MARCH 4, 1911--Continued

Where BLM appraises a parcel of land subject to a communication site right-of-way for direct sale to the holder of the grant pursuant to sec. 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1713 (1982), it is proper for BLM to appraise the parcel as if unencumbered, since the right-of-way is extinguished upon the right-of-way holder's acquisition of the fee title.

Cole Industries, Inc., 82 IBLA 289 (Aug. 31, 1984)

ACT OF FEBRUARY 25, 1920

Sec. 28 of the Mineral Leasing Act of 1920, 30 U.S.C. § 185 (1976), is not applicable to on-lease oil and gas production facilities which are included in a surface use and operations plan, and which are authorized by the approval of an application to conduct leasehold operations or construction activities.

Federal lands included in a unit agreement approved pursuant to 30 CFR Part 226 or a communitization agreement approved pursuant to 43 CFR 3105.2 are treated like an individual oil and gas leasehold for the purpose of determining whether rights-of-way are required for facilities located thereon.

Sec. 29 of the Mineral Leasing Act of 1920, 30 U.S.C. § 186 (1976), has consistently been interpreted as not providing authority separate from sec. 28 of the Mineral Leasing Act, 30 U.S.C. § 185 (1976), for oil and gas pipeline rights-of-way. Instead, it reserves to the United States the right to allow other rights-of-way or to lease other minerals on Federal land already leased for the extraction of one mineral, and allows the reservation of the right to dispose of the surface of land leased for mineral extraction "insofar as said surface is not necessary to the use of the lessee in extracting and removing deposits thereon."

All facilities related to an oil and gas lease which are located on Federal land outside the lease, regardless of their nature, may be constructed only after appropriate rights-of-way have been granted. Similarly, on-lease oil and gas transportation facilities and on-lease commercial facilities require rights-of-way. Depending on the nature of the facility, the right-of-way would be granted pursuant to either sec. 28 of the Mineral Leasing Act of 1920, 30 U.S.C. § 185 (1976), or Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976).

Right-of-way Requirements for Gathering Lines and Other Production Facilities Located Within Oil and Gas Leaseholds, M-36921 (June 19, 1980) 87 I.D. 291

Where an applicant for a right-of-way filed under the Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), for a natural gas pipeline, raises substantial questions concerning the rejection of its proposed route, a decision rejecting this route will be set aside and the matter referred for a hearing.

The Bureau of Land Management has authority to determine the route of a pipeline authorized under 30 U.S.C. § 185 (1976), and is required to consider all relevant factors including its impact on proposed WSA's, as well as the cost to the applicant, in selecting any specific route.

Fuel Resources Development Co., 59 IBLA 378 (Nov. 9, 1981)

RIGHTS-OF-WAY--Continued

ACT OF FEBRUARY 25, 1920--Continued

An appraisal of a right-of-way for a natural gas pipeline, granted pursuant to the Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), will be upheld on appeal if no error is shown in the appraisal methods used by the Bureau of Land Management and the appellant fails to show by convincing evidence that the charges are excessive. However, where the Bureau has determined the highest and best use of the land in order to evaluate the comparability of other lands, and an appellant raises sufficient doubt as to the accuracy of that determination, the case may be remanded for the Bureau to reconsider whether a further appraisal or adjustments in the appraised values should be made.

Western Slope Gas Co., 61 IBLA 57 (Dec. 31, 1981)

The "going rate" approach for appraising rights-of-way for natural gas pipelines granted pursuant to the Mineral Leasing Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), may be used by the Bureau of Land Management in determining the fair market rental value for such grants where there are sufficient market data available to evidence sales of similar right-of-way grants by private landowners.

In determining fair market rental value for a right-of-way for a natural gas pipeline granted pursuant to the Mineral Leasing Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), the Bureau of Land Management may consider market data concerning acquisition of similar rights-of-way across private lands even though the party acquiring those rights-of-way had the power of eminent domain.

Where the record shows that the Bureau of Land Management took into consideration differences between pipeline rights-of-way granted by the Bureau and those granted by private land owners in determining an adjustment factor to be applied to the going rate to arrive at the fair market rental value, in challenging that adjustment figure the right-of-way holder must show by positive and substantial evidence either that the Bureau failed to analyze the proper differences or that the adjustment factor failed reasonably to reflect the amount of those differences.

Northwest Pipeline Corp., 65 IBLA 245 (July 9, 1982)

Where, while a petition for reconsideration is pending before the Board of Land Appeals, BLM acknowledges petitioner's contention that there are conflicting and inconsistent practices within BLM as to the appraisal method used to determine fair market rental values for natural gas pipeline rights-of-way, granted pursuant to the Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), and BLM proposes to resolve the conflicts and inconsistencies by means of a study team to develop and recommend an acceptable method for arriving at the estimated fair market annual rental for BLM rights-of-way grants, the Board may set aside its prior decision and the BLM decisions under appeal and remand the cases to BLM to apply the approved appraisal method adopted following the completion of the study team report.

Northwest Pipeline Corp. (On Reconsideration), 77 IBLA 46 (Nov. 1, 1983)

Where the holder of a natural gas pipeline right-of-way issued pursuant to sec. 28 of the Mineral Leasing Act, as amended, 30 U.S.C. § 185 (1976), seeks to amend the right-of-way to include installation of a residential trailer to house security personnel, a BLM decision to reject the application will be set aside where the applicant demonstrates that the trailer is necessary to operation and maintenance of the pipeline, for reasons of safety and site security, and BLM does

RIGHTS-OF-WAY--Continued

ACT OF FEBRUARY 25, 1920--Continued

not establish that the trailer conflicts with any management objectives.

P & O Pelco, Inc., 78 IBLA 128 (Dec. 29, 1983)

Neither Title VI of the Civil Rights Act of 1964 nor 43 CFR Part 17 require as a mandate of law that a grant of an oil and gas pipeline right-of-way include a provision requiring the grantee to initiate an affirmative action program where (1) the grantee is paying full fair market value for the right granted; (2) the grantee is not the recipient of other financial aid or benefits; and (3) there has been no finding of prior discriminatory practices by the grantee.

Pursuant to its discretionary authority under the Mineral Leasing Act, 30 U.S.C. § 185 (1982), BLM may include in a right-of-way grant a condition that the holder develop and submit specific goals and timetables, and engage in affirmative action with respect to the participation of minorities and women in employment and procurement. However, BLM may impose such an affirmative action clause only if applied uniformly and in a nonarbitrary fashion in accordance with specifically identified Departmental policy.

Marathon Oil Co., 83 IBLA 137 (Oct. 9, 1984)

Where the Bureau of Land Management proposes to resolve the conflicts and inconsistencies in its appraisal method used to determine fair market rental values for natural gas pipeline rights-of-way, granted pursuant to the Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1982), the Board will not rule on the legality of the going rate method of appraisal, since the Bureau of Land Management should be allowed to explore the full range of options available in developing the proper appraisal method.

During the interim period until the Bureau of Land Management develops an approved appraisal method to determine fair market value for natural gas pipeline rights-of-way, new rights-of-way should not be appraised using the going rate method of appraisal. The Bureau of Land Management should proceed to charge a reasonable estimate of the fair market value subject to subsequent appraisal in accordance with 43 CFR 2803.1-2(b).

During the interim period until the Bureau of Land Management develops an approved appraisal method to determine fair market value for natural gas pipeline rights-of-way, reappraisal of existing rights-of-way should be deferred, and the Bureau of Land Management should continue to charge the original rental fee or last uncontested rental fee.

Northwest Pipeline Corp. (On Reconsideration), 83 IBLA 204 (Oct. 18, 1984)

ACT OF OCTOBER 21, 1976 (FLPMA)

Where BLM grants a right-of-way for a haul road under sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1976), subject to a future appraisal, BLM may subsequently appraise the land included in the right-of-way, and the rental charges imposed from the date of the right-of-way grant will not be considered retroactive.

Lone Star Steel Co., 79 IBLA 345 (Mar. 22, 1984)

RIGHTS-OF-WAY--Continued

APPLICATIONS

The Bureau of Land Management can recover the full cost of providing a service to an identifiable beneficiary regardless of the incidental public benefits flowing from that service. Charges may be made for environmental studies deemed appropriate for the proper consideration of the application.

Recognizing the principle of stare decisis, the Board nevertheless declines to follow a decision of the same district court involving the same statute where a circuit court decision, although arising under a different statute, is of more recent vintage, takes specific cognizance of the district court decision, and the circuit court decision comports with Departmental policies.

A pending right-of-way application does not create any vested right in the applicant; therefore, the application is subject to the regulations in effect when it is adjudicated.

Management overhead costs are not recoverable from right-of-way applicants under 43 CFR 2802.1-2.

Colorado-Ute Electric Ass'n, Inc., 46 IBLA 35 (Feb. 20, 1980)

The repeal of sec. 704(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2792, of certain statutory authority to reserve land as a waterhole only prohibits future withdrawals or reservations of land under the repealed statutes and does not affect known waterholes withdrawn prior to the repeal. It was proper for the Bureau of Land Management to reject a water pipeline right-of-way application for land containing a waterhole which was withdrawn prior to the Federal Land Policy and Management Act of 1976, and where the water is needed for a public use.

Grant L. Hacking, 50 IBLA 154 (Sept. 30, 1980)

The Federal Land Policy and Management Act of 1976 authorizes the Bureau of Land Management to recover reasonable costs including costs of environmental analyses for applications of rights-of-way across public lands.

Costs not directly associated with the processing or monitoring of a right-of-way application, such as evaluation of the mine to be served by the rights-of-way, are not authorized by the Federal Land Policy and Management Act of 1976 and are not reimbursable pursuant to 43 CFR 2802.1-2.

Management overhead costs are not recoverable from right-of-way applicants under 43 CFR 2802.1-2.

U.S. Steel Corp., 50 IBLA 190 (Sept. 30, 1980)
87 I.D. 473

Under the Federal Land Policy and Management Act of 1976, a Bureau of Land Management rejection of a road right-of-way is discretionary and will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest.

Department of the Army, Corps of Engineers, 51 IBLA 26 (Oct. 28, 1980)

Anita Robinson, 71 IBLA 380 (Mar. 29, 1983)

RIGHTS-OF-WAY--Continued

APPLICATIONS--Continued

A decision rejecting an application for an access road and canal right-of-way will be affirmed when the record shows that the appellant has failed to file a statement of the proper State official, or other evidence showing that he has a right to the use of the water.

Andrew A. Harrower, 51 IBLA 390 (Dec. 31, 1980)

The Federal Land Policy and Management Act of 1976 authorizes the Bureau of Land Management to recover reasonable costs including costs of environmental analyses for applications of rights-of-way across public lands.

Management overhead costs are not a reimbursable cost recoverable from right-of-way applicants under 43 CFR 2802.1-2.

Utah Power and Light Co., 52 IBLA 105 (Jan. 12, 1981)

Southern California Edison Co., 55 IBLA 210 (June 18, 1981)

Under the Federal Land Policy and Management Act of 1976, a Bureau of Land Management rejection of a road right-of-way is discretionary and will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest. Where, however, an applicant significantly controverts BLM's reasons for rejecting his application, the case will be remanded to allow BLM to respond to the issues raised on appeal and to reconsider the application in light thereof.

Patrick O. Brown, 55 IBLA 336 (June 26, 1981)

Where, over a 6-year period an applicant for a right-of-way fails to submit requested information or agree to reimburse BLM for costs incurred in processing the application, BLM has the authority to reject the application for a failure of diligence on the part of the applicant.

Wyoming Water, Inc., 56 IBLA 139 (July 20, 1981)

The Department of the Interior may condition approval of a right-of-way application for a communications site right-of-way by requiring acceptance of conditions for the protection of the public interest so long as such conditions are neither inconsistent with nor tend to unreasonably burden the proposed right-of-way.

Donald R. Clark, 56 IBLA 167 (July 20, 1981)

Where an applicant for a right-of-way filed under the Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), for a natural gas pipeline, raises substantial questions concerning the rejection of its proposed route, a decision rejecting this route will be set aside and the matter referred for a hearing.

Fuel Resources Development Co., 59 IBLA 378 (Nov. 9, 1981)

RIGHTS-OF-WAY--Continued

APPLICATIONS--Continued

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(b)(1), states that the Secretary shall require an applicant for a right-of-way to submit certain information prior to the issuance of the right-of-way, and an application for such right-of-way is properly canceled where the applicant fails to comply with the requirements.

John M. Barbee et al., 60 IBLA 81 (Nov. 19, 1981)

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a water pipeline right-of-way will ordinarily be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown. Where the Bureau of Land Management denies a right-of-way application because of the imminent conveyance of the land sought to a Native corporation which opposes the right-of-way and the record satisfactorily rebuts the substance of the opposition and identifies overriding public interest considerations such that the sole reason for the denial becomes the imminence of the conveyance and concern that the Native corporation control its own land, the BLM decision must be reversed. The problem of a Native corporation's control of the use of land conveyed to it is provided for in sec. 14(g) of the Alaska Native Claims Settlement Act and 43 CFR 2650.4-3 and should be addressed apart from the grant or denial of a right-of-way on its own merits.

Welbro Packing Co., 63 IBLA 176 (Apr. 8, 1982)

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of reservoirs, pipelines, and ditches on public land and continued use without prior authorization earns an applicant a right to a right-of-way under these statutes.

Bumble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

The grant of a right-of-way for construction of an access road under sec. 501 of the Federal Land Policy and Management Act of 1976 is discretionary. A decision exercising that discretion to reject an application may be set aside where the record on appeal discloses that factors cited as the basis for the decision are

RIGHTS-OF-WAY--Continued

APPLICATIONS--Continued

inconsistent with the facts and/or immaterial to a determination of the public interest.

William A. Sigman, 66 IBLA 53 (July 28, 1982)

The Secretary has broad discretion regarding the amount of information he may require from the applicant for a right-of-way grant prior to accepting the application for consideration. The primary intended use of the right-of-way grant -- the use of the public lands -- must be disclosed. The applicant's inability to disclose a secondary use -- a use resulting from the primary use -- does not preclude the Secretary from considering the application. He must decide whether he is informed adequately of necessary facts to apply the relevant statutory criteria based upon the available information. If so, he may proceed to decide whether the grant or deny the interest that is sought based upon the statutory criteria for FLPMA.

Where an applicant for a right-of-way grant seeks to use the public lands as the site for a reservoir but is unable to disclose the ultimate use of approximately 82% of the water, the Secretary may decide to proceed to consider the application.

Effect of the Federal Land Policy & Management Act on the Right-of-Way Application for the Middle Fork of the Powder River Reservoir, M-36900 (Supp. I) (June 27, 1983) 90 I.D. 345

Pending applications for rights-of-way filed under previous and repealed authority shall be considered as applications under the Federal Land Policy and Management Act of 1976. Such rights-of-way are subject to such terms and conditions as the Secretary may prescribe regarding extent, duration, survey, location, construction, maintenance, transfer or assignment, and termination. Termination for noncompliance with a condition of the right-of-way grant is within the discretionary authority of the Secretary.

Charles W. Nelson, Lucy A. Nelson, 75 IBLA 115 (Aug. 15, 1983)

Where the holder of a natural gas pipeline right-of-way issued pursuant to sec. 28 of the Mineral Leasing Act, as amended, 30 U.S.C. § 185 (1976), seeks to amend the right-of-way to include installation of a residential trailer to house security personnel, a BLM decision to reject the application will be set aside where the applicant demonstrates that the trailer is necessary to operation and maintenance of the pipeline, for reasons of safety and site security, and BLM does not establish that the trailer conflicts with any management objectives.

P & O Falcon, Inc., 78 IBLA 128 (Dec. 29, 1983)

An applicant for a right-of-way waives any right to challenge BLM's rejection of its application when the applicant refuses to reimburse the United States, in accordance with the provisions of 43 CFR 2803.1-1(a)(4) and (10), for the costs calculated by BLM to be attributable to the processing of its application.

Smart & Co., 79 IBLA 323 (Mar. 21, 1984)

RIGHTS-OF-WAY--Continued

APPLICATIONS--Continued

BLM may properly reject an application for a powerline right-of-way crossing the Snake River pursuant to its discretion under sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1982), in the interest of preserving the scenic quality of the area and protecting raptors listed as endangered and threatened where the record shows the decision to be a reasoned analysis of the factors involved, including the availability of feasible alternatives, made with due regard for the public interest.

Lower Valley Power & Light, Inc., 82 IBLA 216 (Aug. 22, 1984)

Under the Federal Land Policy and Management Act of 1976, BLM has the discretion to grant or deny a road right-of-way across public lands, and its decision will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest. Therefore, when appellant proposes to build a road across BLM lands to provide alternate access to its ranch, but fails to introduce evidence to counter BLM findings that the site is unsuitable for road construction and the area would probably suffer extensive environmental damage from increased offroad vehicle traffic use, the Board will affirm the BLM decision.

Charing Cross Associates, 83 IBLA 167 (Oct. 15, 1984)

APPRAISALS

An appraisal of a right-of-way for an irrigation ditch, granted pursuant to sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1976), will be upheld on appeal if no error is shown in the appraisal method used by BLM and the appellant fails to show by convincing evidence that the annual rental charge is excessive.

Herring Livestock Co., 69 IBLA 110 (Nov. 30, 1982)

The preferred method for appraising the fair market value of nonlinear rights-of-way, including microwave transmission sites, is the comparable lease method of appraisal where there is sufficient comparable rental data and appropriate adjustments are made for differences between the subject site and other leased sites.

Where either the comparable lease or comparable sale method is used to ascertain fair market value of a communications site, such method automatically includes consideration of residual damages and benefits; therefore, the "before and after" test cannot properly be applied in conjunction with either method.

American Telephone & Telegraph Co. et al., 77 IBLA 110 (Nov. 14, 1983)

Where BLM has determined the fair market rental values of a communications site right-of-way in accordance with accepted appraisal procedures but on appeal the grantee presents a summary of evidence that, if proven, would establish that the charge is excessive, the matter will be referred for a hearing at the BLM State Office in accordance with the basic procedural standards set forth in Circle L, Inc., 36 IBLA 260 (1978).

Colorado-Ute Electric Ass'n, Inc., 79 IBLA 53 (Feb. 9, 1984)

RIGHTS-OF-WAY--Continued

APPRAISALS--Continued

An appraisal of a right-of-way for a haul road, granted pursuant to sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1976), will be upheld on appeal if no error is shown in the appraisal method used by BLM and the appellant fails to show by convincing evidence that the annual rental charge is excessive.

Long Star Steel Co., 79 IBLA 345 (Mar. 22, 1984)

Where the BLM granted a communications site right-of-way pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), subject to future appraisal, collection of a rental deposit at the time of the grant with a later adjustment in the annual rental charges upon receipt of an approved fair market value appraisal is not a prohibited imposition of a retroactive rental.

Appraisals of rights-of-way for communication sites will be upheld if there is no error in the appraisal methods used by the Bureau of Land Management and the appellant fails to show convincing evidence that the charges are excessive.

Mountain States Telephone & Telegraph Co., 80 IBLA 128 (Apr. 5, 1984)

Where there is no appraisal to support a readjusted rental rate for a water pipeline right-of-way, a decision imposing the readjusted rate must be reversed.

A. Keith Barbee, 81 IBLA 332 (June 19, 1984)

BLM properly requires the holder of a right-of-way for an access road to pay its fair market rental value in accordance with sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1982), but where there is no evidence that BLM considered the question of whether the holder is entitled to a reduced fee because a valuable benefit is provided to the public by maintenance and improvement of the road, the case will be remanded to BLM to consider that question.

William F. Bigbee, 82 IBLA 6 (July 2, 1984)

CANCELLATION

Sec. 506 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1766 (1976), affords certain due process procedural protections to the holder of a right-of-way; however, sec. 506 is not applicable to the holder of a pre-FLPMA easement for a right-of-way granted under the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), who has not conformed the right-of-way to a FLPMA right-of-way pursuant to sec. 509(a) of FLPMA, 43 U.S.C. § 1769(a) (1976), because such an easement for a right-of-way was not granted, issued, or renewed pursuant to Title V of FLPMA.

James W. Smith (On Reconsideration), 55 IBLA 390 (June 30, 1981)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(b)(1), states that the Secretary shall

RIGHTS-OF-WAY--Continued

CANCELLATION--Continued

require an applicant for a right-of-way to submit certain information prior to the issuance of the right-of-way, and an application for such right-of-way is properly canceled where the applicant fails to comply with the requirements.

John W. Barbee et al., 60 IBLA 81 (Nov. 19, 1981)

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

It is unnecessary for BLM to terminate a communications site right-of-way which has expired at the end of its primary term and which is not then subject to renewal because it was originally granted under authority subsequently repealed by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976). Nevertheless, BLM properly may provide notice of the expiration and inform the holder that continued use under the expired right-of-way is unauthorized.

Donald R. Clark, 65 IBLA 144 (June 29, 1982)

Suspension of the right to construct facilities on a right-of-way granted pursuant to the Act of Feb. 1, 1905, ch. 288, § 4, 33 Stat. 628 (repealed 1976), is tantamount to cancellation of the right-of-way. Such a right-of-way may be canceled only after notice and an opportunity for a hearing have been afforded the holder of the right-of-way.

Cities of Colorado Springs & Aurora, 77 IBLA 395 (Dec. 9, 1983)

CONDITIONS AND LIMITATIONS

An applicant for a right-of-way for a municipal water-supply reservoir may be required to open both this reservoir and another reservoir built pursuant to an earlier right-of-way grant to restricted public access as a condition to receiving the present grant, where the record shows that doing so is in the public interest and will not unduly burden the use of the lands as a water-supply reservoir.

The Department may require an applicant for a right-of-way for a municipal water-supply reservoir to open all parts of this reservoir and another reservoir

RIGHTS-OF-WAY--Continued

CONDITIONS AND LIMITATIONS--Continued

built pursuant to an earlier right-of-way grant to restricted public access, including the portion thereof not located on Federal lands, as a condition precedent to granting the right-of-way, provided that so doing is in the public interest and will not unduly burden the use of the land as a water-supply reservoir.

BLM may properly require an applicant for a right-of-way for a municipal water-supply reservoir which will inundate Federal lands to bear the cost of mitigating damage to archaeological sites located thereon.

Ute Water Conservancy District, 47 IBLA 71 (Apr. 21, 1980)

The Department of the Interior may condition approval of a right-of-way application for a communications site right-of-way by requiring acceptance of conditions for the protection of the public interest so long as such conditions are neither inconsistent with nor tend to unreasonably burden the proposed right-of-way.

Donald R. Clark, 56 IBLA 167 (July 20, 1981)

In granting a right-of-way for a domestic water pipeline, pursuant to sec. 501(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), BLM properly may require stipulations providing that the right-of-way is not renewable and that the United States is not liable for damage or deterioration of the water supply. However, where the circumstances of a particular case indicate that a better course of action, and one that allows the balancing of the interests of BLM and the right-of-way applicant, is to allow the grant to be renewed, the Board may direct that the grant be renewable pursuant to 43 CFR 2803.6-5(a).

Eugene V. Vogel, 65 IBLA 213 (June 30, 1982)

In granting a right-of-way for a domestic water pipeline pursuant to sec. 501(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), BLM properly may require stipulations providing that the right-of-way is not renewable. However, the Board may direct that the grant be renewable pursuant to 43 CFR 2803.6-5(a) where the circumstances of a particular case indicate that a better course of action, and one that allows the balancing of the interests of BLM and the right-of-way applicant, is to allow the grant to be renewed.

Joan Mountaingrove, Ruth Mountaingrove, 67 IBLA 154 (Sept. 20, 1982)

In plain and unambiguous regulations codified at 25 CFR Part 169, the Secretary of the Interior has required tribal consent for any right-of-way across tribal land, not just those sought under 25 U.S.C. §§ 323-328 (1976).

Article II, paragraph 6, of the Treaty with the Navajo, June 1, 1868 (15 Stat. 667), in which the tribe agreed not to oppose "the construction of railroads, wagonroads, mail stations, or other works of utility or necessity which may be ordered or permitted by the laws of the United States," may not be interpreted as

RIGHTS-OF-WAY--Continued

CONDITIONS AND LIMITATIONS--Continued

bestowing tribal consent to all applications for rights-of-way across the Navajo Indian Reservation.

Transwestern Pipeline Co. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 49 (Oct. 28, 1983) 90 I.D. 474

In granting a right-of-way for access over an existing road pursuant to sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1982), BLM may not unreasonably burden the right-of-way by requiring upgrading of the road where upgrading is neither commensurate with the holder's intended use of the road nor designed to protect any other resource value which might be adversely affected by such use.

James B. Loopan, Elizabeth K. Loopan, 82 IBLA 395 (Sept. 17, 1984)

Neither Title VI of the Civil Rights Act of 1964 nor 43 CFR Part 17 require as a mandate of law that a grant of an oil and gas pipeline right-of-way include a provision requiring the grantee to initiate an affirmative action program where (1) the grantee is paying full fair market value for the right granted; (2) the grantee is not the recipient of other financial aid or benefits; and (3) there has been no finding of prior discriminatory practices by the grantee.

Pursuant to its discretionary authority under the Mineral Leasing Act, 30 U.S.C. § 185 (1982), BLM may include in a right-of-way grant a condition that the holder develop and submit specific goals and timetables, and engage in affirmative action with respect to the participation of minorities and women in employment and procurement. However, BLM may impose such an affirmative action clause only if applied uniformly and in a nonarbitrary fashion in accordance with specifically identified Departmental policy.

Marathon Oil Co., 83 IBLA 137 (Oct. 9, 1984)

FEDERAL HIGHWAY ACT

Mining claims located on lands subject to valid, ongoing, and pre-existing rights-of-way granted to the State of Idaho pursuant to the Federal Aid Highway Act, 23 U.S.C. § 317 (1976), to use the lands for materials for highway construction, are null and void ab initio.

James F. Popcorn, Wayne A. Reddekopp, 50 IBLA 414 (Oct. 24, 1980)

Where regulations allowed the grantee of a highway right-of-way pursuant to sec. 17 of the Federal Aid Highway Act of 1921, 23 U.S.C. § 317 (1976), to authorize within its highway right-of-way a right-of-way for "facilities usual to a highway," a subsequent regulation change properly limited that highway grant to require one seeking, after the effective date of the regulation, a right-of-way for buried telephone cables to apply to the Bureau of Land Management for authorization.

Penasco Valley Telephone Cooperative, Inc., 55 IBLA 360 (June 26, 1981)

RIGHTS-OF-WAY--Continued

FEDERAL HIGHWAY ACT--Continued

A mining claim located on lands subject to a valid, ongoing, and preexisting material site granted pursuant to the Federal Highway Act of Nov. 9, 1921, 23 U.S.C. § 18 (1946), now the Federal Aid Highway Act, 23 U.S.C. § 317 (1976), is null and void ab initio.

Ralph Hemmott, 61 IBLA 116 (Jan. 6, 1982)

An application by a state highway department for a material site right-of-way on public land is properly denied where the applicant fails to demonstrate that the material is reasonably necessary for the construction or maintenance of a highway or where such disposition would not be consistent with other public purposes as determined by the Bureau of Land Management. Where the application is denied on the basis of a determination that it would preempt the public's only available source of cinders within 40 miles and appellant contradicts this by identifying other public sources, the decision rejecting the application will be set aside and the case remanded for further consideration of alternatives that would meet the needs of the applicant without sacrificing other public purposes.

Utah Dept. of Transportation, 62 IBLA 176 (Mar. 8, 1982)

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

The effect of decisions of Bureau of Land Management officials regarding applications for use of the public land and its resources are stayed pending the time during which a party adversely affected thereby may file an appeal and during the pendency of any appeal properly filed except where statute or regulation provides otherwise. 43 CFR 4.21(a). Although the regulations governing issuance of rights-of-way pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), provide that such decisions shall be effective when issued, rights-of-way for Federal aid highways are expressly excluded from the scope of such regulation

RIGHTS-OF-WAY--Continued

FEDERAL HIGHWAY ACT--Continued

and thus, a decision to issue the latter type of right-of-way is stayed pending appeal.

Analysis of the environmental impact of the design of a segment of a proposed highway crossing public domain land does not constitute an improper narrowing of the scope of the project for purposes of environmental review where the route of the entire project has already been determined after completion of an environmental impact statement, the portion of the highway across land administered by the Bureau of Land Management has logical termini and a substantial independent utility regardless of whether the balance of the project is constructed, and construction of the highway on BLM land does not foreclose significant alternatives with respect to the balance of the highway project.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

Interim conveyance of a village selection made subject to a right-of-way issued to the State of Alaska pursuant to the 1958 Federal Aid Highway Act does not convey to the village corporation the authority to cancel the right-of-way. A patent subsequently issued subject to the right-of-way will not operate to vest in the village corporation any such right, but will be subordinate to the right-of-way, which may only be terminated by act of an agency of the Federal Government.

Where a village land selection conveyance under the Alaska Native Claims Settlement Act is made subject to a highway right-of-way for a maintenance site held by a state agency, the Department of the Interior retains jurisdiction to determine whether the right-of-way should continue or be canceled.

Bering Straits Native Corp., Council Native Corp., 83 IBLA 280 (Oct. 25, 1984)

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

Public Land Order No. 2676 (1962), requires the approval of an authorized officer of the Department of the Army before the Secretary of the Interior can grant a right-of-way over lands subject to the public land order. The Department of the Interior has no authority to grant a right-of-way where the approval is withheld.

City of Anchorage, Alaska, and Jack G. Fisher, et al., a.k.a. Concerned Chugach Citizens v. Chugach Electric Ass'n, Inc., 45 IBLA 171 (Jan. 30, 1980) 87 I.D. 21

All facilities related to an oil and gas lease which are located on Federal land outside the lease, regardless of their nature, may be constructed only after appropriate rights-of-way have been granted. Similarly, on-lease oil and gas transportation facilities and on-lease commercial facilities require rights-of-way. Depending on the nature of the facility, the right-of-way would be granted pursuant to either sec. 28 of the Mineral Leasing Act of 1920, 30 U.S.C. § 185 (1976), or Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976).

Right-of-Way Requirements for Gathering Lines and Other Production Facilities Located Within Oil and Gas Leaseholds, M-36921 (June 19, 1980) 87 I.D. 291

RIGHTS-OF-WAY--Continued

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

The Federal Land Policy and Management Act of 1976 authorizes the Bureau of Land Management to recover reasonable costs including costs of environmental analyses for applications of rights-of-way across public lands.

Costs not directly associated with the processing or monitoring of a right-of-way application, such as evaluation of the mine to be served by the rights-of-way, are not authorized by the Federal Land Policy and Management Act of 1976 and are not reimbursable pursuant to 43 CFR 2802.1-2.

U.S. Steel Corp., 50 IBLA 190 (Sept. 30, 1980)
87 I.D. 473

Under the Federal Land Policy and Management Act of 1976, a Bureau of Land Management rejection of a road right-of-way is discretionary and will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest.

Department of the Army, Corps of Engineers, 51 IBLA 26 (Oct. 28, 1980)

Anita Robinson, 71 IBLA 380 (Mar. 29, 1983)

A decision rejecting an application for an access road and canal right-of-way will be affirmed when the record shows that the appellant has failed to file a statement of the proper State official, or other evidence showing that he has a right to the use of the water.

Andrew A. Harrower, 51 IBLA 390 (Dec. 31, 1980)

The Federal Land Policy and Management Act of 1976 authorizes the Bureau of Land Management to recover reasonable costs including costs of environmental analyses for applications of rights-of-way across public lands.

Utah Power and Light Co., 52 IBLA 105 (Jan. 12, 1981)

Southern California Edison Co., 55 IBLA 210 (June 18, 1981)

Under the Federal Land Policy and Management Act of 1976, a Bureau of Land Management rejection of a road right-of-way is discretionary and will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest. Where, however, an applicant significantly controverts BLM's reasons for rejecting his application, the case will be remanded to allow BLM to respond to the issues raised on appeal and to reconsider the application in light thereof.

Patrick O. Brown, 55 IBLA 336 (June 26, 1981)

Where, over a 6-year period an applicant for a right-of-way fails to submit requested information or agree to reimburse BLM for costs incurred in processing the application, BLM has the authority to reject the application for a failure of diligence on the part of the applicant.

Wyoming Water, Inc., 56 IBLA 139 (July 20, 1981)

RIGHTS-OF-WAY--Continued

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

Under the Uniform Appraisal Standards for Federal Land Acquisitions (1973), evidence of sums paid by condemning authorities for similar properties, regardless of whether condemnation proceedings have begun, is inadmissible to determine the fair market value of a particular property.

Where the current fair rental value of a communications site right-of-way has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error. However, where the lessee has provided sufficient evidence on appeal to engender substantial doubt as to the data utilized and the conclusion reached in the appraisal report, the matter will be remanded for reconsideration.

Denver and Rio Grande Western Railroad Co., 58 IBLA 4 (Sept. 15, 1981)

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1976), an application for a communication site right-of-way may be accepted or rejected by the Secretary or his duly authorized representative at his discretion. The standard for review of a decision rejecting an application is whether the decision represents a reasoned analysis of pertinent factors with due regard for the public interest. Where the record does not support BLM's decision to reject the application, as amended by subsequent negotiations, it will be remanded for further review.

In connection with an application under FLPMA for a communications site right-of-way, BLM may properly consider site-related technical questions, such as whether and to what degree operation of an FM broadcasting station will result in radio interference with existing uses of the site.

Peregrine Broadcasting Co., 62 IBLA 133 (Mar. 4, 1982)

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a domestic water pipeline right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

A decision rejecting an application for a water pipeline right-of-way will ordinarily be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown. Where the Bureau of Land Management denies a right-of-way application because of the imminent conveyance of the land sought to a Native corporation which opposes the right-of-way and the record satisfactorily rebuts the substance of the opposition and identifies overriding public interest considerations such that the sole reason for the denial becomes the imminence of the conveyance and concern that the Native corporation control its own land, the BLM decision must be reversed. The problem of a Native corporation's control of the use of land conveyed to it is provided for in sec. 14(g) of the Alaska Native Claims Settlement Act and 43 CFR 2650.4-3 and should be

RIGHTS-OF-WAY--Continued

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

addressed apart from the grant or denial of a right-of-way on its own merits.

Holbro Packing Co., 63 IBLA 176 (Apr. 8, 1982)

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for an annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), the Secretary of the Interior may charge less than fair market value for a right-of-way rental. The regulation, 43 CFR 2803.1-2(c), implementing that provision sets forth the circumstances under which no fee or a fee less than fair market rental may be authorized; however, it specifically excludes cooperatives whose principal source of revenue is customer charges from such consideration.

Tri-State Generation and Transmission Ass'n, Inc., 63 IBLA 347 (Apr. 29, 1982) 89 I.D. 227

While sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), indicates that the Secretary of the Interior may charge less than fair market value for annual right-of-way rental, including no charge, the legislative history of that provision reveals that Congress intended that free use be restricted to agencies of the Federal Government and to those situations where the charge is token and the cost of collection unduly large.

Socorro Electric Cooperative, Inc., 64 IBLA 65 (May 6, 1982)

San Miguel Power Ass'n, Inc., 64 IBLA 172 (May 26, 1982)

San Miguel Power Association, Inc., 71 IBLA 213 (Mar. 16, 1983)

Under Departmental regulation 43 CFR 2803.1-2(c) a nonprofit electric distribution cooperative whose principal source of revenue is customer charges is not eligible for an exemption or reduction of fair market rental imposed for a right-of-way under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976).

San Miguel Power Ass'n, Inc., 64 IBLA 342 (June 15, 1982)

Pending applications for rights-of-way filed under the Act of Feb. 15, 1901, 43 U.S.C. § 959 (1970), shall be considered as applications under the Federal Land Policy and Management Act of 1976.

Approval of a right-of-way application filed under the Act of Feb. 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976). Neither an application for a right-of-way nor the building of reservoirs, pipelines, and ditches on public land and continued use

RIGHTS-OF-WAY--Continued

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

without prior authorization earns an applicant a right to a right-of-way under these statutes.

Prior to the repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, as amended, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, one who appropriated water pursuant to the 1866 Act could acquire a right-of-way for reservoirs, dams, pipelines, ditches, and canals crossing public land merely by constructing such improvements, no application to the Federal Government being necessary.

Repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, as amended, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, did not affect rights-of-way previously acquired under the 1866 Act.

Bubble Bee Seafoods, Inc., 65 IBLA 391 (July 23, 1982)

The grant of a right-of-way for construction of an access road under sec. 501 of the Federal Land Policy and Management Act of 1976 is discretionary. A decision exercising that discretion to reject an application may be set aside where the record on appeal discloses that factors cited as the basis for the decision are inconsistent with the facts and/or immaterial to a determination of the public interest.

William A. Sigman, 66 IBLA 53 (July 28, 1982)

Under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976), the Secretary of the Interior may charge less than fair market value for a right-of-way rental under certain circumstances. The regulation, 43 CFR 2803.1-2(c), implementing that provision sets forth the circumstances under which no fee or a fee less than fair market rental may be authorized; however, it specifically excludes from such consideration cooperatives whose principal source of revenue is customer charges.

Northern Electric Cooperative, Inc., 66 IBLA 121 (Aug. 10, 1982)

Where rental charges for a reservoir right-of-way are based upon an appraisal report that does not comport with Departmental standards, the decision determining rental charges will be vacated and the case remanded for a new appraisal.

Paradise Oil, Water & Land Development, Inc., 68 IBLA 268 (Nov. 17, 1982)

Where the current fair rental value of a communications site right-of-way has been determined in accordance with accepted appraisal procedures but where the lessee has provided sufficient evidence on appeal to engender substantial doubt as to the data utilized and the conclusion reached in the appraisal report, the matter will be remanded for reconsideration.

Denver & Rio Grande Western Railroad Co., 71 IBLA 352 (Mar. 28, 1983)

RIGHTS-OF-WAY--Continued

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

The Secretary has broad discretion regarding the amount of information he may require from the applicant for a right-of-way grant prior to accepting the application for consideration. The primary intended use of the right-of-way grant -- the use of the public lands -- must be disclosed. The applicant's inability to disclose a secondary use -- a use resulting from the primary use -- does not preclude the Secretary from considering the application. He must decide whether he is informed adequately of necessary facts to apply the relevant statutory criteria based upon the available information. If so, he may proceed to decide whether the grant or deny the interest that is sought based upon the statutory criteria for FLPMA.

Where an applicant for a right-of-way grant seeks to use the public lands as the site for a reservoir but is unable to disclose the ultimate use of approximately 82% of the water, the Secretary may decide to proceed to consider the application.

When the Secretary receives a right-of-way application, he must make two decisions: a preliminary decision to determine whether the information submitted in the application is adequate for him to begin his evaluation and a final decision on whether to grant the right-of-way. As part of the final decision he must define the nature and character of the grant, including particulars concerning costs to be imposed, location, and terms and conditions. 43 U.S.C. §§ 1762, 1763, 1764, and 1765 (1976).

Effect of the Federal Land Policy & Management Act on the Right-of-Way Application for the Middle Fork of the Powder River Reservoir, M-36900 (Supp. I) (June 27, 1983) 90 I.D. 345

Pending applications for rights-of-way filed under previous and repealed authority shall be considered as applications under the Federal Land Policy and Management Act of 1976. Such rights-of-way are subject to such terms and conditions as the Secretary may prescribe regarding extent, duration, survey, location, construction, maintenance, transfer or assignment, and termination. Termination for noncompliance with a condition of the right-of-way grant is within the discretionary authority of the Secretary.

A decision exercising the discretion to terminate a right-of-way grant may be reversed where the record of the decision does not represent a reasoned analysis of pertinent factors with due regard for the public interest.

Charles W. Nelson, Lucy A. Nelson, 75 IBLA 115 (Aug. 15, 1983)

Sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g), indicates that under certain circumstances the Secretary of the Interior may charge less than fair market value for annual right-of-way rental, including no charge. However, no reduction or waiver of the fee based on fair market rental will be made if the right-of-way user is a cooperative or similar organization whose principal source of revenue is customer charges.

Big Horn Canal Ass'n, 76 IBLA 283 (Oct. 18, 1983)

Wellton-Mohawk Irrigation & Drainage District, 79 IBLA 303 (Mar. 20, 1984)

RIGHTS-OF-WAY--Continued

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

Prior to the repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, as amended, 43 U.S.C. § 661 (1970), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, one who appropriated water pursuant to the 1866 Act could acquire a right-of-way for reservoirs, dams, pipelines, ditches, and canals crossing public land merely by constructing such improvements, no application to the Federal Government being necessary.

Repeal of the right-of-way provisions of the Act of July 26, 1866, 14 Stat. 253, as amended, 43 U.S.C. § 661 (1976), by sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, did not affect rights-of-way previously acquired under the 1866 Act.

R. W. Offerle, 77 IBLA 80 (Nov. 9, 1983)

The holder of a right-of-way issued pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), is required to pay annually, in advance, the fair market value of the grant. Appellant's contention that it should not pay annual rental is properly rejected where appellant's flood control project is completed but the right-of-way grant remains in effect and the land is being used for a dam, spillway, and reservoir.

Bench Lake Irrigation Co., 78 IBLA 305 (Jan. 12, 1984)

Under Departmental regulation 43 CFR 2803.1-2(c), a nonprofit electric distribution cooperative whose principal source of revenue is customer charges is not eligible for an exemption or reduction of fair market rental imposed for a right-of-way under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1976).

Colorado-Ute Electric Ass'n, Inc., 79 IBLA 53 (Feb. 9, 1984)

Where there is no appraisal to support a readjusted rental rate for a water pipeline right-of-way, a decision imposing the readjusted rate must be reversed.

A. Keith Barbon, 81 IBLA 332 (June 19, 1984)

A decision imposing rental charges on a Rural Electrification Act cooperative for a powerline right-of-way grant, pursuant to sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1982), will be set aside where subsequent to the decision that section is amended, P.L. 98-300, 98 Stat. 215 (1984), to provide that rights-of-way shall be granted, without rental fees, for electric facilities financed pursuant to the Rural Electrification Act of 1936.

La Plata Electric Ass'n, Inc., 82 IBLA 159 (Aug. 2, 1984)

A decision imposing rental charges under sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1982), for a right-of-way for a telephone line financed pursuant to the Rural Electrification Act of 1936 will be reversed on

RIGHTS-OF-WAY--Continued

FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976--Continued

appeal to conform to the Act of May 25, 1984, P.L. 98-300, 98 Stat. 215, providing that rights-of-way shall be granted without rental fees for such facilities.

Pursuant to sec. 504(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(a) (1982), the Secretary of the Interior has discretion to set the limits of a right-of-way in light of the area to be occupied by the facilities authorized thereunder, the area required for operation and maintenance of the facilities, the area required for protection of public safety, and the area required for protection of the environment against unnecessary damage. An appellant challenging the determination of boundaries for a right-of-way has the burden of showing error.

Beehive Telephone Co., Inc., 83 IBLA 86 (Sept. 28, 1984)

Under the Federal Land Policy and Management Act of 1976, BLM has the discretion to grant or deny a road right-of-way across public lands, and its decision will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest. Therefore, when appellant proposes to build a road across BLM lands to provide alternate access to its ranch, but fails to introduce evidence to counter BLM findings that the site is unsuitable for road construction and the area would probably suffer extensive environmental damage from increased offroad vehicle traffic use, the Board will affirm the BLM decision.

Charles Cross Associates, 83 IBLA 167 (Oct. 15, 1984)

Amendment of sec. 504(g) of the Federal Land Policy and Management Act of 1976 to permit grants of rights-of-way for electric and telephone facilities without payment of fees in certain cases applies only to rights-of-way for transmission lines, and does not include a right-of-way for a microwave radio site within the facilities excused from payment of fees.

A hearing will be ordered where issues of fact concerning value are raised substantially disputing a decision imposing rental charges on a Rural Electrification Act cooperative for microwave site right-of-way grant pursuant to sec. 504(g) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1764(g) (1982).

Colorado-Ute Electric Ass'n, Inc., 83 IBLA 358 (Nov. 15, 1984)

BLM may not grant to a party, other than the oil and gas lessee, a right-of-way to dispose of salt water by pumping it into the lessee's plugged oil and gas well located on producing leased lands, where the grant effectively precludes lessee's rights to further explore, drill, and develop the leasehold under the lease and the Mineral Leasing Act by utilizing its own well.

Pentec Oil Corp. et al., 84 IBLA 36 (Nov. 27, 1984)

NATURE OF DECISION

When the Secretary receives a right-of-way application, he must make two decisions: a preliminary decision to determine whether the information submitted in the application is adequate for him to begin his evaluation and a final decision on whether to grant the right-of-way. As part of the final decision he must define the nature and character of the grant, including particulars concerning costs to be imposed, location, and

RIGHTS-OF-WAY--Continued

NATURE OF DECISION--Continued

terms and conditions. 43 U.S.C. §§ 1762, 1763, 1764, and 1765 (1976).

Effect of the Federal Land Policy & Management Act on the Right-of-Way Application for the Middle Fork of the Powder River Reservoir, M-36900 (Supp. I) (June 27, 1983) 90 I.D. 345

NATURE OF INTEREST GRANTED

In granting a right-of-way over public lands pursuant to the Federal Aid Highway Act of 1958, 23 U.S.C. § 317 (1976), the Secretary of the Interior does not give up administrative authority over the lands subject to the right-of-way. Subsequent issuance of a patent for lands encompassing a Federally granted right-of-way issued under the Federal Aid Highway Act, supra, does not change the Secretary's jurisdiction over the right-of-way grant.

State of Alaska, 46 IBLA 12 (Feb. 20, 1980)

A right-of-way granted by Revised Statutes Sec. 2477 is a less-than-fee interest in the nature of an easement. Following the acceptance of a Revised Statutes Sec. 2477 grant of right-of-way, the Federal Government retains its fee interest in the land, subject to the right-of-way, and may dispose of it pursuant to law.

State of Alaska, Dept. of Transportation and Public Facilities, 5 ANCAB 307 (June 26, 1981) 88 I.D. 629

Where regulations allowed the grantee of a highway right-of-way granted pursuant to sec. 8 of the Act of July 26, 1866, 43 U.S.C. § 932 (1976), otherwise known as R.S. § 2477, to authorize within its highway right-of-way a right-of-way for "facilities usual to a highway," a subsequent regulation change properly limited that highway grant to require one seeking, after the effective date of that regulation, a right-of-way for buried telephone cables to apply to the Bureau of Land Management for authorization.

Where regulations allowed the grantee of a highway right-of-way pursuant to sec. 17 of the Federal Aid Highway Act of 1921, 23 U.S.C. § 317 (1976), to authorize within its highway right-of-way a right-of-way for "facilities usual to a highway," a subsequent regulation change properly limited that highway grant to require one seeking, after the effective date of the regulation, a right-of-way for buried telephone cables to apply to the Bureau of Land Management for authorization.

Pensaco Valley Telephone Cooperative, Inc., 55 IBLA 360 (June 26, 1981)

Where a reclamation withdrawal is modified by public land order to authorize a public highway right-of-way pursuant to sec. 8 of the Act of July 26, 1866 (repealed 1976, formerly codified at 43 U.S.C. § 932), the nature and extent of the rights authorized are controlled by the express terms of the public land order restoring the land. A decision to close a road built on a right-of-way within a reclamation withdrawal which is expressly conditioned upon noninterference with the operation and maintenance of a dam and related facilities will be affirmed where the record supports a determination by reclamation officials that public access is substantially interfering with operations

RIGHTS-OF-WAY--Continued

NATURE OF INTEREST GRANTED--Continued

and maintenance and the road has been replaced by a new highway open to the public.

County of Imperial, 5 OHA 286 (Mar. 16, 1984)

R.S. 2477 does not provide for the construction of the grant according to the law of the state in which the land subject to the grant is situated; rather, its construction is a question of Federal law. By the time of the R.S. 2477 Idaho grant, Congress had already determined that telephone cables were not within the scope of an R.S. 2477 highway right-of-way. Thus, a telephone cable buried along an R.S. 2477 highway with a right-of-way from the State of Idaho but without the requisite BLM right-of-way is in trespass.

Mountain Bell, 83 IBLA 67 (Sept. 26, 1984)

R.S. 2477 does not provide for the construction of the grant according to the law of the state in which the land subject to the grant is situated; rather, it is a question of Federal law. Rights-of-way obtained by a state pursuant to R.S. 2477 do not contain a legal right on the part of the state to grant third-party rights-of-way. Thus, appellant was required to obtain a right-of-way under 43 U.S.C. § 1761 (1982) to bury cable along an R.S. 2477 highway even though appellant had already obtained permission to bury the cable from the county.

Mountain States Telephone & Telegraph Co., 84 IBLA 1 (Nov. 21, 1984)

OIL AND GAS PIPELINES

The "going rate" approach for appraising rights-of-way for natural gas pipelines granted pursuant to the Mineral Leasing Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), may be used by the Bureau of Land Management in determining the fair market rental value for such grants where there are sufficient market data available to evidence sales of similar right-of-way grants by private landowners.

In determining fair market rental value for a right-of-way for a natural gas pipeline granted pursuant to the Mineral Leasing Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1976), the Bureau of Land Management may consider market data concerning acquisition of similar rights-of-way across private lands even though the party acquiring those rights-of-way had the power of eminent domain.

Where the record shows that the Bureau of Land Management took into consideration differences between pipeline rights-of-way granted by the Bureau and those granted by private land owners in determining an adjustment factor to be applied to the going rate to arrive at the fair market rental value, in challenging that adjustment figure the right-of-way holder must show by positive and substantial evidence either that the Bureau failed to analyze the proper differences or that the adjustment factor failed reasonably to reflect the amount of those differences.

Northwest Pipeline Corp., 65 IBLA 245 (July 9, 1982)

Where the holder of a natural gas pipeline right-of-way issued pursuant to sec. 28 of the Mineral Leasing Act, as amended, 30 U.S.C. § 185 (1976), seeks to amend the right-of-way to include installation of a residential trailer to house security personnel, a BLM decision to reject the application will be set aside where the applicant demonstrates that the trailer is necessary to operation and maintenance of the pipeline,

RIGHTS-OF-WAY--Continued

OIL AND GAS PIPELINES--Continued

for reasons of safety and site security, and BLM does not establish that the trailer conflicts with any management objectives.

P & O Falco, Inc., 78 IBLA 128 (Dec. 29, 1983)

Neither Title VI of the Civil Rights Act of 1964 nor 43 CFR Part 17 require as a mandate of law that a grant of an oil and gas pipeline right-of-way include a provision requiring the grantee to initiate an affirmative action program where (1) the grantee is paying full fair market value for the right granted; (2) the grantee is not the recipient of other financial aid or benefits; and (3) there has been no finding of prior discriminatory practices by the grantee.

Pursuant to its discretionary authority under the Mineral Leasing Act, 30 U.S.C. § 185 (1982), BLM may include in a right-of-way grant a condition that the holder develop and submit specific goals and timetables, and engage in affirmative action with respect to the participation of minorities and women in employment and procurement. However, BLM may impose such an affirmative action clause only if applied uniformly and in a nonarbitrary fashion in accordance with specifically identified Departmental policy.

Marathon Oil Co., 83 IBLA 137 (Oct. 9, 1984)

Where the Bureau of Land Management proposes to resolve the conflicts and inconsistencies in its appraisal method used to determine fair market rental values for natural gas pipeline rights-of-way, granted pursuant to the Act of Feb. 25, 1920, as amended, 30 U.S.C. § 185 (1982), the Board will not rule on the legality of the going rate method of appraisal, since the Bureau of Land Management should be allowed to explore the full range of options available in developing the proper appraisal method.

Northwest Pipeline Corp. (On Reconsideration), 83 IBLA 204 (Oct. 18, 1984)

REVISED STATUTES SEC. 2477

While the question of the establishment of a public highway under the Act of July 26, 1866, 43 U.S.C. § 932 (1976), otherwise known as R.S. § 2477, is ultimately a matter for the state courts, BLM may properly decide the matter for its own purposes where such a question arises during the consideration of an application for a private access road right-of-way under sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1976).

A Bureau of Land Management decision rejecting a right-of-way application for a private access road, filed pursuant to sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1976), because the road in question is a public highway established pursuant to the Act of July 26, 1866, 43 U.S.C. § 932 (1976), otherwise known as R.S. § 2477, will be vacated where the evidence in the record does not support the finding that the road is a public highway.

Nick DiRe et al., 55 IBLA 151 (June 8, 1981)

A right-of-way granted by Revised Statutes Sec. 2477 is a less-than-fee interest in the nature of an easement. Following the acceptance of a Revised Statutes Sec. 2477 grant of right-of-way, the Federal

RIGHTS-OF-WAY--Continued

REVISED STATUTES SEC. 2477--Continued

Government retains its fee interest in the land, subject to the right-of-way, and may dispose of it pursuant to law.

State of Alaska, Dept. of Transportation and Public Facilities, 5 ANCAB 307 (June 26, 1981) 88 I.D. 629

Where regulations allowed the grantee of a highway right-of-way granted pursuant to sec. 8 of the Act of July 26, 1866, 43 U.S.C. § 932 (1976), otherwise known as R.S. § 2477, to authorize within its highway right-of-way a right-of-way for "facilities usual to a highway," a subsequent regulation change properly limited that highway grant to require one seeking, after the effective date of that regulation, a right-of-way for buried telephone cables to apply to the Bureau of Land Management for authorization.

Pequop Valley Telephone Cooperative, Inc., 55 IBLA 360 (June 26, 1981)

Where the State of Idaho accepted a grant pursuant to sec. 8 of the Act of July 26, 1866, 43 U.S.C. § 932, otherwise known as R.S. 2477 (repealed, sec. 706(a) of FLPMA, 90 Stat. 2793), for a highway right-of-way over public lands, the State's right-of-way remains in effect pursuant to sec. 701(a) of FLPMA, 90 Stat. 2786.

R.S. 2477 does not provide for the construction of the grant according to the law of the state in which the land subject to the grant is situated; rather, its construction is a question of Federal law. By the time of the R.S. 2477 Idaho grant, Congress had already determined that telephone cables were not within the scope of an R.S. 2477 highway right-of-way. Thus, a telephone cable buried along an R.S. 2477 highway with a right-of-way from the State of Idaho but without the requisite BLM right-of-way is in trespass.

Mountain Bell, 83 IBLA 67 (Sept. 26, 1984)

Where the State of Montana accepted a grant pursuant to sec. 8 of the Act of July 26, 1866, 43 U.S.C. § 932 (1970), otherwise known as R.S. 2477, repealed, sec. 706(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, for a highway right-of-way over public lands, the State's right-of-way remains in effect pursuant to sec. 701(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2786.

R.S. 2477 does not provide for the construction of the grant according to the law of the state in which the land subject to the grant is situated; rather, it is a question of Federal law. Rights-of-way obtained by a state pursuant to R.S. 2477 do not contain a legal right on the part of the state to grant third-party rights-of-way. Thus, appellant was required to obtain a right-of-way under 43 U.S.C. § 1761 (1982) to bury cable along an R.S. 2477 highway even though appellant had already obtained permission to bury the cable from the county.

Mountain States Telephone & Telegraph Co., 84 IBLA 1 (Nov. 21, 1984)

RULES OF PRACTICE
(See also Administrative Procedure, Appeals, Contests & Protests, Contracts, Hearings, Indian Probate, Practice Before the Department--if included in this Index.)

GENERALLY

Certified mailing is an acceptable form of service under Department practice. 43 CFR 1821.2-4. Sending land classification proposals and decisions to a petitioner-applicant by certified mail meets the requirements in 43 CFR 2450.3 and 2450.4 that those documents be served on the petitioner-applicant.

Elbert C. Sowerwine, Jr., 50 IBLA 15 (Sept. 9, 1980)

Any document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the post office of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

Lito Sabin, 51 IBLA 226 (Dec. 15, 1980) 87 I.D. 610

Betty Alexander, 53 IBLA 139 (Mar. 9, 1981)

"Service." Where BLM sends a copy of its decision to an adversely affected party at his address of record on Sept. 21; where additional information containing the party's more recent address is filed with BLM on Oct. 5; and where BLM receives the mailed copy back as undeliverable on Oct. 16 but does not mail another copy to the more recent address, BLM has not mailed a copy to the party's last address of record, and there is no "service" under 43 CFR 1810.2. Where BLM has never served a copy of its decision on an adversely affected party, the time for this party to appeal has never commenced, and the decision is not effective per 43 CFR 4.21(a).

Estate of Glenn F. Coy, Resource Service Co., Inc., 52 IBLA 182 (Jan. 26, 1981) 88 I.D. 236

Where an appeal is taken from a requirement imposed by BLM and the appellant complies with the requirement during the pendency of the appeal, the case will be remanded for further consideration of the application, providing that such action will not prejudice the interests of the United States or any third party.

State of Alaska, 54 IBLA 373 (May 19, 1981)

Service of a BLM decision is accomplished when it is delivered to the addressee's last address of record by certified mail and such delivery is substantiated by postal authorities, regardless of whether it was in fact received by the person to whom it was addressed, and the prescribed period for initiating an appeal from such decision commences on the date of such delivery.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

Where a party, in the course of various proceedings before the Department, asserts facts that would, if proven, entitle him or her to obtain patent to land owned by the United States, and the litigation proceeds on the assumption that the facts are as stated, appellant will not be heard in a subsequent hearing to deny that those facts existed.

United States v. Richard P. Haskins, 59 IBLA 1 (Oct. 21, 1981) 88 I.D. 925

RULES OF PRACTICE--Continued

GENERALLY--Continued

Where a decision of a BLM state office requires a priority applicant for an oil and gas lease being issued through the simultaneous filing system to file supplemental information within a specified period of time, and the information is filed after this period has run, then delay in filing may not be waived pursuant to 43 CFR 1821.2-2(g), because the rights of applicants drawn with a subsidiary priority have intervened.

F. Peter Zoch, 60 IBLA 150 (Nov. 24, 1981)

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations involving protection of cultural and paleontological resources on the leased lands within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror asserts on appeal that it actually never received the stipulations, its failure to execute the stipulations and return them to BLM may be treated as a curable defect, and priority of filing will be determined as of the date the signed stipulations are received by BLM.

First Mississippi Corp., 62 IBLA 184 (Mar. 9, 1982)

Where a BLM state office decision requires supplemental filings within a specified period of time by a priority applicant for an oil and gas lease to be issued through the simultaneous filing system, in order to avoid subsequent BLM action to reject the lease offer, the rights of applicants drawn with subsidiary priority do not vest unless and until BLM takes action to reject the offer. Where the filings are subsequently received before the rights of applicants drawn with a subsidiary priority have intervened, the delay in filing may be waived pursuant to 43 CFR 1821.2-2(g).

Estate of Isidor Dessar, 63 IBLA 217 (Apr. 13, 1982)

Where the Bureau of Land Management requests an offeror for an over-the-counter noncompetitive oil and gas lease to execute special stipulations within 30 days, it may properly reject the lease offer when the special stipulations are not executed and submitted within the 30 days. However, where the offeror subsequently submits the signed stipulations prior to the filing of a junior offer, the Board will remand the case to BLM so that his offer may be considered with priority as of that time.

James R. Chudnow, 68 IBLA 87 (Oct. 22, 1982)

Any document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the Postal Service of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

Although the Postal Service is the agent of BLM to deliver written communications to the address of record of an applicant, where the applicant changes his address giving notice only to the Postal Service and not to BLM, the Postal Service then becomes the agent for the applicant who must bear the responsibility and consequence for failure of the Postal Service to properly deliver mail from BLM to the changed address, where the mail was originally properly dispatched to the address of record of the applicant.

Frank C. Lytle, III, 69 IBLA 210 (Dec. 16, 1982)

RULES OF PRACTICE--Continued

GENERALLY--Continued

Where BLM rejects an oil and gas lease offer subject to compliance within 30 days, the 30-day period begins upon delivery of the decision to the offeror at his address of record.

BLM properly rejects a request for a time extension filed after termination of the 30-day compliance period where the rights of third parties are affected.

Carl Gerard, 70 IBLA 343 (Feb. 2, 1983)

Where, on appeal, an oil and gas lease offeror alleges facts which, if shown, would entitle him to maintain his priority, a decision rejecting the offers will be set aside and remanded to the state office to afford the offeror an opportunity to show that the facts are as he has alleged.

Wyoming Oil & Minerals, Inc. (On Reconsideration), 71 IBLA 15 (Feb. 10, 1983)

A decision becomes final when the appeal period has run and the Bureau of Land Management may reconsider and amend a decision pursuant to a petition for reconsideration filed during the appeal period.

Tobby L. Alford, 71 IBLA 29 (Feb. 16, 1983)

Where BLM informs an offeror for an over-the-counter oil and gas lease that it is prepared to issue a lease provided certain stipulations are signed and returned within 30 days of receipt of BLM's decision, the decision is interlocutory and the 30-day period for filing a notice of appeal will not begin until the compliance period has been concluded.

John R. Anderson, 71 IBLA 172 (Mar. 10, 1983)

Where, pursuant to 43 CFR 3112.4-1, BLM sends notice by certified mail to a simultaneous oil and gas lease applicant at her record address that she must execute and return the enclosed lease form with the required stipulations and rental, and the notice is returned to BLM marked "Unclaimed" by the Postal Service, and where nondelivery did not occur as a result of the negligence of the Postal Service, the applicant is considered to have been served at the time of return to BLM by the Postal Service of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the notice.

Michele R. Pawurak, 71 IBLA 343 (Mar. 28, 1983)

Where, pursuant to 43 CFR 3112.4-1, BLM sends notice by certified mail to a simultaneous oil and gas lease applicant at his record address that he must execute and return the enclosed lease form with the required stipulations and rental, and the notice is returned to BLM marked "Unclaimed" by the Postal Service, and where nondelivery did not occur as a result of the negligence of the Postal Service, the applicant is considered to have been served at the time of return to BLM by the Postal Service of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the notice.

Robert K. Cambridge, 72 IBLA 66 (Apr. 12, 1983)

RULES OF PRACTICE--Continued

GENERALLY--Continued

Where a stipulation as to the admissibility of various assay results is made by the Government and a mineral contestee, and the contestee clearly asserts his view as to the scope of the stipulation, it is the obligation of the attorney for the Government, if his interpretation differs, to clearly state his view so as to put the contestee on notice as to this conflict. Where this is not done, the stipulation will be enforced in accordance with the contestee's understanding.

United States v. J. Gary Feezor et al., 74 IBLA 56 (June 29, 1983) 90 I.D. 262

Where, pursuant to 43 CFR 3112.4-1, BLM sends notice by certified mail to a simultaneous oil and gas lease applicant at his record address that he must execute and return the enclosed lease form with the rental, and the delivery stub shows the date the first attempted delivery was made but has no date for the second attempted delivery, and the Postal Service held the BLM notice for the required time, negligence by the Postal Service is not established; appellant was constructively served and thus had notice, and as he failed to pay the rental within the required 30 days, BLM correctly rejected appellant's oil and gas lease application.

William F. Heins III, 74 IBLA 133 (June 30, 1983)

Where BLM rejects an oil and gas lease offer, the 30-day period begins upon delivery of the decision to the offeror at his address of record.

Lloyd B. Baldwin, 75 IBLA 251 (Aug. 25, 1983)

The Bureau of Land Management's transmission of a decision to a person's address of record by certified mail constitutes constructive service even though the attempt by the post office to deliver the document at that address was unsuccessful. Such delivery meets the requirements of the regulations governing communications by mail, 43 CFR 1810.2(b).

Red Rock Golf & Recreational Ass'n, Inc., 77 IBLA 87 (Nov. 9, 1983)

The waiver by an appellant of a specified issue concerning current royalty payments during an appeal before the Geological Survey under procedural rules governing such appeals will be enforced upon appeal to the Board of Land Appeals.

Mobil Oil Corp., 78 IBLA 107 (Dec. 20, 1983)

"Last address of record." For the purposes of 43 CFR 1810.2(b), in the context of BLM's processing of a lease application, the address stated on the application is to be used as the "last address of record" unless the applicant has filed written notice of a change of address with the BLM office where the application was filed.

When BLM mails a decision to a lease applicant at an address other than the applicant's address of record, BLM cannot attribute constructive notice of the decision to the applicant under the provisions of 43 CFR 1810.2(b).

Victor M. Onet, Jr., 81 IBLA 144 (May 31, 1984)

RULES OF PRACTICE--Continued

GENERALLY--Continued

BLM may reject an application for conveyance of a federally owned mineral interest, filed pursuant to sec. 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1982), because the applicant failed to pay estimated administrative processing costs within 30 days of receipt of notice to do so. However, when BLM has failed to deduct the fee submitted with the application in its cost calculation, the BLM decision may be set aside and the case remanded to BLM to afford the applicant another opportunity to pay the corrected amount.

Richard E. Doscher, Leida Doscher, 83 IBLA 264 (Oct. 25, 1984)

The unit operator of a producing unit has standing to appeal the granting of a right-of-way to a third party for the purpose of entering the lease and utilizing a plugged well, drilled by the unit operator, for disposing of salt water produced miles away by strangers to the unit.

Penroc Oil Corp. et al., 84 IBLA 36 (Nov. 27, 1984)

Where a decision of the Board affirming a determination that certain mining claims were abandoned and void is reversed on appeal and the case is remanded to the Board, the decision of the Court constitutes the law of the case and the Board will vacate its prior decision and reinstate the mining claims.

The Board may decline to follow a decision of a Federal court in other cases where the effect of the decision could be extremely disruptive of existing Departmental policies and programs and where, in addition, a reasonable prospect exists that other Federal courts might arrive at a differing conclusion.

Oregon Portland Cement Co. (On Judicial Remand), 84 IBLA 186 (Dec. 21, 1984)

APPEALS

Generally

It is a proper exercise of discretionary authority for a Bureau of Land Management office to suspend action on an oil and gas lease offer pending resolution of similar cases on appeal to the Board of Land Appeals and a court proceeding. However, where the court case is remanded to the Department of the Interior for further consideration and the Board has resolved cases with substantive issues similar to those in the case under consideration, it will set aside the Bureau's decision, and dismiss the protest and remand the case for action in accord with those rulings. Where there are no disputed factual issues controlling resolution of the case, the protestant's request for a hearing will be denied as well as his request for further suspension of the case.

Jack Zuckerman, 45 IBLA 337 (Feb. 7, 1980)

Where, in a decision holding a Native allotment for approval and a State selection for rejection to the extent of a conflict, the Bureau of Land Management grants the State 30 days to initiate a private contest challenging the Native allotment, the 30-day appeal period will commence upon expiration of the 30 days accorded the State for initiation of a private contest and not with receipt of the decision.

Where it appears that a party did not realize that an election of remedies was mandated by Departmental procedures, a decision requiring the initiation of a

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

private contest will be set aside, and the party will be permitted a period of time in which to initiate a private contest or alternatively, waive such private contest and pursue a direct appeal on the question of whether a Government contest should issue.

State of Alaska v. Earl G. Patterson, 46 IBLA 56 (Feb. 22, 1980)

State of Alaska, 48 IBLA 229 (June 17, 1980)

The validity or legality of regulations, orders, or policies formulated by the Secretary of the Interior are not issues within the appellate jurisdiction of the Board of Land Appeals. However, the Board may review decisions of the Geological Survey or the Bureau of Land Management to determine whether such Secretarial regulations, orders, or policies have been correctly implemented.

Bass Enterprises Production Co., 48 IBLA 11 (May 27, 1980)

Where the Secretary has decided that production from phosphate leases should be valued in accordance with a particular method and what the value should be, the Board's review authority is limited to determining whether the Geological Survey Area Supervisor who issues orders to the phosphate lessees has properly followed the Secretary's instructions. No hearing is required as a prerequisite to the order.

Stauffer Chemical Co. et al., 49 IBLA 381 (Sept. 5, 1980)

Where Geological Survey has not yet taken any adverse action on a coal lessee's request under 43 CFR 3473.3-2(d) to reduce royalty due on a coal lease, it is premature for the Board of Land Appeals to consider whether such reduction is appropriate. Rather, the lessee must wait for GS to take action and then, if it is adverse, it may pursue its appeal through normal procedures.

Garland Coal & Mining Co., 49 IBLA 400 (Sept. 5, 1980)

Where the State of Alaska lacks a cognizable interest in the specific land being sought by a Native allotment applicant because that land is either within the core township of a Native village or the Native village has received tentative approval for its selection, the State does not have standing to initiate a private contest under 43 CFR 4.450-1. It may, however, protest against the allowance of the allotment and appeal from an adverse decision under 43 CFR 4.410.

State of Alaska v. Steve Serakovikoff et al., 50 IBLA 284 (Oct. 6, 1980)

Where an individual is named as an "adverse party" in a BLM decision which is favorable to that person, who then is duly served with copies of a notice of appeal and statement of reasons challenging the validity of BLM's decision before the Board of Land Appeals and seeking reversal of that decision, but decides not to participate in the appellate proceedings before the Board, the matter becomes res judicata upon the rendering of the Board's decision, and the party may not subsequently challenge this decision by filing a new

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

appeal of his own before the Board for readjudication of the same matter.

Donald W. Coyer, Fred L. Engle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondents) (On Judicial Remand), 50 IBLA 306 (Oct. 14, 1980)

Where, on appeal, an oil and gas lessee submits evidence disputing a decision of the Geological Survey that the land embraced by his lease is not on a known geologic structure of a producing oil or gas field, and there is no basis in the record to support the Geological Survey's conclusion, a decision increasing the annual rental should be set aside and the case remanded for consideration by BLM of appellant's contentions.

Robert L. Haynie et al., 51 IBLA 1 (Oct. 28, 1980)

Outlining the treatment to be accorded voluminous exhibits, the Board states that in the event counsel for either side considers that information contained in a voluminous exhibit either proves or may be of material assistance in proving a particular point, it is incumbent upon counsel to specifically cite the portions of the voluminous exhibit relied upon by page number, by date, or by other appropriate reference. Absent specific citations to a voluminous exhibit or to an appropriate summary thereof in evidence, the Board will not undertake to determine the content of this type of exhibit in particular areas before reaching its decision.

The Board seriously questions the wisdom of the Government in not arranging for the audit of multi-million dollar claims apparently advanced in good faith by reputable contractors, noting that securing audits will not only facilitate the examination of witnesses with respect to quantum but are also likely to prove to be useful in establishing a basis for agreeing upon stipulations narrowing the issues in quantum areas or affording a basis for arriving at a settlement prior to the hearing, while it is in progress or after it has been concluded.

Appeal of Fluor Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981) 88 I.D. 41

"Service." Where BLM sends a copy of its decision to an adversely affected party at his address of record on Sept. 21; where additional information containing the party's more recent address is filed with BLM on Oct. 5; and where BLM receives the mailed copy back as undeliverable on Oct. 16 but does not mail another copy to the more recent address, BLM has not mailed a copy to the party's last address of record, and there is no "service" under 43 CFR 1810.2. Where BLM has never served a copy of its decision on an adversely affected party, the time for this party to appeal has never commenced, and the decision is not effective per 43 CFR 4.21(a).

Estate of Glenn F. Coy, Resource Service Co., Inc., 52 IBLA 182 (Jan. 26, 1981) 88 I.D. 236

Where, on appeal, a mining claimant submits arguments similar or identical to those presented before the Administrative Law Judge after the hearing had been concluded and the decision of the Administrative Law Judge correctly summarizes the facts and applies the

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

applicable law, the decision of the Administrative Law Judge will be adopted by the Board.

United States v. Virgil Prowell and Belinda Prowell, 52 IBLA 256 (Feb. 6, 1981)

Where there is uncertainty regarding title to the oil and gas in an acquired land tract embraced in an oil and gas lease offer, and the evidence provided by the applicant does not provide a sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the BLM. However, if the applicant provides new evidence on appeal tending to show the existence of a Federal interest in the oil and gas in the tract, the case may be remanded for consideration of the new evidence.

Edward C. Shepardson, 53 IBLA 79 (Mar. 2, 1981)

Where, after initial wilderness inventory, the Bureau of Land Management decides that an area might possess wilderness characteristics, an appellant who objects to such a determination must show that there is no realistic possibility that these lands may be suitable for wilderness designation.

Jerry D. Reynolds, 54 IBLA 300 (Apr. 29, 1981)

Adjudication of an appeal before the Board of Land Appeals is necessarily based on the information included in the case file. Where there is nothing in the case file to support BLM's basis for rejecting an oil and gas lease offer, BLM's decision rejecting the offer will be reversed.

Patricia D. Aspras, 55 IBLA 190 (June 16, 1981)

On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision. The powers of an agency reviewing an initial or recommended decision of an Administrative Law Judge are greater than those of an appellate court reviewing the decision of a trial judge.

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

An appeal may be decided on the basis of a theory not advanced by the parties so long as the theory is consistent with the facts of record or legitimate inferences therefrom.

Appeal of Singleton Contracting Corp., IBCA-1413-12-80 (Aug. 12, 1981) 88 I.D. 722

Where, following the contest of a number of mining claims, a decision is rendered by an Administrative Law Judge holding certain claims and portions of claims to be valid and invalidating the remainder for lack of mineral or as embracing excess mineral reserves, and the Government appeals from that decision but the claimant does not, that decision will be set aside and the case remanded for rehearing on the basis of a judicial decision in another case, made while the subject appeal was pending, that there can be no invalidation of mining claims by this Department on a finding that the claimant has acquired claims for far more mineral than the market can absorb within the foreseeable future.

United States v. Oneida Perlite Corp., 57 IBLA 167 (Aug. 27, 1981) 88 I.D. 772

The validity or legality of regulations, orders, or policies formulated by the Secretary of the Interior are not issues within the appellate jurisdiction of the Board of Land Appeals. However, the Board may review decisions of the Geological Survey to determine whether such Secretarial regulations, orders, or policies have been correctly implemented.

Superior Oil Co., 57 IBLA 404 (Sept. 14, 1981)

Neither the State of Alaska nor an instrumentality thereof has standing to appeal a decision which recognizes that full title to a parcel of land is in the State, absent a showing of injury in fact from such a decision.

State of Alaska, 58 IBLA 118 (Sept. 24, 1981)

A finding by BLM that some statutory mechanism has been triggered which automatically divests a right does not and cannot mean that the adversely affected party is denied recourse to the appellate process. The Board of Land Appeals is the exclusive arbiter of its jurisdiction, and neither employees of BLM nor attorneys of the Office of the Solicitor may create or deny the right of appeal to the Board.

Texas Oil and Gas Corp., 58 IBLA 175 (Sept. 28, 1981) 88 I.D. 879

Where the definition of "road," utilized in the Wilderness Inventory Handbook, cannot be said to be contrary to the statutory language or legislative intent manifested in sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), decisions employing such definition will not be set aside on appeal unless it can be shown that it was improperly applied.

California State Lands Commission, 58 IBLA 213 (Sept. 29, 1981)

Where a decision by an officer of the Department has become final, the principle of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and same issues, absent compelling legal or equitable reasons for reconsideration.

Lillian Barlow, 58 IBLA 385 (Oct. 21, 1981)

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

A.C.C.T.S., 60 IBLA 1 (Nov. 12, 1981)

Susan Delles et al., 66 IBLA 407 (Aug. 31, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

Where, on appeal, an oil and gas lessee submits evidence disputing a decision of BLM that a portion of the land embraced by his lease is on a known geologic structure of a producing oil or gas field, and there is no basis in the record to support BLM's determination, the decision will be set aside and the case remanded for consideration by BLM of appellant's contentions.

Hepburn T. Armstrong, 60 IBLA 140 (Nov. 24, 1981)

Where a homestead patent is impressed with the reservation of a right-of-way for a material site which is held and operated by a state agency, the Department of the Interior retains its jurisdiction to determine whether the right-of-way has continuing efficacy or whether it should be canceled.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

Where an individual, named as an adverse party in a proceeding before the Board of Land Appeals, is duly served with notice of that fact, and is given the opportunity to participate in the proceeding but fails to do so, the matter becomes res judicata upon the rendering of the Board's decision and the party may not subsequently challenge the decision in a new appeal before the Board from the Bureau of Land Management's ministerial action implementing the decision.

Ray Kay, Teckla Productions, Inc., 63 IBLA 357 (Apr. 29, 1982)

Where an appellant fails to meet criteria in 43 CFR 1.3 for who may practice before the Department, he may not appear on behalf of others, and his standing must be determined based on his claim of property interest on his own behalf.

Ervin K. Terry, 7 ANCAB 63 (May 19, 1982) 89 I.D. 242

Upon assuming jurisdiction of an appeal, the Board of Land Appeals has full authority to consider the entire record in making a decision, and its review is not limited to the theories of law upon which the parties have proceeded.

R. Jay Kidd, 66 IBLA 71 (July 29, 1982)

Shiny Rock Mining Corp. (On Reconsideration), 77 IBLA 261 (Nov. 30, 1983)

A notice of appeal must be filed within 30 days after appellant is served with the decision from which he is appealing. When a party does not appeal, the doctrine of administrative finality, the administrative equivalent of res judicata, generally bars consideration of the same issue in a later appeal.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

Where the definition of "road," utilized in the Wilderness Inventory Handbook, cannot be said to be contrary to the statutory language or legislative intent manifested in sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), decisions employing such definition will not be

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

set aside on appeal unless it can be shown that it was applied improperly.

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

The regulations governing procedures before the Board of Land Appeals provide for the filing of a statement of reasons for appeal by appellant and an answer by an adverse party within certain time limits (subject to extension). Proper practice requires that all issues deemed relevant by the parties be briefed at that time because, as a general rule, the Board does not issue interlocutory decisions on issues which are not dispositive of the appeal.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982) 89 I.D. 496

The Board of Land Appeals must defer to the Secretary's decision to approve the granting of a contract, where such approval implicitly ratifies the entire process which led up to issuance of the contract itself, including compliance with the National Environmental Protection Act of 1969, 42 U.S.C. §§ 4321-4361 (1976). The Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

Donald Pay, 68 IBLA 26 (Oct. 21, 1982)

Where the assignee, in effect, withdraws his request for approval of an assignment, an appeal filed by the assignor as to the validity of the assignment will be dismissed as moot.

Champlin Petroleum Co., Wayne E. DeBord, 68 IBLA 90 (Oct. 22, 1982)

Where BLM unconditionally rejects an oil and gas lease offer but provides a period of 30 days in which to cure a deficiency the decision is not interlocutory and the 30-day period for filing a notice of appeal begins upon receipt of the decision.

Carl Gerard, 70 IBLA 343 (Feb. 2, 1983)

Where BLM affords an offeror a period of 30 days to execute stipulations as a condition to issuance of an oil and gas lease and states that failure to comply will result in rejection of the offer to lease, the decision is interlocutory and there is no right of appeal. The offeror may elect to comply, to comply under protest, or to let the 30-day period run without complying and appeal the resulting BLM decision rejecting the offer. In the latter case the offeror has waived the right to comply and, if the appeal is unsuccessful, the rejection is final and no additional opportunity to execute the stipulations will be granted.

Fortune Oil Co., 71 IBLA 153 (Mar. 9, 1983) 90 I.D. 84

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

A protest to issuance of an oil and gas lease filed after the lease has issued is not timely. Where, however, the "protest" is filed by an individual with subsidiary priority such protest shall be deemed to be an appeal from the rejection of the protestant's application or offer to lease.

Goldie Skadsas, 72 IBLA 120 (Apr. 14, 1983)

Patricia C. Aiken, 79 IBLA 123 (Feb. 22, 1984)

A party challenging a decision to harvest timber on the grounds that the lands involved will not regenerate within the time contemplated by the applicable rules bears the burden of establishing both the factual predicates and the ultimate conclusion.

A party who challenges a decision to sell timber on the ground that timber harvesting will adversely affect water quality, plant and animal life, recreational values, or the economic stability of surrounding communities must show not only that some adverse effect will result because of timber harvesting, but that these effects are of sufficient magnitude so as to render the decision to harvest contrary to the applicable laws and regulations.

In re Lick Gulch Timber Sale, 72 IBLA 261 (Apr. 28, 1983) 90 I.D. 189

The Board of Land Appeals will not consider a general protest against a regulation where appellant has not shown how the appealed decision applied or implemented the regulation.

Doyon, Ltd., 74 IBLA 139 (July 6, 1983) 90 I.D. 289

An appeal filed for an appellant by an attorney-in-fact who is not himself qualified to practice before the Department under 43 CFR 1.3 is subject to summary dismissal.

Anthony Chiarenza et al., 74 IBLA 350 (July 28, 1983)

A coal lease clause which implements a statutory benefit is not ambiguous where the terms to be applied are expressed in a regulation which is cited in that clause. Where there is no allegation that the applicable process is erroneous or that a cognizable interest has been adversely affected, the proposed clause of the readjusted lease will be affirmed.

PMC Corp., 74 IBLA 389 (July 29, 1983)

A party challenging a decision to harvest timber on the grounds that allowable cut has been exceeded and that pertinent environmental considerations were disregarded bears the burden of establishing both the factual predicates and the ultimate conclusions.

In re Otter Slide Timber Sale, 75 IBLA 380 (Aug. 31, 1983)

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

The Board of Land Appeals has no jurisdiction to hear an appeal by a mining claimant from a BLM decision classifying land for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), which has become a final order of the Secretary.

Ronald R. Graham, Dorothy L. Graham, 77 IBLA 174 (Nov. 17, 1983)

Where an oil and gas lease offer is rejected based on the conclusion that the land sought evolved from the bed of the Yellowstone River subsequent to North Dakota-Montana statehood in 1889 and, therefore, is state land, and, on appeal, the offeror contends that the land is public land and submits evidence which tends to show the existence of islands in the river prior to statehood that the offeror asserts persisted and, through accretion, merged with the river bank, the decision rejecting the offer may be set aside and the case remanded for consideration of the new evidence.

David A. Provinse, 78 IBLA 85 (Dec. 16, 1983)

BLM classifications of land as suitable for disposition by public sale are not subject to appeal to the Board of Land Appeals. Likewise, BLM's dismissal of a protest against a resource management plan is not appealable to the Board. In each instance, other provisions for agency review have been made by regulations.

Oregon Natural Resources Council, 78 IBLA 124 (Dec. 27, 1983)

A decision by the Deputy Assistant Secretary--Indian Affairs (Operations) under 25 CFR Part 2 that is not timely appealed to the Board of Indian Appeals is final for the Department.

Clayton J. Gray v. Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 146 (Jan. 27, 1984) 91 I.D. 43

Where the Bureau of Land Management issues various decisions applying precedents of the Interior Board of Land Appeals, which precedents have subsequently been reversed on appeal to Federal court, the decisions of the Bureau must be reversed.

Mark Woods et al., 79 IBLA 129 (Feb. 22, 1984)

If an assignment is approved by BLM after BLM has received notice that a private dispute exists as to the validity or effect of the assignment, but before resolution of the private dispute, fairness dictates that the assignment be vacated to restore status quo pending resolution of the dispute.

Charles H. Dorman et al. (Appellants), Robert L. Berger, Roger H. Ramsey (Appellees), 79 IBLA 209 (Feb. 28, 1984)

A decision by an officer of the BLM which does not fall within any of the enumerated exceptions in 43 CFR 4.410 is subject to appeal to the Board of Land Appeals

RULES OF PRACTICE--Continued

APPEALS--Continued

Generally--Continued

and a BLM officer is without authority to state otherwise.

Utah Wilderness Ass'n, 80 IBLA 64 (Mar. 30, 1984) 91 I.D. 165

A decision by an Administrative Law Judge setting aside a BLM decision rejecting the grazing preference application of the longstanding holder of a temporary nonrenewable license because of the equities in favor of the applicant will be set aside on appeal and remanded so that BLM may consider whether the applicant is entitled to a grazing permit for the additional forage within a particular allotment in accordance with 43 CFR 4110.3-1 and 4110.5.

Ray Pershall v. Bureau of Land Management, 80 IBLA 168 (Apr. 13, 1984)

Where the resolution of an appeal depends on the determination of disputed issues of fact, the Board of Land Appeals will often refer the case for an evidentiary hearing on the record before an administrative law judge. However, when the administrative record appears to include nearly all of the available evidence, and affords an adequate basis for decision, and other circumstances indicate that an oral hearing would be unlikely to contribute substantially to the existing record, the Board may determine the facts and decide the appeal on the basis of the record before it.

State of Alaska, Mary Frances DeHart, 82 IBLA 165 (Aug. 6, 1984)

A party challenging a decision to harvest timber on the grounds that clearcutting is an inappropriate method to be employed and that pertinent environmental considerations were disregarded bears the burden of establishing both the factual predicates and the ultimate conclusions.

Curtis Mitchell & STAND, 82 IBLA 275 (Aug. 31, 1984)

Where a 1974 decision to issue a highway right-of-way is not challenged on appeal until 1980, the doctrine of administrative finality bars consideration of the legal basis for the 1974 right-of-way grant.

Where a village land selection conveyance under the Alaska Native Claims Settlement Act is made subject to a highway right-of-way for a maintenance site held by a state agency, the Department of the Interior retains jurisdiction to determine whether the right-of-way should continue or be canceled.

Bering Straits Native Corp., Council Native Corp., 83 IBLA 280 (Oct. 25, 1984)

A party who challenges a decision to sell timber on the ground that timber harvesting will adversely affect water quality, plant and animal life, property values, or the economic stability of surrounding communities must establish the decision to proceed with the timber sale is erroneous.

In re Crooked Cedar Timber Sale, 83 IBLA 329 (Nov. 5, 1984)

RULES OF PRACTICE--Continued

APPEALS--Continued

Answers

The regulations governing procedures before the Board of Land Appeals provide for the filing of a statement of reasons for appeal by appellant and an answer by an adverse party within certain time limits (subject to extension). Proper practice requires that all issues deemed relevant by the parties be briefed at that time because, as a general rule, the Board does not issue interlocutory decisions on issues which are not dispositive of the appeal.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982) 89 I.D. 496

Burden of Proof

Where the current fair rental value of a small tract lease has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error.

Hyatt Lake Homeowners Ass'n, 48 IBLA 159 (June 9, 1980)

The assertion that annual assessment work has not been performed is the assertion of a negative fact. If an examination of the mining claims and the nearby lands does not reveal the accomplishment of the required work, and there is no record of any such work having been performed, then evidence to this effect would be sufficient to establish a prima facie case. It would then devolve upon the claimant to show by a preponderance of the countervailing evidence that he has substantially complied with the statute.

In a Government contest proceeding to determine the validity of a mining claim, the claimant is always the proponent of the rule or order, always the one claiming to have earned the benefit of the mining laws through his compliance therewith. Regardless of whether the issue on which the validity of the claim rests is discovery, mode of location, or performance of assessment work, the relative position and obligation of the contestant and the contestee remain the same.

United States v. Catlin Bohae et al., United States v. Exxon Corp. et al., United States v. Aidabelle Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 248

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bert H. Smith, Paul Smith v. Bureau of Land Management, 48 IBLA 385 (July 11, 1980)

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

Ruskin Lines, Jr. v. Bureau of Land Management, 76 IBLA 170 (Sept. 30, 1983)

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

In a Government contest of a mining claim for which an application for patent has been filed, the Government assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that the claims are valid. A claimant establishes the validity of his claims by a preponderance of the evidence where the claimant's witness, testifying to the validity of the contested claims, is found to be more credible.

United States v. Cornelius E. Mannix, 50 IBLA 110 (Sept. 24, 1980)

The burden of proof as to the character of land applied for under the Swamp Land Acts falls upon the applicant.

State of California, Stockdale Development Corp., 51 IBLA 3 (Oct. 28, 1980)

In a case involving the assertion of a differing site conditions claim under a contract for the construction of concrete lined tunnels for the Navajo Indian Irrigation Project, the Board follows the Court of Claims in holding that it is not necessary for the "indications" in the contract to be explicit or specific, it being sufficient for there to be an indication on the face of the contract documents causing a bidder reasonably to expect that there were no "subsurface or latent" physical conditions at the site differing materially from those indicated in the contract.

Appeal of Fluor Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981) 88 I.D. 41

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of a discovery, the Government will have established a prima facie case of the lack of a discovery.

A mining claimant will not have satisfied his burden of proof with respect to marketability where the evidence indicates a superabundance of the mineral of commercial quality such that supply exceeds demand and the claimant fails to show that his mineral deposit possesses a unique advantage over other deposits from potentially competitive sources.

United States v. The Dredge Corp., 54 IBLA 281 (Apr. 28, 1981)

Where a Government mineral examiner testifies that he has examined a mining claim and found the mineral values insufficient to support a finding of a discovery, the Government will have established a prima facie case of the lack of a discovery.

United States v. Alice W. Rouge et al., 56 IBLA 36 (July 8, 1981)

In a Government contest of a mining claim for which an application for patent has been filed, the Government assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that the claim is valid.

United States v. C. J. Anderson, C. Joseph Anderson, 57 IBLA 256 (Aug. 28, 1981)

The Federal Land Policy and Management Act of 1976 requires the Secretary of the Interior to manage public lands under principles of "multiple use" and "sustained yield," and the statutory definition of these concepts recognizes the need for latitude and discretion in their implementation. As the Secretary's delegate, BLM has the responsibility of administering such policies and programs, and BLM must be accorded correlative powers of reasoned discretion in discharging these duties. Therefore, so long as the BLM policy or implementing action is based on a consideration of all relevant factors and is supported by the record, the Board will not disturb it absent a clear showing that it is contrary to statute or regulation or otherwise erroneous.

A.C.O.T.S., 60 IBLA 1 (Nov. 12, 1981)

An appellant or intervenor requesting this Board to reverse a Bureau of Land Management decision regarding the inclusion or exclusion of a unit of land as a wilderness study area must show the decision to be based on a clear and specific error of law or fact, otherwise the Board will affirm.

Merrill G. Hastings, 60 IBLA 54 (Nov. 17, 1981)

The Government failed to sustain its burden of proving that the malfunctioning of discharge gate valves required for an irrigation system was due to the valves not meeting the requirements of the specifications rather than a result of the Government's failure to provide a filtering device in the irrigation system to keep out damaging foreign matter. Noted by the Board was the fact that under the maintenance warranty provision on which the Government's claim is based, the contractor is not responsible for repairing defects or failures due to negligence in the operation of the irrigation system by the Government or its agents.

Appeal of Armstrong & Armstrong, Inc., IBCA-1311-10-79 (Jan. 29, 1982) 89 I.D. 30

A decision of the State Director designating an inventory unit as a wilderness study area will not be disturbed on appeal where the appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. More than mere disagreement with BLM's conclusion is required to reverse its decisions or place a factual matter at issue.

L. J. Cornelius, 61 IBLA 279 (Feb. 2, 1982)

A first category differing site conditions claim is denied where the Board finds that the conditions encountered were not materially different from indications in the specifications and drawings interpreted in the light of what should have been disclosed by an adequate site investigation.

Appeal of Granite Construction Co., IBCA-1500-8-81 (Feb. 12, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

Where the current fair rental value of a cabin site has been determined in accordance with accepted appraisal procedures and the permittee contends that the rental is excessive, the burden is upon the permittee to prove by positive, substantial evidence that the appraisal is in error.

Honor A. Stroud et al., 4 OHA 257 (Apr. 9, 1982)

A decision cancelling a cooperative agreement for private maintenance of wild free-roaming horses will be affirmed on appeal where the record indicates the horses were commercially exploited as rodeo bucking stock in violation of the cooperative agreement and the relevant regulations.

Cecil McCandless et al., 64 IBLA 76 (May 10, 1982)

An appellant will be held to have failed to sustain its burden of proof and the appeal will be denied where appellant's case is submitted on the record without a hearing and the record consists only of contract documents, correspondence, and pleadings alleging that the Contracting Officer's decision is erroneous. Disputed allegations do not constitute evidence and cannot be accepted as proof of facts.

Appeal of E. H. White & Co., IBCA-1216-9-78 (July 19, 1982)

On appeal from a BLM decision rejecting an offeror's competitive bid for a geothermal lease on the basis of Geological Survey's valuation of the tract sought to be leased, the offeror has the burden of showing that the valuation was in error and that the bid should be considered acceptable. In the absence of such a showing, BLM is entitled to rely on the technical expertise of Geological Survey.

Shaw Resources, Inc., 66 IBLA 57 (July 29, 1982)

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Buskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

A claim for breach of warranty is not established under a contract calling for the furnishing of an audiovisual system where the Government asserts that the system was defective at the time of acceptance and the Board finds that the nonlatent preexisting defects forming the basis of the warranty claim were not excluded from the coverage of the standard inspection clause making acceptance conclusive, except as regards

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

latent defects, fraud, or such gross mistakes as amount to fraud.

Appeal of Bergen Expo Systems, Inc., IBCA-1348-4-80 (Sept. 9, 1982) 89 I.D. 449

A claim of constructive change is denied where the appeal is submitted for decision on the record without a hearing and the appellant's case consists entirely of allegations contained in its claim letter or complaint. Allegations do not constitute proof of essential facts which are disputed.

Appeal of Western States Construction Co., Inc., IBCA-1466-6-81 (Sept. 21, 1982)

A contractor has the burden of producing evidence showing that he is entitled to relief on the basis of claims made, and the appeal will be denied where the record does not support appellant's contentions and appellant fails to appear at the hearing scheduled at its request and adduces no evidence. Disputed allegations do not constitute evidence and cannot be accepted as proof of facts.

Appeal of Dexter Cedar, IBCA-1535-11-81 (Sept. 30, 1982)

A claim for the cost of preparing a technical inventory of field tapes and other data furnished by the Government is denied where the appellant alleges that some of the field tapes were missing and some of the data was received in a deplorable condition, but the Board finds that the concurrence of a Government representative in the taking of the inventory did not provide a predicate for the claim asserted where the preparation of the inventory was considered to be simply an exercise of a management prerogative, irrespective of whether such action was to be viewed as a means of facilitating contract performance or satisfying a contract requirement for the furnishing of demultiplexing documentation.

Appeal of Walden General, Inc., IBCA-1475-6-81 (Oct. 19, 1982) 89 I.D. 529

In an oil shale mining claim contest, the Government bears only the burden of going forward with sufficient evidence to establish a prima facie case of invalidity, and the burden then shifts to the claimant to overcome this showing by a preponderance of the evidence. However, since abandonment and lack of good faith are questions of intent, the Government bears the ultimate burden of proving these charges.

Where evidence creates only inferences of lack of good faith in the location and holding of mining claims and fails to show clearly that these claims were abandoned, these charges are not sustained.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

Where the reasonable rental value of Government-furnished quarters has been determined in accordance with accepted appraisal procedures pursuant to Departmental directives, and the occupant alleges that his rent is excessive in relation to rates prevailing in the local community, the burden is on the occupant to

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

prove by positive, specific, and substantial evidence that the appraisal is in error.

Barry C. Wilson, 5 OHA 79 (Jan. 18, 1983)

In a case involving the construction of a road and a bridge in which the Government has stipulated that it has made slope staking errors throughout the entire project, a claim for additional costs allegedly involved in correcting slope staking errors in specified areas of the project is denied where the appellant fails to show by a preponderance of the evidence that additional costs were incurred. In support of its denial the Board notes that the lack of persuasive evidence of any contemporaneous objection to performing the work in question and a delay of over 31 months in presenting the claim now asserted raise presumptions against its validity.

A claim for additional rock excavation is denied where the Board finds (i) that the contract provided for volume of excavation to be measured by the average end area method; (ii) that all excavation including rock boulders was so measured; and (iii) that the appellant failed to show by a preponderance of the evidence that there were any rock boulders placed in embankments for which it has not been paid.

Appeal of Central Colorado Contractors, Inc., IBCA-1203-8-78 (Mar. 25, 1983) 90 I.D. 109

It is the obligation of the appellant to show error. Therefore, when a statement of reasons does not with some particularity show adequate reasons for appeal and support the allegations with evidence showing error, the appeal cannot be afforded favorable consideration.

United States v. Connor et al., 72 IBLA 254 (Apr. 27, 1983)

Bob G. Howell, 75 IBLA 113 (Aug. 12, 1983)

When the Government contests the validity of a mining claim, it bears only the burden of going forward with sufficient evidence to establish a prima facie case. If a prima facie case is presented, the mining claimant then has the burden of overcoming this showing by a preponderance of the evidence.

United States v. Ira B. Pool et al., 74 IBLA 37 (June 27, 1983)

Where protests to a mineral patent application are denied and an appeal is taken, protestants have the burden of affirmatively establishing that patent should not issue and that BLM's decision was in error.

In re Pacific Coast Molybdenum Co., 75 IBLA 16 (Aug. 5, 1983) 90 I.D. 352

Where the Board found that the Government failed to produce documentation for its claimed actual costs resulting from the contractor's failure to complete the contract, it held that the general statements in the testimony of the Government witnesses became nothing more than reassertions of the disputed allegations of

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

its claim and insufficient to sustain the burden of proof.

Appeal of Charley Q. Bates, d.b.a. Phoenix Reforestation Co., IBCA-1198-7-78 (Aug. 11, 1983) 90 I.D. 366

When regulations provide that payment is based on total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision the applicant bears the burden of proof that an ambiguity exists which renders the total acreage unknown. Mere allegation of an ambiguity is not sufficient.

Thomas Connell, 75 IBLA 209 (Aug. 22, 1983)

When a party appeals a BLM easement determination made pursuant to ANCSA and Department regulations, the burden of proof is on the party challenging the determination to show that the determination is erroneous.

Henry W. Waterfield, 77 IBLA 270 (Nov. 30, 1983)

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

When a party appeals a BLM easement determination made pursuant to ANCSA and Department regulations, the burden of proof is on the party challenging the determination to show that the determination is erroneous. Where BLM finds that site easements are not necessary to accommodate existing patterns of travel and an appealing party fails to show otherwise, the BLM decision will ordinarily be affirmed. Where BLM's decision rests on an assumption which is not supported by facts of record, it must be set aside for the record to be supplemented.

State of Alaska, 78 IBLA 390 (Jan. 31, 1984)

Pursuant to the provision of sec. 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1713 (1976), the Secretary is directed to condition any patent issued thereunder with such terms or reservations as are necessary to ensure proper land use and protect the public interest. A party challenging any such condition must show that it does not reasonably ensure proper land use or protect the public interest.

August & Mary Sobotka, 79 IBLA 340 (Mar. 22, 1984)

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

When a party appeals a BLM decision, it is the obligation of the appellant to show that the determination is erroneous. Unless a statement of reasons shows adequate reasons for appeal and the allegations are supported with evidence showing error, the appeal cannot be afforded favorable consideration.

Howard J. Hunt, Howard H. Hunt, 80 IBLA 396 (May 14, 1984)

Implementation of the Taylor Grazing Act of 1934, as amended, is committed to the discretion of the Secretary of the Interior. An adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with the provisions of the Federal range code for grazing, 43 CFR Part 4100.

Clyde L. Darius, Douglas L. Bown v. Bureau of Land Management, 83 IBLA 29 (Sept. 24, 1984)

The burden to prove a BLM decision erroneous is upon the appellant, where her appeal is based upon allegations that the first-drawn lease applicant is disqualified to hold a Federal lease.

Joan Lieberman, 84 IBLA 85 (Dec. 6, 1984)

Dismissal

The Board of Land Appeals will reverse a decision of the Geological Survey dismissing an appeal for failure to timely file an appeal within the time required by 30 CFR Part 290, from letter decisions assessing compensatory royalty in which no right of appeal was indicated, where appellant responded to the letter decisions and filed a timely notice of appeal to a subsequent decision issued by Geological Survey in which appellant was notified of its right to appeal.

Inexco Oil Co., 45 IBLA 377 (Feb. 13, 1980)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of an order issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department, and an appeal which is limited to those issues must be dismissed.

Where oil and gas lease offers have been rejected because of a moratorium on the leasing of the subject lands which was imposed by the direct order of the Secretary of the Interior, and the rejected applicant has filed suit, now pending, for judicial review of the legality of the Secretary's order, and also makes a contemporaneous appeal to the Board of Land Appeals, the Board will not await the outcome of the judicial proceedings, but will summarily dismiss the appeal.

Texas Oil & Gas Corp., 46 IBLA 50 (Feb. 20, 1980)

Timely filing of a notice of appeal with the Board of Land Appeals is jurisdictional. If appeal from a decision of a Bureau of Land Management official is untimely, the Board does not have jurisdiction to consider it and that official must close the case pursuant to 43 CFR 4.411(b). When an appeal is properly filed,

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

the BLM official loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal until jurisdiction over it is restored by Board action disposing of the appeal. Where BLM closes a case because appeal was untimely when in fact it was timely, the Board's jurisdiction will have been triggered at the time of filing of the notice of appeal. BLM's action in closing the case is a nullity and does not affect the appellant's rights before the Board.

State of Alaska v. Earl G. Patterson, 46 IBLA 56 (Feb. 22, 1980)

An appeal to the Director, Geological Survey, is properly dismissed where the appellant failed to file a timely notice of appeal in the proper office within 30 days from service of the decision appealed from in order to comply with the requirements of the applicable regulations in 30 CFR 290.

Union Oil Co. of California, 48 IBLA 145 (June 9, 1980)

Texaco, Inc., 51 IBLA 243 (Dec. 15, 1980)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Ilean Landis, 49 IBLA 59 (July 21, 1980)

Galen B. Brazington, 59 IBLA 255 (Oct. 29, 1981)

Kenyon Ass'n, 60 IBLA 386 (Dec. 23, 1981)

Russell L. Osborn, 62 IBLA 104 (Mar. 1, 1982)

B. W. Dodds, 62 IBLA 241 (Mar. 11, 1982)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

Ray Mallory, 68 IBLA 189 (Nov. 9, 1982)

Harold H. Ruppert, 69 IBLA 82 (Nov. 30, 1982)

Ina May Collier Johnson et al., 72 IBLA 26 (Apr. 5, 1983)

Jerald P. Russell, Patricia K. Russell, 72 IBLA 28 (Apr. 5, 1983)

James M. Chudnow, Laurent A. Geisbert, 72 IBLA 60 (Apr. 12, 1983)

Gary T. Suhrie, 75 IBLA 9 (Aug. 2, 1983)

Lloyd H. Baldwin, 75 IBLA 251 (Aug. 25, 1983)

Red Rock Golf & Recreational Ass'n, Inc., 77 IBLA 87 (Nov. 9, 1983)

George Schultz et al., 81 IBLA 29 (May 17, 1984)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Where appellant's allegations on appeal are immaterial and irrelevant and appellant fails to establish

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

any error in the decision below or any infringement of appellant's rights, the appeal is properly dismissed as lacking in merit.

Margaret Wallace, 49 IBLA 256 (Aug. 18, 1980)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of an order, which temporarily suspended oil and gas leasing, and was issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department. An appeal which is limited to those issues must be dismissed.

William E. Jeffers, Jr., William E. Jeffers, 49 IBLA 264 (Aug. 18, 1980)

The provisions of 43 CFR 4.411, requiring that a notice of appeal be filed within 30 days of the decision appealed from, are mandatory, inasmuch as they determine the jurisdiction of the Board to hear an appeal, and are not subject to waiver. An appeal which was not filed timely must be dismissed.

For the purposes of the proviso to 43 CFR 4.410, which grants any party to a case a right of appeal to the Board of Land Appeals "except * * * where a decision has been approved by the Secretary," the Under Secretary is vested with the authority of the Secretary to make decisions final for the Department and thus not subject to review by the Board.

DNA--People's Legal Services, 49 IBLA 307 (Aug. 20, 1980)

An appeal from a decision declaring mining claims abandoned and void because of failure to meet the recordation requirements of the Federal Land Policy and Management Act of 1976 may be dismissed where the appellant failed to file her statement of reasons or request for a further extension of time to file a statement within time granted by the Board and she does not satisfactorily show why a request was not timely filed, and there is no likelihood she could prevail on the merits of the case in any eventuality.

Elaine Joyce Williamson, 50 IBLA 42 (Sept. 9, 1980)

Under 43 CFR 4.402 and 4.412, an appeal to the Board will be subject to summary dismissal by the Board if a statement of reasons for the appeal is not included in the notice of appeal and is not filed within 30 days after the notice of appeal was filed.

E. M. Hart, 50 IBLA 138 (Sept. 26, 1980)

Where an individual is named as an "adverse party" in a BLM decision which is favorable to that person, who then is duly served with copies of a notice of appeal and statement of reasons challenging the validity of BLM's decision before the Board of Land Appeals and seeking reversal of that decision, but decides not to participate in the appellate proceedings before the Board, the matter becomes res judicata upon the rendering of the Board's decision, and the party may not subsequently challenge this decision by filing a new

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

appeal of his own before the Board for readjudication of the same matter.

Donald W. Coyer, Fred L. Engle, d.b.a. Resource Service Co., Inc. (Appellants); Alfred L. Easterday, Bureau of Land Management (Respondents) (On Judicial Remand), 50 IBLA 306 (Oct. 14, 1980)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of a policy directive issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department, and an appeal limited to those issues must be dismissed.

James R. Leonard et al., 50 IBLA 416 (Oct. 24, 1980)

Where Geological Survey issues an order directing appellant to pay back royalties attributable to an offshore oil and gas lease, and thereafter schedules a conference with appellant to discuss its order, a notice of appeal filed within 30 days of such conference will be regarded as timely.

Shell Oil Co., 52 IBLA 74 (Jan. 9, 1981)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Glen Gould, 52 IBLA 305 (Feb. 10, 1981)

United States v. William A. Beasley et al., 53 IBLA 320 (Mar. 25, 1981)

An appeal from a Bureau of Land Management decision suspending action on an Indian allotment application pending final action on a previously filed application for the same lands will be dismissed and the case remanded to BLM where the record shows that the previously filed application requesting the same land was, in fact, filed prior to appellant's application.

Wanda Lois Lee McKinney et al., 53 IBLA 279 (Mar. 24, 1981)

A claim asserted under the Changes clause for increased costs resulting from actions of the President in decontrolling the price of heavy crude oil is dismissed as being outside the jurisdiction of the Board since the President's action was a sovereign act taken as part of the program to maintain or increase production of heavy crude oil.

Appeal of Martin K. Eby Construction Co., Inc., IBCA-1389-9-80 (Apr. 8, 1981) 88 I.D. 431

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed. However, dismissal is not mandatory and each case will be considered on its own merits.

Geneva Barry et al., 54 IBLA 48 (Apr. 9, 1981)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

The provisions of 43 CFR 4.411, requiring that a notice of appeal be filed within 30 days of service of the decision appealed from, are mandatory, inasmuch as they determine the jurisdiction of the Board to hear an appeal, and are not subject to waiver. An appeal which was not filed timely must be dismissed.

Art Fields, Russel Adams, 57 IBLA 142 (Aug. 25, 1981)

Lynn Dahle, 58 IBLA 73 (Sept. 22, 1981)

A Government motion to dismiss an appeal is granted where no express contract between the parties exists, there is no evidence from which an implied in fact contract could be inferred, and the Board is without jurisdiction over contracts implied in law, assuming appellant is seeking full relief.

Appeal of Dean Prosser and Crew, IBCA-1471-6-81 (Aug. 28, 1981) 88 I.D. 809

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of that portion of a State Director's decision which implements an order issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department and the appeal will be dismissed insofar as it relates to this issue.

Cascade Holistic Economic Consultants et al., 60 IBLA 293 (Dec. 18, 1981)

Where, in a decision published in the Federal Register designating wilderness study areas pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the Bureau of Land Management grants interested parties 30 days to initiate a protest challenging the decision, the 30-day appeal period as to that decision will commence upon expiration of the 30 days accorded for filing protests. An appeal filed after the time period allowed must be dismissed.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

An appeal to the Director, Geological Survey, is properly dismissed where the appellant failed to file timely a notice of appeal in the proper office within 30 days from service of the decision appealed from in accordance with 30 CFR 290.3(a).

Pennzoil Oil and Gas, Inc., Pennzoil Producing Co., 61 IBLA 308 (Feb. 4, 1982)

Where appellant states that he may not be adversely affected by a decision of the Bureau of Land Management and fails to point out affirmatively in his statement of reasons in what respect the decision is in error, he does not meet the requirements of the Department's rules of practice and the appeal must be dismissed.

Hal V. Carlson, Jr., 62 IBLA 305 (Mar. 18, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

Where an individual, named as an adverse party in a proceeding before the Board of Land Appeals, is duly served with notice of that fact, and is given the opportunity to participate in the proceeding but fails to do so, the matter becomes res judicata upon the rendering of the Board's decision and the party may not subsequently challenge the decision in a new appeal before the Board from the Bureau of Land Management's ministerial action implementing the decision.

Ray Kay, Tackle Productions, Inc., 63 IBLA 357 (Apr. 29, 1982)

Where, during the pendency of an appeal involving the protest of the designation of land units as WSA's, the Board issues a decision in another case involving the same units in which it holds that BLM's designation of these units as WSA's is error, and thereby, achieves the result sought by the appellant whose appeal is pending, the issue is moot and the appeal is dismissed.

Arizona State Ass'n of 4-Wheel Drive Clubs, 65 IBLA 126 (June 28, 1982)

The Board denies a Government motion to dismiss an appeal predicated upon the ground, inter alia, that the Disputes Concerning Labor Standards clause gives the Department of Labor the authority to decide disputed questions arising out of the Davis-Bacon Act, where the record indicates that almost two-thirds of the amount withheld from a prime contractor by reason of Davis-Bacon Act violations by its subcontractor appears to represent amounts owed by the subcontractor to the Federal or to a state government and thus present questions for resolution by the Board incident to its authority to adjudicate disputes between the parties to the contract.

A Government motion to dismiss an appeal on the grounds that the contracting officer had neither issued nor been requested to issue a final decision is denied, where the Board finds (i) that the appellant was warranted in treating a contracting officer's disclaimer of any responsibility for adjudicating a dispute as a final decision, and (ii) that no useful purpose would be served by remanding a case to the contracting officer for a decision when the Government's announced position is that the contracting officer has no authority to render a decision relating to wage determinations under the Davis-Bacon Act.

Appeal of G. A. Western Construction Co., IBCA-1550-2-82 (July 1, 1982) 89 I.D. 365

Where an advisory letter from an official of the Bureau of Land Management to an official of Minerals Management Service reporting recommendations on an application for permit to drill on an oil and gas lease is clearly interlocutory in nature, and where implementation of the action contemplated by the letter is contingent upon the future approval by Minerals Management Service of an application for a permit to drill, an appeal from the recommendations contained in the letter will be dismissed because the letter does not constitute a final decision, and appellant's interests have not yet been adversely affected.

Utah Wilderness Ass'n, 65 IBLA 219 (July 9, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

The Board of Land Appeals will reverse a determination of the Geological Survey dismissing in part an appeal for failure to file timely an appeal within the time required by 30 CFR Part 290, from a letter denying refunds of alleged royalty overpayments in which no right of appeal was indicated, and which could not fairly be held to have put appellant on notice that a final determination with right of appeal was intended.

Mobil Oil Corp., 65 IBLA 295 (July 13, 1982)

A Government motion to dismiss an appeal as untimely filed under the Contract Disputes Act of 1978 is denied where the Board finds that the Act does not deprive the contracting officer of authority he had prior to the passage of the Act to reconsider a final decision after it is issued and prior to the expiration of the appeal period and that the available evidence indicates that the actions of the contracting officer may have contributed to the contractor's failure to initiate an appeal to the Board at an earlier time.

Appeal of Riverside General Construction Co., Inc., IBCA-1633-7-82 (Nov. 12, 1982) 89 I.D. 583

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the appeal or when he fails to file timely a statement of reasons, and no reason for maintaining the action is apparent.

Irvin Wall, 68 IBLA 308 (Nov. 19, 1982)

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the appeal and no reason for maintaining the appeal is apparent.

Irvin Wall, 69 IBLA 154 (Dec. 13, 1982)

As a general rule an appeal is subject to dismissal where either the appeal or the application which is the subject of the appeal is withdrawn by appellant. An appeal is properly dismissed where the application upon which it is based is withdrawn and the only error in the decision below is a misapplication of the regulations which only the appellant has standing to appeal.

Jerry B. Pritchard, 70 IBLA 154 (Jan. 18, 1983)

An appeal to the Board of Land Appeals will be subject to dismissal in the exercise of the Board's discretion when the appellant fails to file a statement of reasons in support of the appeal within the time permitted by Departmental regulation.

George L. Clay Lee et al., 70 IBLA 196 (Jan. 21, 1983)

Notice of appeal from the dismissal of a protest filed by the State of Alaska pursuant to sec. 905(a)(5)(B) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(a)(5)(B) (Supp. IV 1980), must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

the appeal within the time allowed requires dismissal of the appeal.

State of Alaska, 70 IBLA 369 (Feb. 3, 1983)

An appeal to the Board will be dismissed where the issues on appeal are moot and where relief sought by appellant has been granted by a court.

Sierra Club, 71 IBLA 235 (Mar. 18, 1983)

An appeal brought by a person who does not fall within any of the categories of persons authorized by regulation to practice before the Department is subject to dismissal.

Thomas L. Tuttle, 71 IBLA 265 (Mar. 22, 1983)

William L. Burney, 72 IBLA 62 (Apr. 12, 1983)

J. C. Trahan, 74 IBLA 15 (June 24, 1983)

Anthony O'Brien, 77 IBLA 154 (Nov. 16, 1983)

An appeal before the Board of Indian Appeals will be dismissed at the request of the parties when it appears that the Board does not have authority to grant the relief sought.

Diane Zarr v. Acting Deputy Director, Office of Indian Education Programs, 11 IBIA 174 (Apr. 21, 1983) 90 I.D. 172

Appeals for which no statements of reasons are submitted will be dismissed in the exercise of the Board's discretion in the absence of any explanation for the failure to file or any indication of appellants' continuing intention to prosecute their appeals.

Where appellant's statement of reasons for appeal from a decision to include certain lands in a wilderness study area fails to assert any right, claim, title or interest in the subject lands, nor any use of them which will be adversely affected, appellant will be considered to lack standing to appeal, and the appeal will be dismissed.

The Board of Land Appeals is the arbiter of its jurisdiction, and neither employees of BLM nor attorneys of the Solicitor's office may create or deny the right of appeal to the Board. Where a notice published by BLM erroneously includes a provision for appeal to the Board, the Board is not thereby bound, and an appeal filed in response to such notice is subject to dismissal.

Phelps Dodge Corp. et al., 72 IBLA 226 (Apr. 26, 1983)

An appeal taken under a grant is dismissed where the Board finds that it is without jurisdiction over the claim asserted under either the terms of the grant or under the provisions of the Contract Disputes Act of 1978.

Appeal of Confederated Tribes of the Chehalis Reservation, IBCA-1640-12-82 (May 20, 1983) 90 I.D. 228

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

A Government motion to dismiss an appeal predicated upon an oral contract is denied when the available evidence indicates that the Government official named was without authority to enter into a contract such as had been alleged but where assuming appellant's material allegations to be true for the purpose of the motion, it appears that a question exists as to whether the Government may be estopped to reply upon the defense of a lack of actual authority to contract if affirmative misconduct of the Government official concerned were shown to exist.

Appeal of Powell A. Casey, IBCA-1638-11-82 (May 23, 1983) 90 I.D. 230

An appeal before the Board of Indian Appeals will not be dismissed on the grounds that the Board lacks authority to grant the relief requested when the appeal seeks review of legal prerequisites to the exercise of discretionary authority vested in the Bureau of Indian Affairs.

Idaho Mining Corp. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 249 (July 29, 1983) 90 I.D. 329

Where the exceptions to a "Release" specifically designate particular claims as being excluded from the effect of the release, a further claim, that cannot reasonably be considered to be within the claims asserted in the exceptions is barred by the release provisions and will be dismissed.

Appeal of Charles O. Estes, d.b.a. Phoenix Reforestation Co., IBCA-1198-7-78 (Aug. 11, 1983) 90 I.D. 366

Failure by appellant to point to some error in a decision or to show that agency action has deprived him of some right subjects his appeal to dismissal.

Contention by appellant that the agency generally conducted a competitive oil and gas lease sale so as to deprive appellant of information needed to compile a reasonable competitive bid is inadequate to support an appeal where it fails to specify how any agency conduct complained of operated to appellant's detriment or how appellant is entitled to relief claimed.

R. H. Northcutt, 75 IBLA 305 (Aug. 30, 1983)

A Government motion to dismiss an appeal and remand it to the contracting officer for decision is granted where the Board finds that it is without jurisdiction over a claim of mutual mistake first presented in the complaint, since a published regulation prescribes that claims of mistake alleged after award of a contract, whether mutual or unilateral, are to be presented initially to the contracting officer for decision.

Appeal of Wakon Redbird & Associates, IBCA-1682-6-83 (Sept. 30, 1983) 90 I.D. 441

Where in a previous appeal the Board has considered and decided appellant's objections to several provisions incorporated in the readjusted terms of a coal lease, a second appeal based upon appellant's

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

objection to still another provision in the same lease readjustment will be dismissed as untimely. Also, where the appeal concerns only potential adverse effects which might result if certain regulation changes were promulgated in the future, the appeal will be dismissed for want of appellant's standing to appeal.

Lone Star Steel Co., 77 IBLA 96 (Nov. 14, 1983)

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file timely a statement of reasons and no reason for maintaining the action is apparent.

Village & City Council of Alakanuk, Mary M. Olson, Lawrence Murphy, Sr., 77 IBLA 130 (Nov. 15, 1983)

Edward W. Thorp, 84 IBLA 58 (Nov. 30, 1984)

One who settles on withdrawn land in Alaska acquires no rights to or title interest in the land which is superior to a conveyance of the land to a Native village corporation pursuant to sec. 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1611 (1976), and the appeal against the conveyance must be dismissed.

L. Joe McVey, 77 IBLA 374 (Dec. 7, 1983)

Where, in its statement of reasons for appeal, appellant fails to allege a cognizable interest which has been adversely affected, appellant will be considered to lack standing, and the appeal will be dismissed.

Oregon Natural Resources Council, 78 IBLA 124 (Dec. 27, 1983)

Notice of appeal must be filed within 30 days from the date that the party appealing receives the decision from which the appeal is taken. A timely filing of the notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal.

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed. However, dismissal is not mandatory and each case will be considered on its own merits.

Score International, 78 IBLA 142 (Dec. 29, 1983)

A determination under 25 CFR 2.17 as to whether an appeal should be dismissed or decided on the merits when an appellant has failed to submit supporting argumentation must be based on the facts of each case.

M.S.C. Logging, Inc. v. Acting Deputy Ass't Secretary--Indian Affairs (Operations), 12 IBIA 181 (Mar. 1, 1984)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

The conclusion of proceedings under the Freedom of Information Act, as amended, 5 U.S.C. § 552 (1982), to acquire information related to the rationale for the production royalty set in a competitive coal lease does not constitute a final decision by BLM subject to an appeal to the Board, challenging the royalty. The appellant only had a right to protest the royalty set in the notice of the lease sale and to appeal from any denial of that protest.

Coastal States Energy Co., 80 IBLA 274 (May 4, 1984)

A Government motion to dismiss a claim for lost profits and an alternative motion for partial summary judgment on the lost profit claim are both denied in a case where appellant implies that the actions of the contracting officer were in bad faith and asserts that the actions of the contracting officer during the administration of the contract were arbitrary, capricious, and unreasonable. In denying both motions, the Board notes that there are some limited circumstances in which the damages recoverable have not been restricted to those specified in the termination for convenience clause and that at the requested oral hearing, appellant will be afforded the opportunity to prove bad faith or abuse of discretion on the part of the contracting officer such as might avoid the recovery limitations of the convenience-termination clause.

Appeal of Allan D. Barwise, IBCA-1690-6-83 (May 17, 1984) 91 I.D. 253

In a simultaneous oil and gas lease drawing, the first-qualified applicant drawn with first priority is entitled to receive the lease. An appeal is properly dismissed where the appellant fails to point out the grounds on which the decision appealed from is in error, and the allegations in his statement of reasons are irrelevant and immaterial.

Chickasaw Oil & Gas, Inc., 82 IBLA 59 (July 11, 1984)

A notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Donna J. Waidlow, 82 IBLA 247 (Aug. 28, 1984)

Where the record in a case establishes that the person authorized by a Native group to act as its agent had actual notice of a certificate of ineligibility for such group, and that the notice of appeal was not transmitted within 30 days of such notice, the notice of appeal must be dismissed. The timely filing of a notice of appeal is jurisdictional, and the Board has no authority to waive a jurisdictional requirement.

Nabesna Native Corp., Inc. (On Reconsideration), 83 IBLA 82 (Sept. 26, 1984)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

The Board of Land Appeals has no jurisdiction to hear appeals from BLM decisions denying petitions for classification.

State of Utah, Division of Wildlife Resources, 83 IBLA 298 (Oct. 26, 1984)

A motion to dismiss an appeal on the grounds that the appellant failed to file a timely notice of appeal within 30 days of actual notice of the BLM decision will be denied where there is no evidence in the record of when the appellant had such notice.

A person who is a party to a case and who has a cognizable interest which has been adversely affected will be considered to have standing to appeal pursuant to 43 CFR 4.410(a). Where the appellant's interest is only that of a deeply concerned citizen, the appeal must be dismissed for lack of standing.

Sharon Long et al., 83 IBLA 304 (Oct. 30, 1984)

An appeal from a decision declaring mining claims null and void because they were located on land withdrawn from mineral entry may be dismissed where the appellants failed to file a statement of reasons, and there is no likelihood they could prevail on the merits of the case in any eventuality.

John F. Malone, Vicki L. Malone, 84 IBLA 5 (Nov. 26, 1984)

Under 43 CFR 4.1271, notice of appeal must be filed on or before 30 days from date of receipt of the order or decision sought to be reviewed. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

William M. Johnson v. Office of Surface Mining Reclamation & Enforcement, 84 IBLA 169 (Dec. 19, 1984)

Effect of

Timely appeal to the Board of Land Appeals suspends the effect of a Bureau of Land Management decision pending outcome of the appeal. Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

State of Alaska, 46 IBLA 12 (Feb. 20, 1980)

Timely filing of a notice of appeal with the Board of Land Appeals is jurisdictional. If appeal from a decision of a Bureau of Land Management official is untimely, the Board does not have jurisdiction to consider it and that official must close the case pursuant to 43 CFR 4.411(b). When an appeal is properly filed, the BLM official loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal until jurisdiction over it is restored by Board action disposing of the appeal. Where BLM closes a case because appeal was untimely when in fact it was timely, the Board's jurisdiction will have been triggered at the time of filing of the notice of appeal. BLM's action in closing the case is

RULES OF PRACTICE--Continued

APPEALS--Continued

Effect of--Continued

a nullity and does not affect the appellant's rights before the Board.

State of Alaska v. Earl G. Patterson, 46 IBLA 56 (Feb. 22, 1980)

When an appeal is properly filed with the Board of Land Appeals from a decision made by an official of the Bureau of Land Management, that official loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal until jurisdiction over the case is restored by Board action disposing of the appeal.

James T. Brown, 46 IBLA 265 (Mar. 27, 1980)

Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

George H. Pennimore et al., 50 IBLA 280 (Oct. 6, 1980)

Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981) 88 I.D. 31

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

Robert J. King, L. K. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

Where, in a drawing of simultaneously filed oil and gas lease offers, the first-drawn applicant fails to submit the advance rental within 15 days after notice, as prescribed by 43 CFR 3112.4-1, disqualification is automatic, notwithstanding the fact that at the time of the notice the Secretary had suspended the Bureau of Land Management's authority to issue noncompetitive oil and gas leases until further notice. However, if the first-drawn applicant files a notice of appeal within that time period, the time period is suspended and following affirmation of Bureau of Land Management's decision, the first-drawn applicant is properly given the entire time period from receipt of the Board's decision within which to submit the rental.

Robert A. Skyrock, Jas. O. Greene, Jr., 55 IBLA 74 (June 1, 1981)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the initial Bureau of Land Management decision, adverse to his, becomes final. Appeal to this Board satisfies the due process requirements.

Gary Willis, 56 IBLA 217 (July 22, 1981)

RULES OF PRACTICE--Continued

APPEALS--Continued

Effect of--Continued

When an appeal to the Board of Land Appeals from a decision made by an official of the Bureau of Land Management is properly filed, that official loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal until jurisdiction over the case is restored by Board action disposing of the appeal.

Sierra Club, 57 IBLA 288 (Aug. 31, 1981)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the adverse Bureau of Land Management decision becomes final. Appeal to this Board satisfies the due process requirements.

Francis Skav et al., 63 IBLA 235 (Apr. 19, 1982)

The effect of decisions of Bureau of Land Management officials regarding applications for use of the public land and its resources are stayed pending the time during which a party adversely affected thereby may file an appeal and during the pendency of any appeal properly filed except where statute or regulation provides otherwise. 43 CFR 4.21(a). Although the regulations governing issuance of rights-of-way pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), provide that such decisions shall be effective when issued, rights-of-way for Federal aid highways are expressly excluded from the scope of such regulation and thus, a decision to issue the latter type of right-of-way is stayed pending appeal.

Citizens for Glenwood Canyon, 64 IBLA 346 (June 15, 1982)

Application for approval by the Bureau of Land Management of an assignment of record title to an oil and gas lease is made by the assignee of the lease. Any decision adverse to an applicant for approval of assignment must be issued to the applicant and is not effective during the period when the applicant may file an appeal or while the appeal is pending.

Petrol Resources Corp., 65 IBLA 104 (June 24, 1982)

Under 25 CFR 2.3(b) and 43 CFR 4.21(a), a decision which is subject to review by a higher Departmental official is not effective during the appeal period or during the pendency of an appeal, unless the BIA official to whom an appeal is made, the Board, or the Director of the Office of Hearings and Appeals determines that the public interest requires the decision to be made effective immediately.

Matthew Allen v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 146 (Oct. 15, 1982) 89 I.D. 508

Wilbur Barton v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 173 (Oct. 15, 1982)

Henry W. Begay v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 189 (Oct. 15, 1982)

Johnny Begay v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 205 (Oct. 15, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Effect of--Continued

Bessie Benally v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 221 (Oct. 15, 1982)

Arletta Bischoff v. Acting Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 237 (Oct. 15, 1982)

Irving Clark v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 253 (Oct. 15, 1982)

Pearlene Dayzie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 269 (Oct. 15, 1982)

Janet Gordon v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 285 (Oct. 15, 1982)

Leo Green v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 301 (Oct. 15, 1982)

Francis Harvey v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 318 (Oct. 15, 1982)

June James v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 334 (Oct. 15, 1982)

Thomas Kee v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 350 (Oct. 15, 1982)

Lester Kelwood v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 366 (Oct. 15, 1982)

Juanita Paddock v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 382 (Oct. 15, 1982)

Irma Shirley v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 399 (Oct. 15, 1982)

Charity Tsosie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 416 (Oct. 15, 1982)

Leo Willie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 432 (Oct. 15, 1982)

Francis Yazzie v. Area Director, Navajo Area Office, Bureau of Indian Affairs, 10 IBIA 448 (Oct. 15, 1982)

A protest to issuance of an oil and gas lease filed after the lease has issued is not timely. Where, however, the "protest" is filed by an individual with subsidiary priority such protest shall be deemed to be an appeal from the rejection of the protestant's application or offer to lease.

The filing of an appeal from rejection of a lease offer or application preserves the viability of the offer or application during the pendancy of the appeal. Thus, where it is shown that the lease improperly issued to another party, the lease is properly canceled and may be awarded to the appellant.

Goldie Skodras, 72 IBLA 120 (Apr. 14, 1983)

A protest to issuance of an oil and gas lease filed after the lease has issued is not timely. Where, however, the "protest" is filed by an individual with subsidiary priority such protest shall be deemed to be an appeal from the rejection of the protestant's application or offer to lease.

The filing of an appeal from rejection of a lease offer or application preserves the viability of the offer or application during the pendency of the appeal.

RULES OF PRACTICE--Continued

APPEALS--Continued

Effect of--Continued

Thus, if it can be shown that the lease improperly issued to another party, the lease is properly canceled and may be awarded to the appellant.

Where the lessee of an oil and gas lease fails to pay the annual rental, the lease is terminated. Such termination, however, does not moot an unadjudicated appeal challenging the issuance of the lease to the lessee. Appellant is entitled to an adjudication of her appeal. Upon a determination that the terminated lease was improperly issued to the lessee in the first instance, appellant as the first-qualified applicant may be awarded the lease.

Patricia C. Alker, 79 IBLA 123 (Feb. 22, 1984)

Rejection of an application to lease filed under the automated simultaneous system necessarily encompasses retention of filing fees submitted therewith. Where an application to lease is "rejected" because of a deficiency on the application form, an applicant must either appeal or seek a return of any filing fees within 30 days of rejection. Where an applicant fails to do either, he will be barred from subsequently seeking a return of filing fees on the grounds that the deficiency should properly have been treated as rendering the application "unacceptable."

Shay Resources, Inc., 79 IBLA 153 (Feb. 24, 1984) 91 I.D. 122

The filing of an appeal from rejection of a lease offer or application preserves the viability of the offer or application during the pendency of the appeal. Thus, where it is shown that the lease improperly issued to another party, the lease is properly canceled and may be awarded to the appellant.

Judy Fleming, 81 IBLA 290 (June 12, 1984)

Where BLM has denied a protest of the proposed issuance of competitive geothermal resources leases pursuant to sec. 4 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1003 (1982), the effect of the decision is stayed during the time the protestant may file an appeal and while the appeal is pending, and issuance of the leases during that time will be considered subject to cancellation by the Board.

Lawrence H. Merchant, 81 IBLA 360 (June 27, 1984)

Extensions of Time

A Government motion to dismiss an appeal as untimely filed under the Contract Disputes Act of 1978 is denied where the Board finds that the Act does not deprive the contracting officer of authority he had prior to the passage of the Act to reconsider a final decision after it is issued and prior to the expiration of the appeal period and that the available evidence indicates that the actions of the contracting officer may have contributed to the contractor's failure to initiate an appeal to the Board at an earlier time.

Appeal of Riverside General Construction Co., Inc., IBCA-1603-7-82 (Nov. 12, 1982) 89 I.D. 583

RULES OF PRACTICE--Continued

APPEALS--Continued

Failure to Appeal

A desert land applicant, whose application is rejected because of an adverse classification, and does not timely seek appropriate appellate review thereof, loses whatever rights may have accrued to him by virtue of the application and he will not enjoy any preference right to the land when it is subsequently classified as suitable for desert land entry.

Bruce C. Newcomb, 48 IBLA 263 (June 30, 1980)

Where following dismissal of a protest, a protestant files a supplemental protest and request for reconsideration, but asks that should such pleading be rejected it be considered in the alternative as a notice of appeal, protestant has complied with the provisions of 43 CFR 4.411 if such pleading is filed with BLM within 30 days after being served with BLM's dismissal of the protest.

Henry A. Alker, 49 IBLA 118 (July 28, 1980)

The 30-day period within which an appeal from a decision classifying lands as being within a KGS must be initiated commences upon service on the lessee (or co-lessee) of record of a copy of the decision. Both the lessee and his agent, including the holder of operating rights under the lease, are subject to the 30-day deadline.

Robert L. Wright, Shell Oil Co., 60 IBLA 142 (Nov. 24, 1981)

Where the Geological Survey informs an oil and gas lessee that completion of a well on an adjacent tract of land has resulted in substantial drainage from the Government's land and directs the lessee to either complete an offset well or tender compensatory royalties, the lessee may attempt to show that the drainage is not substantial or that a prudent operator would not attempt to complete a paying well. Where, however, the lessee does not challenge the factual predicates of the Survey demand within a reasonable time after he has been informed of them, the right to subsequently contravene the factual determinations of Survey on these points is waived.

Nola Grace Ptasynski, 63 IBLA 240 (Apr. 19, 1982)
89 I.D. 208

A notice of appeal must be filed within 30 days after appellant is served with the decision from which he is appealing. When a party does not appeal, the doctrine of administrative finality, the administrative equivalent of res judicata, generally bars consideration of the same issue in a later appeal.

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

A prior decision of the Department will not be overturned by the Board of Land Appeals where the claimant has failed to appeal such decision and in essence acquiesced to the decision for a prolonged period of time.

Ida Mae Rose, Leo G. Comer, 73 IBLA 97 (May 23, 1983)

RULES OF PRACTICE--Continued

APPEALS--Continued

Failure to Appeal--Continued

The timely filing of a notice of appeal from an order denying reopening of an Indian decedent's estate is a jurisdictional prerequisite.

Estate of Ralph James (Elmer) Heil, 12 IBIA 62 (Nov. 10, 1983)

Where a 1974 decision to issue a highway right-of-way is not challenged on appeal until 1980, the doctrine of administrative finality bars consideration of the legal basis for the 1974 right-of-way grant.

Bering Straits Native Corp., Council Native Corp., 83 IBLA 280 (Oct. 25, 1984)

Hearings

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of a leasing service and its clientele where there are ambiguities in the complex contract between them, and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients have given to the terms.

Valerie Mellor, Elizabeth B. Drozda, 49 IBLA 303 (Aug. 20, 1980)

A second hearing of a Government mining contest will not be afforded where a claimant was given notice and an opportunity to appear at a hearing, where he was actually present at the hearing, and where nothing has been submitted which suggests that another hearing would produce a different result. A petition to reopen a hearing of a Government mining contest will be denied when the contestee offers no valid justification for the neglect to offer evidence which was or could have been available at the original hearing. A further hearing will not be ordered merely to afford a claimant an additional opportunity to explore and make a discovery.

United States v. Leon R. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981)
88 I.D. 31

The Board refuses to draw inferences adverse to the Government by reason of its failure to have its project engineer testify in important areas and by reason of its failure to call as witnesses two of its employees who attended the hearing where the Board finds that the action of the Government is consistent with the principal defenses made to the differing site

RULES OF PRACTICE--Continued

APPEALS--Continued

Hearings--Continued

conditions claims asserted and where under long-established Board practice, the appellant could have called any or all of the Government's employees concerned as witnesses without making them appellant's witnesses for the purposes of impeachment.

The Board sustains the action of the hearing member in refusing to receive in evidence documents not identified by a witness through whose testimony their admission is being sought.

Appeal of Flour Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981) 88 I.D. 41

A Government motion for summary judgment is granted and an appellant's request for a hearing is denied in a case where if all of appellant's factual allegations are accepted as true, there would still be no basis for granting the appellant relief for the claim asserted. The Board finds that to hold a hearing in such circumstances would not secure the just and inexpensive determination of the appeal without unnecessary delay.

Appeal of McCutcheon-Peterson (JV), IBCA-1392-9-80 (Mar. 12, 1981) 88 I.D. 361

The Board of Land Appeals has the discretion to grant a request for a hearing on issues of fact but, in order to warrant such a hearing, an appellant must at least allege facts which, if proved, would entitle him to the relief sought.

Stewart Capital Corp., 53 IBLA 369 (Mar. 30, 1981)

A second hearing will not be afforded where a mining claimant has been given notice and an opportunity to appear at a hearing and where nothing has been submitted to indicate that another hearing would produce a different result.

United States v. Michael Kuretich et al., 54 IBLA 124 (Apr. 17, 1981)

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Guy A. Matthews, 58 IBLA 246 (Oct. 6, 1981)

Where the Bureau of Land Management has dismissed a protest to the transfer of a special use permit for river rafting without considering evidence in the record, which tends to support certain allegations in the protest, the case will be remanded to BLM for reconsideration of the evidence and a final determination of whether there has been a violation of the guidelines which state that an authorized outfitter's authorization to conduct float trips is not a salable commodity.

Wilderness Public Rights Fund, National Organization for River Sports, 63 IBLA 91 (Mar. 31, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Hearings--Continued

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

It is within the discretion of the Board of Land Appeals to grant a request for a hearing on an issue of fact. In order to warrant such a hearing, an appellant must at least allege facts which, if proved, would entitle him to the relief sought.

Paul H. Temple, 69 IBLA 58 (Nov. 29, 1982)

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing is required only where there is a disputed question of fact. Where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

Mackay Bar Corp., 69 IBLA 148 (Dec. 13, 1982)

The obligation to establish a valid color-of-title claim is upon claimant. Where claimants have not alleged facts which, if proved, would establish the color of title, a request for a fact-finding hearing pursuant to 43 CFR 4.415 will be denied.

Bernard R. Snyder, M. Marie Snyder, 70 IBLA 207 (Jan. 24, 1983)

A hearing before an Administrative Law Judge is necessary only where there is a material issue of fact requiring resolution through the introduction of testimony and other evidence. In the absence of such an issue, no hearing is required.

KernCo Drilling Co., et al., 71 IBLA 53 (Feb. 22, 1983)

Alunite Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

Where the lessee under a noncompetitive oil and gas lease, which is canceled to the extent it includes land which had been determined to be within a known geologic structure prior to issuance of the lease, submits probative evidence contravening the determination by the Geological Survey, a hearing will be ordered so that a complete record may be developed. Only evidence pertaining to the period prior to lease issuance will be admissible.

Celeste C. Grynberg, 74 IBLA 180 (July 18, 1983)

An evidentiary hearing is properly ordered pursuant to 43 CFR 4.415 where the record is inconclusive on an issue of material fact dispositive of the rights of the parties to an appeal.

Rosita Trujillo, 77 IBLA 35 (Oct. 31, 1983)

Desert Survivors, 80 IBLA 111 (Apr. 3, 1984)

RULES OF PRACTICE--Continued

APPEALS--Continued

Hearings--Continued

Where a simultaneous oil and gas lease applicant, whose application has been rejected because it covers land within a known geologic structure, submits probative evidence contravening the determination that the land is presumptively productive of oil and gas, which is not fully rebutted, but where, nonetheless, questions of fact remain unresolved by the record, a hearing is appropriate to establish a sufficient record to permit decision.

Lloyd Chemical Sales, Inc., 82 IBLA 182 (Aug. 13, 1984)

Motions

A motion to dismiss an appeal from a decision of the District Manager is properly granted pursuant to 43 CFR 4.470 where the arguments set forth by an applicant for a grazing license or permit are immaterial to the issue of whether the applicant has previously made substantial use of his grazing privileges.

Floyd and Corwin Silva, 45 IBLA 11 (Jan. 8, 1980)

The Government's motion for reconsideration, which contends that the current version of the Limitation of Cost clause does not entitle a contractor to additional funding for a change unless the contracting officer specifically increases the estimated cost, provides no basis for overturning the Board's principal decision allowing excess costs attributable to a constructive change, where the contracting officer was given advance notice that the estimated costs would be exceeded and took no action to advise the contractor that no funding would be provided or to stop the project officer from asking for continued performance of the changed work.

Appeal of Recon Systems, Inc., IBCA-1214-9-78 (Jan. 17, 1980) 87 I.D. 7

A Government motion for summary judgment is granted and an appellant's request for a hearing is denied in a case where if all of appellant's factual allegations are accepted as true, there would still be no basis for granting the appellant relief for the claim asserted. The Board finds that to hold a hearing in such circumstances would not secure the just and inexpensive determination of the appeal without unnecessary delay.

Appeal of McCutcheon-Peterson (JV), IBCA-1392-9-80 (Mar. 12, 1981) 88 I.D. 361

A claim asserted under the Changes clause for increased costs resulting from actions of the President in decontrolling the price of heavy crude oil is dismissed as being outside the jurisdiction of the Board since the President's action was a sovereign act taken as part of the program to maintain or increase production of heavy crude oil.

Appeal of Martin K. Eby Construction Co., Inc., IBCA-1389-9-80 (Apr. 8, 1981) 88 I.D. 431

A Government motion to dismiss an appeal is granted where no express contract between the parties exists, there is no evidence from which an implied in fact contract could be inferred, and the Board is without jurisdiction over contracts implied in law, assuming appellant is seeking full relief.

Appeal of Dean Prosser and Crew, IBCA-1471-6-81 (Aug. 28, 1981) 88 I.D. 809

The Government's motion for reconsideration which requests remand of an appeal, after a decision by the Board that appellant's final report was improperly rejected using criteria not specified or reasonably inferred by the contract, in order that the contracting officer can render a new decision on acceptability of the final report under the terms of the contract is denied because no proper basis is offered for the request.

Appeal of A. Helene Warren, IBCA-1422-1-81 (Nov. 9, 1981)

A Government's motion for summary judgment is granted and an appeal is dismissed where in connection with a claim for interest for the Government's delay in making progress payment the Board finds there is no genuine issue of material fact and that neither the payments clause nor the Contract Disputes Act of 1978 authorize the payment of interest on undisputed underlying claims on which the claim for interest is based.

Appeal of Lee Roofing Co., IBCA-1506-8-81 (May 11, 1982) 89 I.D. 233

A motion for reconsideration is denied where appellant's assertions of error in the principal decision are not supported by arguments or by references to the record, and appellant admittedly seeks a rehearing in order to present the evidence in a more coherent sequence and logical order.

Appeals of Porter Mechanical Contractors, Inc., (On Reconsideration), IBCA-1357-5-80 & IBCA-1366-6-80 (June 28, 1982) 89 I.D. 359

A Government motion to dismiss an appeal as untimely filed under the Contract Disputes Act of 1978 is denied where the Board finds that the Act does not deprive the contracting officer of authority he had prior to the passage of the Act to reconsider a final decision after it is issued and prior to the expiration of the appeal period and that the available evidence indicates that the actions of the contracting officer may have contributed to the contractor's failure to initiate an appeal to the Board at an earlier time.

Appeal of Riverside General Construction Co., Inc., IBCA-1603-7-82 (Nov. 12, 1982) 89 I.D. 583

A Government motion for summary judgment is granted and an appeal is dismissed when in connection with a claim for interest for the Government's delays in making progress payments, the Board finds that the Government's delays were unreasonable but also finds that there is no genuine issue of material fact and that neither the Payments to Contractor clause nor the Contract Disputes Act of 1978 authorize the payment of interest on undisputed underlying claims. Noted by the Board was the fact that the invoices on which the claim for interest is based had been paid several months before the contractor's claim

RULES OF PRACTICE--Continued

APPEALS--Continued

Motions--Continued

for interest was submitted to the contracting officer for a decision.

Appeal of Seawork Installations, Ltd., IBCA-1635-11-82 (June 7, 1983)

A contractor's motion for reconsideration and to supplement the record by contractor's testimony after an adverse decision by the Board of the contractor's appeal, decided on the record without an oral hearing, is denied where the contractor failed to request a hearing, and its motion not only failed to satisfy the newly discovered evidence rule but also failed to disclose the testimony proffered.

Appeal of Pebble Haulers, Inc., IBCA-1524-10-81 (Sept. 28, 1983)

In a case in which the appellant's motion for summary judgment is denied and the Government's cross motion for summary judgment is granted, the allowance of interest on borrowings (however represented) as part of an equitable adjustment is found to be prohibited by a provision of the Federal Procurement Regulations incorporated into the contract by reference.

In a case in which the appellant's motion for summary judgment is denied and the Government's cross motion for summary judgment is granted, the failure of a contractor to certify its claims in excess of $50,000 when submitting them to the contracting officer, as required by sec. 6(c) of the Contract Disputes Act of 1978, is found to preclude the allowance of interest provided for by sec. 12 of the Act.

Appeal of Ferguson Construction Co., IBCA-1681-6-83 (Oct. 28, 1983)

The Board rejected appellant's contention that certification of a claim appended to a complaint makes Government counsel an agent of the contracting officer for the purpose of compliance with the requirements of 41 U.S.C. § 605(c)(1) and granted the motion of the Government to vacate the Board's decision rendered on the merits and to dismiss the appeal for lack of jurisdiction.

L. A. Melka Marine Construction & Diving Co., Inc., IBCA-1511-9-81 (Nov. 25, 1983) 90 I.D. 491

A Government motion to dismiss a claim for lost profits and an alternative motion for partial summary judgment on the lost profit claim are both denied in a case where appellant implies that the actions of the contracting officer were in bad faith and asserts that the actions of the contracting officer during the administration of the contract were arbitrary, capricious, and unreasonable. In denying both motions, the Board notes that there are some limited circumstances in which the damages recoverable have not been restricted to those specified in the termination for convenience clause and that at the requested oral hearing, appellant will be afforded the opportunity to prove bad faith or abuse of discretion on the part of the contracting officer such as might avoid the recovery limitations of the convenience-termination clause.

Appeal of Allen D. Berglee, IBCA-1690-6-83 (May 17, 1984) 91 I.D. 253

RULES OF PRACTICE--Continued

APPEALS--Continued

Notice of Appeal

Where, in a decision holding a Native allotment for approval and a State selection for rejection to the extent of a conflict, the Bureau of Land Management grants the State 30 days to initiate a private contest challenging the Native allotment, the 30-day appeal period will commence upon expiration of the 30 days accorded the State for initiation of a private contest and not with receipt of the decision.

State of Alaska v. Earl G. Patterson, 46 IBLA 56 (Feb. 22, 1980)

State of Alaska, 48 IBLA 229 (June 17, 1980)

In order to constitute a notice of appeal a document must state in an objectively ascertainable manner a present intent to appeal a final decision of the Bureau of Land Management. A petition for reconsideration of a decision with reasons directed to the office which issued the decision that expresses a conditional intent to file an appeal in the future if the relief requested by petitioner is not granted does not constitute notice of appeal. Where the decision is reconsidered in response to the petition and the petitioner is notified that the decision is reaffirmed with right of appeal, the decision will become final in the absence of a timely appeal.

Ilean Landis, 49 IBLA 59 (July 21, 1980)

Where following dismissal of a protest, a protestant files a supplemental protest and request for reconsideration, but asks that should such pleading be rejected it be considered in the alternative as a notice of appeal, protestant has complied with the provisions of 43 CFR 4.411 if such pleading is filed with BLM within 30 days after being served with BLM's dismissal of the protest.

Henry A. Alker, 49 IBLA 118 (July 28, 1980)

Where a person moves from his record address and does not apprise BLM of a forwarding address, and a copy of a BLM decision affecting him is mailed to this last address of record and returned by the postal service as undeliverable, the decision is considered to have been "served" on him as of the date it is returned to BLM. 43 CFR 4.401(c). Accordingly, the deadline for filing a notice of appeal is 30 days after the date the decision is returned to BLM, and an appeal filed after that date is properly dismissed as untimely.

Reg Whitson, 55 IBLA 5 (May 26, 1981)

Where several BLM decisions declaring appellant's mining claims abandoned and void each stated "In reply refer to 3833 (N-952)," and appellant's notice of appeal specifically applied to BLM decisions bearing that reference number, the notice of appeal was effective, and BLM incorrectly and prematurely closed the file of one claim that BLM decided was not covered by the notice of appeal.

D. F. Colson, 63 IBLA 221 (Apr. 15, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Notice of Appeal--Continued

Where BLM unconditionally rejects an oil and gas lease offer but provides a period of 30 days in which to cure a deficiency the decision is not interlocutory and the 30-day period for filing a notice of appeal begins upon receipt of the decision.

Carl Gerard, 70 IBLA 343 (Feb. 2, 1983)

Where BLM affords an offeror a period of 30 days to execute stipulations as a condition to issuance of an oil and gas lease and states that failure to comply will result in rejection of the offer to lease, the decision is interlocutory and there is no right of appeal. The offeror may elect to comply, to comply under protest, or to let the 30-day period run without complying and appeal the resulting BLM decision rejecting the offer. In the latter case the offeror has waived the right to comply and, if the appeal is unsuccessful, the rejection is final and no additional opportunity to execute the stipulations will be granted.

Fortune Oil Co., 71 IBLA 153 (Mar. 9, 1983)
90 I.D. 84

Where BLM informs an offeror for an over-the-counter oil and gas lease that it is prepared to issue a lease provided certain stipulations are signed and returned within 30 days of receipt of BLM's decision, the decision is interlocutory and the 30-day period for filing a notice of appeal will not begin until the compliance period has been concluded.

John R. Anderson, 71 IBLA 172 (Mar. 10, 1983)

Reconsideration

The Government's motion for reconsideration, which contends that the current version of the Limitation of Cost clause does not entitle a contractor to additional funding for a change unless the contracting officer specifically increases the estimated cost, provides no basis for overturning the Board's principal decision allowing excess costs attributable to a constructive change, where the contracting officer was given advance notice that the estimated costs would be exceeded and took no action to advise the contractor that no funding would be provided or to stop the project officer from asking for continued performance of the changed work.

Appeal of Recon Systems, Inc., IBCA-1214-9-78 (Jan. 17, 1980) 87 I.D. 7

Where, upon the second review of the record pursuant to appellant's motion for reconsideration, the Board finds that the main premise upon which appellant's original claim for relief was based is neither supported by the evidence of record nor by any apparent legal authority, the Board will deny the motion for reconsideration without reaching the ancillary issue raised by such motion.

Appeal of Wunschel & Small, Inc., IBCA-1263-5-79 (June 27, 1980)

RULES OF PRACTICE--Continued

APPEALS--Continued

Reconsideration--Continued

Where in a motion for reconsideration counsel fails to apprise the Board of any significant newly discovered evidence or evidence not duly considered in the course of rendering the principal decision, the motion will be denied.

Appeal of Tiffany Construction Co., IBCA-1162-8-77 (Aug. 22, 1980)

Upon a motion for reconsideration, the Board finds that the contentions of appellant challenging the principal decision are based on misstatements or misinterpretations of the principal decision or ask that the Board consider the merits of a claim deemed to have been properly dismissed for lack of proof of coercion or duress.

Appeal of Systems Technology Associates, Inc., IBCA-1108-4-76 (Apr. 30, 1981) 88 I.D. 521

The Government's motion for reconsideration which requests remand of an appeal, after a decision by the Board that appellant's final report was improperly rejected using criteria not specified or reasonably inferred by the contract, in order that the contracting officer can render a new decision on acceptability of the final report under the terms of the contract is denied because no proper basis is offered for the request.

Appeal of A. Helene Warren, IBCA-1422-1-81 (Nov. 9, 1981)

A motion for reconsideration is denied where appellant's assertions of error in the principal decision are not supported by arguments or by references to the record, and appellant admittedly seeks a rehearing in order to present the evidence in a more coherent sequence and logical order.

Appeals of Porter Mechanical Contractors, Inc. (On Reconsideration), IBCA-1357-5-80 & IBCA-1366-6-80 (June 28, 1982) 89 I.D. 359

Where an appeal is dismissed for failure to timely file a statement of reasons in support thereof, and a petition for reconsideration is filed which essentially argues that the failure to timely file the statement of reasons with the Board was due to ignorance, such a petition for reconsideration has not shown extraordinary circumstances as required by 43 CFR 4.21(e) and is properly denied.

Where, during the adjudication of a petition for reconsideration of a dismissal of an appeal for failure to timely file a statement of reasons, a review of the case file discloses the existence of a document, filed after issuance of the adverse decision from which an appeal was taken, which delineates the points in controversy, such a document may be deemed a statement of reasons and the decision dismissing the appeal will be vacated.

Wyoming Oil & Minerals, Inc. (On Reconsideration), 71 IBLA 15 (Feb. 10, 1983)

RULES OF PRACTICE--Continued

APPEALS--Continued

Reconsideration--Continued

The Board will not consider an issue in a petition for reconsideration which was not timely raised and considered below.

Edmond H. Burns & Mark Hoesons v. Anadarko Area Director, Bureau of Indian Affairs (On Reconsideration), 11 IBIA 133 (Mar. 22, 1983)

A contractor's motion for reconsideration and to supplement the record by contractor's testimony after an adverse decision by the Board of the contractor's appeal, decided on the record without an oral hearing, is denied where the contractor failed to request a hearing, and its motion not only failed to satisfy the newly discovered evidence rule but also failed to disclose the testimony proffered.

Appeal of Pebble Haulers, Inc., IBCA-1524-10-81 (Sept. 28, 1983)

Under 43 CFR 4.21(c), a request for reconsideration of a decision of the Board of Land Appeals must be filed promptly and may be granted only in extraordinary circumstances. A petition for reconsideration will be denied as untimely when it is filed more than 6 months after issuance of the decision, the petition raises no new matter, and the only apparent justification for such late filing is a reference to a recent court decision which has no controlling effect on the disposition of the appeal.

Pathfinder Mines Corp. (On Reconsideration), 76 IBLA 276 (Oct. 18, 1983)

Under 43 CFR 4.21(c), a request for reconsideration of a decision of the Board of Land Appeals must be filed promptly and may be granted only in extraordinary circumstances. A petition for reconsideration will be denied as untimely when it is filed more than 18 months after issuance of the decision, the petition raises no new issues or matters, and the only apparent justification for such late filing is a reference to a recent communication from the National Park Service which has no controlling effect on disposition of the appeal.

Take Mining (On Reconsideration), 77 IBLA 30 (Oct. 31, 1983)

Under 43 CFR 4.314 and 4.315, a decision issued by the Board of Indian Appeals is final for the Department without further action. The filing of a petition for reconsideration is not required for finality.

Walch Logging Co., Inc., Dant & Russell, Inc., v. Assistant Area Director (Economic Development), Portland Area Office, Bureau of Indian Affairs, 12 IBIA 126 (Dec. 22, 1983)

In an earlier decision in the context of a contract ambiguity, the Board ruled in the contractor's favor on the costs of supplying certain building components and against the contractor on the costs of installing them. On reconsideration, the contractor convinced the Board that the analogy relied upon in denying the appeal for installation costs was fallacious, but, in reviewing all aspects of the decision on reconsideration, the Board discovered that its rationale for granting ANY relief on the issue of supplying and installing the components was also erroneous, and therefore affirmed its denial of installation costs and reversed its grant of supply

RULES OF PRACTICE--Continued

APPEALS--Continued

Reconsideration--Continued

costs. Where there is a patent ambiguity between contract provisions and a contractor fails to make inquiry about it, the contractor may not rely on its interpretation if the Government interpretation differs and will not be allowed to prevail for any alleged extra costs for complying with directions consistent with the Government's interpretation.

Appeal of C. G. Horton Co. (On Reconsideration), IBCA-1647-1-83 (Apr. 23, 1984)

Where, subsequent to a decision issued by the Board, which decision is premised on certain factual assumptions, a party establishes on the basis of the record before the Board that the facts may not be as assumed, and, as a result, it becomes impossible for the Board to fairly determine the true underlying facts essential to adjudication, the Board decision will be vacated and the case will be remanded to the Hearings Division for a hearing to clarify the matter.

United States v. J. Gary Foezor et al. (On Reconsideration), 81 IBLA 94 (May 29, 1984)

Where the Interior Board of Land Appeals sets aside a BLM decision because on appeal the appellant has pointed out ambiguities and inconsistencies in the record and BLM does not come forward to clarify them, the Board ordinarily will not entertain a postdecision brief seeking reconsideration and setting forth such clarification.

Sierra Club, The Mono Lake Committee (On Reconsideration), 84 IBLA 175 (Dec. 19, 1984)

Service on Adverse Party

BLM may not summarily dismiss a private contest complaint against a homestead entry for failure to file with BLM proof of service on the contestee within 30 days of service, as required by 43 CFR 4.450-3, where the evidence indicates that the contestant actually served the complaint and the contestant files proof of such service on appeal.

Jessie L. Winegeart v. Glenn W. Price, 74 IBLA 373 (July 29, 1983) 90 I.D. 338

Failure to serve a copy of the notice of appeal on an adverse party within the time required subjects an appeal to summary dismissal pursuant to 43 CFR 4.413. A motion to dismiss an appeal because of a failure to comply with the service requirement will be denied where the moving party fails to show any prejudice from the failure to serve and the record indicates that the moving party had actual notice of the appeal.

Defenders of Wildlife, 79 IBLA 62 (Feb. 13, 1984)

Where the record in a case establishes that the person authorized by a Native group to act as its agent had actual notice of a certificate of ineligibility for such group, and that the notice of appeal was not transmitted within 30 days of such notice, the notice of appeal must be dismissed. The timely filing of a notice of appeal is jurisdictional, and the Board has no authority to waive a jurisdictional requirement.

Nabesna Native Corp., Inc. (On Reconsideration), 83 IBLA 82 (Sept. 28, 1984)

RULES OF PRACTICE--Continued

APPEALS--Continued

Standing to Appeal

Where a Native corporation has pending an application to acquire land, which land was awarded to an Alaska Native by BLM pursuant to a Native allotment application, the Native corporation is a party adversely affected by the decision of BLM and therefore has a right to appeal pursuant to 43 CFR 4.410, from the BLM decision holding the Native allotment application for allowance and will be afforded the opportunity to contest the Native allotment application.

Ouzinkie Native Corp. v. Edward Ophoim, Sr., 45 IBLA 198 (Jan. 30, 1980)

For the purposes of the proviso to 43 CFR 4.410, which grants any party to a case a right of appeal to the Board of Land Appeals "except * * * where a decision has been approved by the Secretary," the Under Secretary is vested with the authority of the Secretary to make decisions final for the Department and thus not subject to review by the Board.

DNA--People's Legal Services, 49 IBLA 307 (Aug. 20, 1980)

A Government motion to dismiss an appeal is granted where no express contract between the parties exists, there is no evidence from which an implied in fact contract could be inferred, and the Board is without jurisdiction over contracts implied in law, assuming appellant is seeking full relief.

Appeal of Dean Prosser and Crew, IBCA-1471-6-81 (Aug. 28, 1981) 88 I.D. 809

Neither the State of Alaska nor an instrumentality thereof has standing to appeal a decision which recognizes that full title to a parcel of land is in the State, absent a showing of injury in fact from such a decision.

State of Alaska, 58 IBLA 118 (Sept. 24, 1981)

Under 43 CFR 4.410, a party must be adversely affected by a decision of an officer of the Bureau of Land Management in order to have the right to appeal to the Board of Land Appeals.

California State Lands Commission, 58 IBLA 213 (Sept. 29, 1981)

James M. Chudnow et al., 70 IBLA 71 (Jan. 11, 1983)

Appellant business lessee of tribal trust lands held not to be an interested party affected by a final administrative action of an official of the Bureau of Indian Affairs within the meaning of Interior Board of Indian Appeals practice rule sec. 4.331 (46 FR 7337 (Jan. 23, 1981)) so as to be entitled to seek review of agency determination that lessor Indian tribe had failed to legally enact a tribal law and order code.

Marlin D. Kuykendall v. Comm'r of Indian Affairs and Yavapai-Prescott Tribe, 9 IBIA 90 (Oct. 23, 1981)

RULES OF PRACTICE--Continued

APPEALS--Continued

Standing to Appeal--Continued

An appellant has standing to appeal a decision of a Bureau of Indian Affairs official granting fee patent title to Indian trust land only if it can be shown that the decision adversely affects his or her enjoyment of a legally protected interest.

Roland Redfield v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 174 (Feb. 16, 1982) 89 I.D. 67

Where appellant states that he may not be adversely affected by a decision of the Bureau of Land Management and fails to point out affirmatively in his statement of reasons in what respect the decision is in error, he does not meet the requirements of the Department's rules of practice and the appeal must be dismissed.

Hal V. Carlson, Jr., 62 IBLA 305 (Mar. 18, 1982)

An assignee of an oil and gas lease offeror drawn with second or third priority has standing to protest the issuance of a lease to first-priority offeror, as well as standing to appeal from a rejection of such protest.

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

Where the Bureau of Land Management authorized officer issues a decision determining the grazing privileges of two conflicting applicants which is adverse to one of the applicants, and that applicant appeals to an Administrative Law Judge and receives a favorable decision, the failure of the other applicant to participate in the proceedings before the Administrative Law Judge does not foreclose that applicant from appealing that decision to the Board of Land Appeals, as that applicant is a party to a case adversely affected by a decision of an Administrative Law Judge within the meaning of 43 CFR 4.410.

Bureau of Land Management v. Alfredo R. Maez, 67 IBLA 89 (Sept. 13, 1982)

The provisions of 30 U.S.C. §§ 29 and 30 (1976) relating to "adverse claims" refers only to adverse mineral claims, and nothing in these sections purports to limit the rights of third parties to appeal from a denial of a protest of a patent application where they can show a cognizable interest which has been adversely affected.

Where an individual or organization files a protest to a mineral patent application, which protest is denied, and timely appeals from that denial, such individual or organization is "a party to the case" within the meaning of 43 CFR 4.410. In order to maintain the appeal, however, such a party must also show an interest which has been adversely affected by the decision appealed.

Where an individual or organization fails to protest action proposed to be taken by BLM, such an entity has no standing to appeal the denial of a protest filed by some other individual or organization.

In re Pacific Coast Molybdenum Co., 68 IBLA 325 (Nov. 22, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Standing to Appeal--Continued

Where appellant's statement of reasons for appeal from a decision to include certain lands in a wilderness study area fails to assert any right, claim, title or interest in the subject lands, nor any use of them which will be adversely affected, appellant will be considered to lack standing to appeal, and the appeal will be dismissed.

Phelps Dodge Corp. et al., 72 IBLA 226 (Apr. 26, 1983)

Where a protest is filed to a competitive phosphate lease offering, which protest is denied, and a timely appeal is filed by the protestant, the protestant is "a party to the case" within the meaning of 43 CFR 4.410. In order to maintain the appeal, however, such a party must also show an interest which has been adversely affected by the decision appealed.

John D. Archer, 74 IBLA 323 (July 28, 1983)

Standing to appeal is limited to a party to a case adversely affected by a decision of the Bureau of Land Management. An appeal may be dismissed without prejudice as premature where it is filed prior to an adverse adjudication of appellant's rights by BLM.

Cities of Colorado Springs & Aurora, 77 IBLA 395 (Dec. 9, 1983)

Where, in its statement of reasons for appeal, appellant fails to alleye a cognizable interest which has been adversely affected, appellant will be considered to lack standing, and the appeal will be dismissed.

Oregon Natural Resources Council, 78 IBLA 124 (Dec. 27, 1983)

A decision advising applicant of a perceived defect in his application and allowing 30 days to cure the deficiency is interlocutory in nature and, as a general rule, applicant lacks standing to appeal such a decision in the absence of a rejection of his application.

Richard H. Greene, 79 IBLA 234 (Feb. 29, 1984)

Unless a party asserts an "adversely affected" interest, it does not have standing to appeal under 43 CFR 4.410 and its appeal will be dismissed.

Lee Brothers Grading Co., 79 IBLA 330 (Mar. 21, 1984)

An organization appealing a Bureau of Land Management decision will be considered a "party to a case" having standing to appeal an adverse decision of an officer of the Bureau of Land Management where the organization uses the lands in question and actively and extensively participates in the formulation of land use plans for the lands in question.

Desert Survivors, 80 IBLA 111 (Apr. 3, 1984)

RULES OF PRACTICE--Continued

APPEALS--Continued

Standing to Appeal--Continued

Where appellant's statement of reasons for appeal asserts that many of its members live in close proximity to a mine and are adversely affected in their property, aesthetic, and recreational interests as a result of the mine owner's failure to comply with the permitting requirements of the approved Illinois program, appellant has standing to appeal the decision of the Director, OSM, finding that there is no violation by the mine owner.

Citizens for the Preservation of Knox County, 81 IBLA 209 (June 5, 1984)

Where a national conservation organization challenges a Bureau of Land Management determination to proceed with a private exchange, that organization satisfies the requirements of 43 CFR 4.410 by establishing that it is a "party to a case" and that it is adversely affected because its membership uses the public land in question.

National Wildlife Federation, 82 IBLA 303 (Sept. 5, 1984)

A Government motion to dismiss an appeal is denied where the Board determines that it has jurisdiction over an appeal being actively prosecuted by a subcontractor where it finds the prime contractor's sponsorship of the subcontractor's claim is established by the following: (1) The decision from which the appeal was taken was addressed to the prime contractor; (2) the notice of appeal was signed by a representative of the contractor; and (3) the contractor is claiming overhead and profit on the subcontractor's claim.

Appeal of Chiyashi-Gumi, Ltd., IBCA-1785-3-84 (Sept. 25, 1984) 91 I.D. 311

A person who is a party to a case and who has a cognizable interest which has been adversely affected will be considered to have standing to appeal pursuant to 43 CFR 4.410(a). Where the appellant's interest is only that of a deeply concerned citizen, the appeal must be dismissed for lack of standing.

Sharon Long et al., 83 IBLA 304 (Oct. 30, 1984)

The unit operator of a producing unit has standing to appeal the granting of a right-of-way to a third party for the purpose of entering the lease and utilizing a plugged well, drilled by the unit operator, for disposing of salt water produced miles away by strangers to the unit.

Penroc Oil Corp. et al., 84 IBLA 36 (Nov. 27, 1984)

Statement of Reasons

The Government's motion for reconsideration, which contends that the current version of the Limitation of Cost clause does not entitle a contractor to additional funding for a change unless the contracting officer specifically increases the estimated cost, provides no basis for overturning the Board's principal decision allowing excess costs attributable to a constructive change, where the contracting officer was given advance notice that the estimated costs would be exceeded and took no action to advise the contractor that no funding

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

would be provided or to stop the project officer from asking for continued performance of the changed work.

Appeal of Recon Systems, Inc., IBCA-1214-9-78 (Jan. 17, 1980) 87 I.D. 7

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Where appellant's allegations on appeal are immaterial and irrelevant and appellant fails to establish any error in the decision below or any infringement of appellant's rights, the appeal is properly dismissed as lacking in merit.

Margaret Wallace, 49 IBLA 256 (Aug. 18, 1980)

An appeal from a decision declaring mining claims abandoned and void because of failure to meet the recordation requirements of the Federal Land Policy and Management Act of 1976 may be dismissed where the appellant failed to file her statement of reasons or request for a further extension of time to file a statement within time granted by the Board and she does not satisfactorily show why a request was not timely filed, and there is no likelihood she could prevail on the merits of the case in any eventuality.

Elaine Joyce Williamson, 50 IBLA 42 (Sept. 9, 1980)

Under 43 CFR 4.402 and 4.412, an appeal to the Board will be subject to summary dismissal by the Board if a statement of reasons for the appeal is not included in the notice of appeal and is not filed within 30 days after the notice of appeal was filed.

E. M. Hart, 50 IBLA 138 (Sept. 26, 1980)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed.

Glen Gould, 52 IBLA 305 (Feb. 10, 1981)

United States v. William A. Reavely et al., 53 IBLA 320 (Mar. 25, 1981)

Where there is uncertainty regarding title to the oil and gas in an acquired land tract embraced in an oil and gas lease offer, and the evidence provided by the applicant does not provide a sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the BLM. However, if the applicant provides new evidence on appeal tending to show the existence of a Federal interest in the oil and gas in the tract, the case may be remanded for consideration of the new evidence.

Edward C. Shepardson, 53 IBLA 79 (Mar. 2, 1981)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

Where the Bureau of Land Management fails to designate an inventory unit as a Wilderness Study Area (WSA) because, inter alia, it lacks outstanding opportunities for solitude or a primitive and unconfined type of recreation, and thereafter a protest and appeal are filed which contain no affirmative allegations of facts or provide no legal arguments sufficient to compel a reversal, BLM's decision will be affirmed.

Sierra Club, 53 IBLA 159 (Mar. 12, 1981)

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and may be dismissed. However, dismissal is not mandatory and each case will be considered on its own merits.

Geneva Berry et al., 54 IBLA 48 (Apr. 9, 1981)

Virgil V. Peterson, 66 IBLA 156 (Aug. 10, 1982)

Score International, 78 IBLA 142 (Dec. 29, 1983)

An appeal from an appraisal of a communication site right-of-way will not be accorded favorable consideration where it does not show with some particularity adequate reason for appeal and support the allegations with evidence showing error.

Rocky Mountain Natural Gas Co., Inc., 55 IBLA 3 (May 26, 1981)

Where appellant states that he may not be adversely affected by a decision of the Bureau of Land Management and fails to point out affirmatively in his statement of reasons in what respect the decision is in error, he does not meet the requirements of the Department's rules of practice and the appeal must be dismissed.

Hal V. Carlson, Jr., 62 IBLA 305 (Mar. 18, 1982)

The regulations governing procedures before the Board of Land Appeals provide for the filing of a statement of reasons for appeal by appellant and an answer by an adverse party within certain time limits (subject to extension). Proper practice requires that all issues deemed relevant by the parties be briefed at that time because, as a general rule, the Board does not issue interlocutory decisions on issues which are not dispositive of the appeal.

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982) 89 I.D. 496

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the appeal or when he fails to file timely a statement of reasons, and no reason for maintaining the action is apparent.

Irvin Wall, 68 IBLA 308 (Nov. 19, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

An appeal to the Board of Land Appeals will be subject to dismissal in the exercise of the Board's discretion when the appellant fails to file a statement of reasons in support of the appeal within the time permitted by Departmental regulation.

George L. Clay Log et al., 70 IBLA 196 (Jan. 21, 1983)

Where an appeal is dismissed for failure to timely file a statement of reasons in support thereof, and a petition for reconsideration is filed which essentially argues that the failure to timely file the statement of reasons with the Board was due to ignorance, such a petition for reconsideration has not shown extraordinary circumstances as required by 43 CFR 4.21(a) and is properly denied.

Where, during the adjudication of a petition for reconsideration of a dismissal of an appeal for failure to timely file a statement of reasons, a review of the case file discloses the existence of a document, filed after issuance of the adverse decision from which an appeal was taken, which delineates the points in controversy, such a document may be deemed a statement of reasons and the decision dismissing the appeal will be vacated.

Wyoming Oil & Minerals, Inc. (On Reconsideration), 71 IBLA 15 (Feb. 10, 1983)

It is the obligation of the appellant to show error. Therefore, when a statement of reasons does not with some particularity show adequate reasons for appeal and support the allegations with evidence showing error, the appeal cannot be afforded favorable consideration.

United States v. Connor et al., 72 IBLA 254 (Apr. 27, 1983)

Bob G. Howell, 75 IBLA 113 (Aug. 12, 1983)

Failure by appellant to point to some error in a decision or to show that agency action has deprived him of some right subjects his appeal to dismissal.

R. H. Northcutt, 75 IBLA 305 (Aug. 30, 1983)

A decision dismissing the protest of the third-drawn oil and gas lease applicant against the prospective issuance of the lease to either the first- or second-drawn applicants will be affirmed where the statement of reasons for appeal merely repeats the wholly unsubstantiated allegations of the protestant that the others each had made agreements which invested third parties with undisclosed interests in their applications, in violation of regulations.

John W. Childress, 76 IBLA 42 (Sept. 14, 1983)

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file timely a statement of reasons and no reason for maintaining the action is apparent.

Village & City Council of Algonquin, Gay H. Olson, Lawrence Murphy, Sr., 77 IBLA 130 (Nov. 15, 1983)

Edward W. Thorp, 84 IBLA 58 (Nov. 30, 1984)

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

The waiver by an appellant of a specified issue concerning current royalty payments during an appeal before the Geological Survey under procedural rules governing such appeals will be enforced upon appeal to the Board of Land Appeals.

Mobil Oil Corp., 78 IBLA 107 (Dec. 20, 1983)

In a simultaneous oil and gas lease drawing, the first-qualified applicant drawn with first priority is entitled to receive the lease. An appeal is properly dismissed where the appellant fails to point out the grounds on which the decision appealed from is in error, and the allegations in his statement of reasons are irrelevant and immaterial.

Chickaday Oil & Gas, Inc., 82 IBLA 59 (July 11, 1984)

An appeal from a decision declaring mining claims null and void because they were located on land withdrawn from mineral entry may be dismissed where the appellants failed to file a statement of reasons, and there is no likelihood they could prevail on the merits of the case in any eventuality.

John F. Malone, Vicki L. Malone, 84 IBLA 5 (Nov. 26, 1984)

Timely Filing

The Board of Land Appeals will reverse a decision of the Geological Survey dismissing an appeal for failure to timely file an appeal within the time required by 30 CFR Part 290, from letter decisions assessing compensatory royalty in which no right of appeal was indicated, where appellant responded to the letter decisions and filed a timely notice of appeal to a subsequent decision issued by Geological Survey in which appellant was notified of its right to appeal.

Ipexco Oil Co., 45 IBLA 377 (Feb. 13, 1980)

Timely filing of a notice of appeal with the Board of Land Appeals is jurisdictional. If appeal from a decision of a Bureau of Land Management official is untimely, the Board does not have jurisdiction to consider it and that official must close the case pursuant to 43 CFR 4.411(b). When an appeal is properly filed, the BLM official loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal until jurisdiction over it is restored by Board action disposing of the appeal. Where BLM closes a case because appeal was untimely when in fact it was timely, the Board's jurisdiction will have been triggered at the time of filing of the notice of appeal. BLM's action in closing the case is a nullity and does not affect the appellant's rights before the Board.

State of Alaska v. Earl G. Patterson, 46 IBLA 56 (Feb. 22, 1980)

An appeal to the Director, Geological Survey, is properly dismissed where the appellant failed to file a timely notice of appeal in the proper office within 30 days from service of the decision appealed from in

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

order to comply with the requirements of the applicable regulations in 30 CFR 290.

Union Oil Co. of California, 48 IBLA 145 (June 9, 1980)

Texaco, Inc., 51 IBLA 243 (Dec. 15, 1980)

Notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Ilean Landis, 49 IBLA 59 (July 21, 1980)

Galen H. Brazington, 59 IBLA 255 (Oct. 29, 1981)

Mazuela Ass'n, 60 IBLA 386 (Dec. 23, 1981)

Russell L. Osborn, 62 IBLA 104 (Mar. 1, 1982)

B. W. Dodds, 62 IBLA 241 (Mar. 11, 1982)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

Ray Mallory, 68 IBLA 189 (Nov. 9, 1982)

Harold H. Ruppert, 69 IBLA 82 (Nov. 30, 1982)

Ina May Collier Johnson et al., 72 IBLA 26 (Apr. 5, 1983)

Jerald K. Russell, Patricia K. Russell, 72 IBLA 28 (Apr. 5, 1983)

James H. Chudnow, Laurent A. Geisbert, 72 IBLA 60 (Apr. 12, 1983)

Gary L. Suhrie, 75 IBLA 9 (Aug. 2, 1983)

Lloyd M. Baldwin, 75 IBLA 251 (Aug. 25, 1983)

Red Rock Golf & Recreational Ass'n, Inc., 77 IBLA 87 (Nov. 9, 1983)

George Schultz et al., 81 IBLA 29 (May 17, 1984)

The provisions of 43 CFR 4.411, requiring that a notice of appeal be filed within 30 days of the decision appealed from, are mandatory, inasmuch as they determine the jurisdiction of the Board to hear an appeal, and are not subject to waiver. An appeal which was not filed timely must be dismissed.

DNA--People's Legal Services, 49 IBLA 307 (Aug. 20, 1980)

An appeal from a decision declaring mining claims abandoned and void because of failure to meet the recordation requirements of the Federal Land Policy and Management Act of 1976 may be dismissed where the appellant failed to file her statement of reasons or request for a further extension of time to file a statement within time granted by the Board and she does not satisfactorily show why a request was not timely filed, and there is no likelihood she could prevail on the merits of the case in any eventuality.

Eloise Joyce Williamson, 50 IBLA 42 (Sept. 9, 1980)

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

There is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties. Where the record reveals no conclusive evidence that an appeal was filed timely, but the responsible official has referenced in correspondence that the appeal was timely, the presumption of administrative regularity will attach and the appeal considered as timely filed.

Frederick H. Larson v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

Where Geological Survey issues an order directing appellant to pay back royalties attributable to an offshore oil and gas lease, and thereafter schedules a conference with appellant to discuss its order, a notice of appeal filed within 30 days of such conference will be regarded as timely.

Shell Oil Co., 52 IBLA 74 (Jan. 9, 1981)

Where a person moves from his record address and does not apprise BLM of a forwarding address, and a copy of a BLM decision affecting him is mailed to this last address of record and returned by the postal service as undeliverable, the decision is considered to have been "served" on him as of the date it is returned to BLM. 43 CFR 4.401(c). Accordingly, the deadline for filing a notice of appeal is 30 days after the date the decision is returned to BLM, and an appeal filed after that date is properly dismissed as untimely.

Reg Whitson, 55 IBLA 5 (May 26, 1981)

The provisions of 43 CFR 4.411, requiring that a notice of appeal be filed within 30 days of service of the decision appealed from, are mandatory, inasmuch as they determine the jurisdiction of the Board to hear an appeal, and are not subject to waiver. An appeal which was not filed timely must be dismissed.

Art Fields, Russel Adams, 57 IBLA 142 (Aug. 25, 1981)

Lynn Dahle, 58 IBLA 73 (Sept. 22, 1981)

The 30-day period within which an appeal from a decision classifying lands as being within a KGS must be initiated commences upon service on the lessee (or co-lessee) of record of a copy of the decision. Both the lessee and his agent, including the holder of operating rights under the lease, are subject to the 30-day deadline.

Robert L. Wright, Shell Oil Co., 60 IBLA 142 (Nov. 24, 1981)

Where, in a decision published in the Federal Register designating wilderness study areas pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the Bureau of Land Management grants interested parties 30 days to initiate a protest challenging the decision, the 30-day appeal period as to that decision will commence upon expiration of the 30 days accorded for filing protests. An appeal filed after the time period allowed must be dismissed.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

An appeal to the Director, Geological Survey, is properly dismissed where the appellant failed to file timely a notice of appeal in the proper office within 30 days from service of the decision appealed from in accordance with 30 CFR 290.3(a).

Pennzoil Oil and Gas, Inc., Pennzoil Producing Co., 61 IBLA 308 (Feb. 4, 1982)

Where the Geological Survey informs an oil and gas lessee that completion of a well on an adjacent tract of land has resulted in substantial drainage from the Government's land and directs the lessee to either complete an offset well or tender compensatory royalties, the lessee may attempt to show that the drainage is not substantial or that a prudent operator would not attempt to complete a paying well. Where, however, the lessee does not challenge the factual predicates of the Survey demand within a reasonable time after he has been informed of them, the right to subsequently contravene the factual determinations of Survey on these points is waived.

Rola Grace Plasynski, 63 IBLA 240 (Apr. 19, 1982) 89 I.D. 208

The Board of Land Appeals will reverse a determination of the Geological Survey dismissing in part an appeal for failure to file timely an appeal within the time required by 30 CFR Part 290, from a letter denying refunds of alleged royalty overpayments in which no right of appeal was indicated, and which could not fairly be held to have put appellant on notice that a final determination with right of appeal was intended.

Mobil Oil Corp., 65 IBLA 295 (July 13, 1982)

A Government motion to dismiss an appeal as untimely filed under the Contract Disputes Act of 1978 is denied where the Board finds that the Act does not deprive the contracting officer of authority he had prior to the passage of the Act to reconsider a final decision after it is issued and prior to the expiration of the appeal period and that the available evidence indicates that the actions of the contracting officer may have contributed to the contractor's failure to initiate an appeal to the Board at an earlier time.

Appeal of Riverside General Construction Co., Inc., IBCA-1003-7-82 (Nov. 12, 1982) 89 I.D. 583

Notice of appeal from the dismissal of a protest filed by the State of Alaska pursuant to sec. 905(a)(5)(B) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. § 1634(a)(5)(B) (Supp. IV 1980), must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

State of Alaska, 70 IBLA 369 (Feb. 3, 1983)

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

An appellant's statement as to when the decision being appealed was received will be accepted in the absence of any proof in the record that the decision was received earlier.

Lillian Lord, a.k.a. Lillian George v. Comm'r of Indian Affairs, 11 IBLA 51 (Feb. 9, 1983)

An appeal under the Contract Disputes Act filed more than 90 days after a contractor's receipt of a final decision was dismissed with prejudice as untimely.

Appeal of B & B Contractors, IBCA 1646-1-83 (May 13, 1983) 90 I.D. 226

Regulation 43 CFR 4.401(a) authorizes a 10-day grace period for the filing of documents required under 43 CFR, Part 4, Subpart E, if the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Where the final day of the grace period is a Saturday and the following Monday is a Federal holiday, a document filed on Tuesday, if timely transmitted to the proper office, meets the requirements of the regulation.

Ida Mae Ross, Leo G. Comer, 73 IBLA 97 (May 23, 1983)

An appeal under the Contract Disputes Act filed more than 90 days after a contractor's receipt of a contracting officer's final decision is dismissed as untimely.

Appeal of Tibbals Construction, Inc., IBCA-1618-9-82 (Nov. 4, 1983)

Timely filing of an appeal under the Contract Disputes Act of 1978 is jurisdictional and an appeal filed after the expiration of the 90-day period allowed by the Act is dismissed since the Board has no jurisdiction to consider an untimely filed appeal.

Appeal of Denver Fuel Co., Inc., IBCA-1725-9-83 (Nov. 14, 1983)

Appeal of Nicholson Construction Co., IBCA-1711-8-83 (Nov. 30, 1983) 90 I.D. 494

Appeal of Columbia Engineering Corp., IBCA-1776-2-84 (Feb. 29, 1984)

The waiver by an appellant of a specified issue concerning current royalty payments during an appeal before the Geological Survey under procedural rules governing such appeals will be enforced upon appeal to the Board of Land Appeals.

Mobil Oil Corp., 78 IBLA 107 (Dec. 20, 1983)

Notice of appeal must be filed within 30 days from the date that the party appealing receives the decision from which the appeal is taken. A timely filing of the notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal.

Score International, 78 IBLA 142 (Dec. 29, 1983)

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

The date of receipt shown on a Postal Service return receipt card will, in the absence of clear proof to the contrary, be presumed to be the date of receipt, and consequently, will control the due date for a notice of appeal.

The Board of Indian Appeals does not have the authority to extend the period for filing a notice of appeal or to waive a properly promulgated Departmental regulation.

Oliver Redfield v. Deputy Ass't Secretary--Indian Affairs (Operations), 12 IBIA 190 (Mar. 2, 1984)

The conclusion of proceedings under the Freedom of Information Act, as amended, 5 U.S.C. § 552 (1982), to acquire information related to the rationale for the production royalty set in a competitive coal lease does not constitute a final decision by BLM subject to an appeal to the Board, challenging the royalty. The appellant only had a right to protest the royalty set in the notice of the lease sale and to appeal from any denial of that protest.

Coastal States Energy Co., 80 IBLA 274 (May 4, 1984)

With respect to a known party claiming a property interest adversely affected by a decision to issue conveyance under the Alaska Native Claims Settlement Act, both the regulations at 43 CFR 2650.7 and the requirements of due process mandate an effort to serve notice of the decision, coupled with a 30-day appeal period from date of service. Where such a party files a notice of appeal within 30 days of service of the decision, but not within 30 days of publication of that decision in the Federal Register, it is error for the Bureau of Land Management to dismiss the appeal as untimely.

Goodnews Bay Mining Co. et al., 81 IBLA 1 (May 14, 1984)

A notice of appeal must be filed within 30 days after the person taking the appeal is served with the decision from which the appeal is taken. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

Donna J. Waidtlow, 82 IBLA 247 (Aug. 28, 1984)

Where a coal lessee is informed that his lease is being amended to add additional land thereto, and is expressly advised that the additional land will be considered to have been included in the lease as of the date of issuance of the original lease, a lessee who objects to this must file an appeal within 30 days after being notified or is thereafter barred from litigating the propriety of the amendment within the Department.

Mid-Continent Coal & Coke Co., 83 IBLA 56 (Sept. 25, 1984)

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

Where the record in a case establishes that the person authorized by a Native group to act as its agent had actual notice of a certificate of ineligibility for such group, and that the notice of appeal was not transmitted within 30 days of such notice, the notice of appeal must be dismissed. The timely filing of a notice of appeal is jurisdictional, and the Board has no authority to waive a jurisdictional requirement.

Nabesna Native Corp., Inc. (On Reconsideration), 83 IBLA 82 (Sept. 28, 1984)

A motion to dismiss an appeal on the grounds that the appellant failed to file a timely notice of appeal within 30 days of actual notice of the BLM decision will be denied where there is no evidence in the record of when the appellant had such notice.

Sharon Long et al., 83 IBLA 304 (Oct. 30, 1984)

Under the express terms of 43 CFR 4.411(a), a person who wishes to appeal a decision to the Board of Land Appeals must file his notice of appeal in the office of the officer who made the decision (not the Board). This requirement is strictly enforced. Thus, where a notice of appeal from a decision by a state office of BLM is filed only with the Board of Land Appeals and the Field Solicitor's Office, not with BLM, an appeal is not initiated, and, if no other notice is timely filed in the correct office, the appeal must be dismissed.

San Juan Coal Co., 83 IBLA 379 (Nov. 16, 1984)

Under 43 CFR 4.1271, notice of appeal must be filed on or before 30 days from date of receipt of the order or decision sought to be reviewed. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

William M. Johnson v. Office of Surface Mining Reclamation & Enforcement, 84 IBLA 169 (Dec. 19, 1984)

EVIDENCE

Where an Administrative Law Judge found that there was sufficient evidence of the reliability of the assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard G. Clemans et al., 45 IBLA 64 (Jan. 17, 1980)

The Board of Land Appeals is obliged to consider everything contained in the record in determining all matters relevant to the disposition of an appeal.

M. S. Hack, 45 IBLA 99 (Jan. 17, 1980)

RULES OF PRACTICE--Continued

EVIDENCE--Continued

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered. If the Government fails to make a sufficient prima facie case against a mining claim, the claimant may move to have the contest dismissed and rest his case. However, when the claimant goes forward with his evidence, the Administrative Law Judge must consider the evidence presented and weigh it in accordance with its probative value. In choosing to rebut the case, the claimant bears the burden of doing so by a preponderance of the evidence and bears the risk of nonpersuasion if he fails.

United States v. Clare Williamson and Lapine Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

Where, in the hearing of a mining claim contest in which the presence of a mineral deposit within the limits of a claim is at issue and the claim is accessible, it is established that the Government mineral examiner made no professional examination of certain of the contested claims, the testimony of the Government mineral examiner, without more, is insufficient to establish a prima facie case of invalidity.

United States v. Gerald Hess, 46 IBLA 1 (Feb. 13, 1980)

To warrant a further hearing in a mining claim contest, based upon asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Evidence of a past discovery is not sufficient by itself to indicate that a different result might now be obtained.

United States v. Mary E. Gray, 50 IBLA 209 (Sept. 30, 1980)

The Board refuses to draw inferences adverse to the Government by reason of its failure to have its project engineer testify in important areas and by reason of its failure to call as witnesses two of its employees who attended the hearing where the Board finds that the action of the Government is consistent with the principal defenses made to the differing site conditions claims asserted and where under long-established Board practice, the appellant could have called any or all of the Government's employees concerned as witnesses without making them appellant's witnesses for the purposes of impeachment.

In a case involving the assertion of a differing site conditions claim under a contract for the construction of concrete lined tunnels for the Navajo Indian Irrigation Project, the Board follows the Court of Claims in holding that it is not necessary for the "indications" in the contract to be explicit or specific, it being sufficient for there to be an indication on the face of the contract documents causing a bidder reasonably to expect that there were no "subsurface or latent" physical conditions at the site differing materially from those indicated in the contract.

Outlining the treatment to be accorded voluminous exhibits, the Board states that in the event counsel for either side considers that information contained in a voluminous exhibit either proves or may be of material assistance in proving a particular point, it is incumbent upon counsel to specifically cite the portions of the voluminous exhibit relied upon by page number, by date, or by other appropriate reference. Absent specific citations to a voluminous exhibit or to an appropriate summary thereof in evidence, the Board

RULES OF PRACTICE--Continued

EVIDENCE--Continued

will not undertake to determine the content of this type of exhibit in particular areas before reaching its decision.

The Board sustains the action of the hearing member in refusing to receive in evidence documents not identified by a witness through whose testimony their admission is being sought.

The Board seriously questions the wisdom of the Government in not arranging for the audit of multi-million dollar claims apparently advanced in good faith by reputable contractors, noting that securing audits will not only facilitate the examination of witnesses with respect to quantum but are also likely to prove to be useful in establishing a basis for agreeing upon stipulations narrowing the issues in quantum areas or affording a basis for arriving at a settlement prior to the hearing, while it is in progress or after it has been concluded.

Appeal of Fluor Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981) 88 I.D. 41

Where there is uncertainty regarding title to the oil and gas in an acquired land tract embraced in an oil and gas lease offer, and the evidence provided by the applicant does not provide a sufficient basis for a legal opinion as to the status of title, the offer is properly rejected by the BLM. However, if the applicant provides new evidence on appeal tending to show the existence of a Federal interest in the oil and gas in the tract, the case may be remanded for consideration of the new evidence.

Edward C. Shepardson, 53 IBLA 79 (Mar. 2, 1981)

Assay reports have limited probative value concerning the existence of a valuable mineral deposit on a mining claim when they are not supported by sufficient evidence to show how and where the samples were taken and how the samples were treated.

United States v. William J. Smith, Sr., et al., 54 IBLA 12 (Apr. 6, 1981)

To warrant a further hearing in a mining claim contest based upon an asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Vague and unsupported assertions of mineralization do not establish equitable justification for reopening the hearing.

United States v. Armin Speckert, 55 IBLA 340 (June 26, 1981)

To warrant a further hearing in a mining claim contest based upon asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Evidence of a past discovery is not sufficient by itself to warrant a further hearing.

United States v. John Burt et al., 59 IBLA 326 (Nov. 5, 1981)

The presumption of regularity supports the acts of public officers and, in the absence of clear evidence to the contrary, they are presumed to have properly discharged their official duties.

Don Cook, 60 IBLA 255 (Dec. 4, 1981)

RULES OF PRACTICE--Continued

EVIDENCE--Continued

To warrant a further hearing in a mining claim contest based upon an asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Vague and unsupported assertions of mineralization do not establish a basis for reopening the hearing. Because under 30 U.S.C. § 23 (1976) a mining claimant must make a discovery of a valuable mineral deposit prior to the location of the claim, it is presumed that when the validity of his claim is challenged, the mining claimant need only come forward with the evidence of discovery which he has already made.

United States v. Gary J. Murdock, 65 IBLA 239 (July 9, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, affidavits which serve only to declare the affiants' assumption, surmise, or deduction that such documents must have been included in an envelope received by BLM are inadequate to overcome the presumption where there is no direct evidence to establish that the documents were actually transmitted by the sender and BLM personnel disclaim receiving them.

Where, in the course of an appeal from the rejection of an oil and gas lease application for other reasons, the pleadings and evidence raise for the first time the question of the existence of an outstanding undisclosed interest in the application, the Board will not decide that issue, but in no event may a lease be granted the appellant unless and until the question is ultimately resolved in appellant's favor.

Lynda Bailey Doyle, 65 IBLA 340 (July 16, 1982)

An appellant will be held to have failed to sustain its burden of proof and the appeal will be denied where appellant's case is submitted on the record without a hearing and the record consists only of contract documents, correspondence, and pleadings alleging that the Contracting Officer's decision is erroneous. Disputed allegations do not constitute evidence and cannot be accepted as proof of facts.

Appeal of E. H. White & Co., IBCA-1216-9-78 (July 19, 1982)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, the presumption is not overcome merely by the submission of an affidavit that the document was mailed. Rather, BLM's denial of its receipt can be rebutted only by substantial countervailing evidence, as an instrument is not "filed" by depositing it in the mail, but only when it is delivered to and received by the proper BLM office.

Glenn W. Gallagher, 66 IBLA 49 (July 27, 1982)

A claim of constructive change is denied where the appeal is submitted for decision on the record without a hearing and the appellant's case consists entirely of allegations contained in its claim letter or complaint. Allegations do not constitute proof of essential facts which are disputed.

Appeal of Western States Construction Co., Inc., IBCA-1466-6-81 (Sept. 21, 1982)

RULES OF PRACTICE--Continued

EVIDENCE--Continued

A contractor has the burden of producing evidence showing that he is entitled to relief on the basis of claims made, and the appeal will be denied where the record does not support appellant's contentions and appellant fails to appear at the hearing scheduled at its request and adduces no evidence. Disputed allegations do not constitute evidence and cannot be accepted as proof of facts.

Appeal of Dexter Cedar, IBCA-1535-11-81 (Sept. 30, 1982)

Where an Administrative Law Judge found that there was sufficient evidence of the reliability or assay certificates to justify the chief expert witness' acceptance and consideration thereof in forming his opinion, as is the recognized custom among geologists and mining engineers, no error was committed in overruling objections to admission in evidence of the assay certificates. Material, relevant hearsay is admissible in administrative proceedings.

United States v. Richard S. Arbo, 70 IBLA 244 (Jan. 25, 1983)

It is the obligation of the appellant to show error. Therefore, when a statement of reasons does not with some particularity show adequate reasons for appeal and support the allegations with evidence showing error, the appeal cannot be afforded favorable consideration.

United States v. Connor et al., 72 IBLA 254 (Apr. 27, 1983)

Bob G. Howell, 75 IBLA 113 (Aug. 12, 1983)

The record established at the hearing in a mining claim contest is the sole basis for determining the validity of a claim.

United States v. Lee H. Rice, Goldie E. Rice, 73 IBLA 128 (May 23, 1983)

Where the lessee under a noncompetitive oil and gas lease, which is canceled to the extent it includes land which had been determined to be within a known geologic structure prior to issuance of the lease, submits probative evidence contravening the determination by the Geological Survey, a hearing will be ordered so that a complete record may be developed. Only evidence pertaining to the period prior to lease issuance will be admissible.

Celeste C. Grynberg, 74 IBLA 180 (July 18, 1983)

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, the presumption is not overcome merely by the submission of an affidavit that the document was mailed. Rather, BLM's denial of its receipt can be rebutted only by substantial countervailing evidence, as an instrument is not "filed" by depositing it in the mail, but only when it is delivered to and received by the proper BLM office.

Mackay Bar Corp., 75 IBLA 57 (Aug. 5, 1983)

Thomas Johnson, 77 IBLA 20 (Oct. 31, 1983)

RULES OF PRACTICE--Continued

EVIDENCE--Continued

Where the Board found that the Government failed to produce documentation for its claimed actual costs resulting from the contractor's failure to complete the contract, it held that the general statements in the testimony of the Government witnesses because nothing more than reassertions of the disputed allegations of its claim and insufficient to sustain the burden of proof.

Appeal of Charley O. Estes, d.b.a. Phoenix Reforestation Co., IBCA-1198-7-78 (Aug. 11, 1983) 90 I.D. 366

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), provides that owners of an unpatented lode or placer claim located prior to Oct. 21, 1976, shall file in the office of the Bureau of Land Management a copy of the official record of the notice of location or certificate of location. A certificate which purports to be a certificate of location might be a certificate of amendment or relocation. However, the document filed with the Bureau of Land Management is presumed to be the certificate of location. If a claimant desires to demonstrate otherwise, it is the claimant's burden to come forward with proof that the document is something other than that which it purports to be.

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

Where an oil and gas lease offer is rejected based on the conclusion that the land sought evolved from the bed of the Yellowstone River subsequent to North Dakota-Montana statehood in 1889 and, therefore, is state land, and, on appeal, the offeror contends that the land is public land and submits evidence which tends to show the existence of islands in the river prior to statehood that the offeror asserts persisted and, through accretion, merged with the river bank, the decision rejecting the offer may be set aside and the case remanded for consideration of the new evidence.

David A. Provinse, 78 IBLA 85 (Dec. 16, 1983)

Where an issue in an appeal involving a simultaneous oil and gas lease application is the existence or nonexistence of materials defining the relationship between the priority applicant and its filing service, the applicant, as the party with peculiar means of knowledge enabling it to prove the nonexistence of such materials, has the burden of doing so. Failure to do so may give rise to an inference that the applicant's evidence is unfavorable.

Hal Carlson, Jr., 78 IBLA 333 (Jan. 24, 1984)

Where an issue in an appeal involving a simultaneous oil and gas lease application is the existence or nonexistence of an agreement between the lessee as priority applicant and her assignee which would have resulted in a violation of 43 CFR 3102.2-6(a) and (b), the lessee is the party with peculiar means and knowledge enabling her to show the nonexistence of such agreement. Failure or refusal to do so may give rise to an inference that the lessee's evidence is unfavorable.

Patricia C. Alker, 79 IBLA 123 (Feb. 22, 1984)

RULES OF PRACTICE--Continued

EVIDENCE--Continued

A prima facie case is made where sufficient evidence is presented to establish the essential facts. Prima facie evidence is that evidence that will justify a finding in favor of the one presenting the evidence. It is not necessary to present evidence that is compelling, and the determination must be made on a case-by-case basis. An important factor in making a determination regarding the amount of evidence required for a prima facie case is the availability of the evidence and the difficulty which may reasonably be encountered in obtaining the evidence.

S & M Coal Co. & Jewell Smokeless Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 79 IBLA 350 91 I.D. 159 (Mar. 22, 1984)

Where a simultaneous oil and gas lease applicant, whose application has been rejected because it covers land within a known geologic structure, submits probative evidence contravening the determination that the land is presumptively productive of oil and gas, which is not fully rebutted, but where, nonetheless, questions of fact remain unresolved by the record, a hearing is appropriate to establish a sufficient record to permit decision.

Lloyd Chemical Sales, Inc., 82 IBLA 182 (Aug. 13, 1984)

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by the contestees shows that there has not been a discovery, it may be used in reaching a decision that the claim is invalid because of a lack of discovery, regardless of any defects in the Government's prima facie case.

United States v. Oscar E. & Gary K. Anderson, 83 IBLA 170 (Oct. 15, 1984)

The failure of an expert witness, such as a Government mineral examiner, to remain current with all the literature concerning practices in his field may affect the weight but not the admissibility of his testimony. The trier of fact who presides at a hearing has an opportunity to observe witnesses and is in the best position to judge the weight to be accorded the testimony of the expert.

United States v. Marvin C. Ramsey et al., 84 IBLA 66 (Nov. 30, 1984)

GOVERNMENT CONTESTS

Where a mining claim contestee fails to appear at a contest hearing and merely sends a message stating that he will not appear, without stating the reasons for his absence, a subsequent motion to reschedule the hearing and reopen the record is properly denied, as the regulations provide that a postponement may be granted only pursuant to a request made no later than the hearing date and stating in detail the reasons why a postponement is necessary.

The asserted inability of a contestee to drive an automobile due to his taking medication is not an extreme emergency which justifies beyond question the granting of a postponement of the hearing where it is not impossible to get to a hearing site by public transportation. Nor is restricted mobility due to arthritis justification for a postponement where the record shows that it is an ongoing condition which

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

could have been anticipated, and that transportation to the hearing site could have been arranged by exercise of proper diligence.

Where a party fails to appear or participate in a hearing as scheduled even though no order postponing the hearing has been issued, the merits of the case may be reached and decided on the basis of the record as completed at the hearing, despite the absence of evidence in support of the party's case.

New evidence offered on appeal after an initial decision is rendered by an Administrative Law Judge may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. Richard H. Franklin, 45 IBLA 54 (Jan. 14, 1980)

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered. If the Government fails to make a sufficient prima facie case against a mining claim, the claimant may move to have the contest dismissed and rest his case. However, when the claimant goes forward with his evidence, the Administrative Law Judge must consider the evidence presented and weigh it in accordance with its probative value. In choosing to rebut the case, the claimant bears the burden of doing so by a preponderance of the evidence and bears the risk of nonpersuasion if he fails.

In a mining contest, a matter not charged in the complaint cannot be used as a ground to invalidate a claim, unless it has been raised at the hearing and the contestee has not objected.

United States v. Clare Williamson and Lapine Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, if all else be regular.

State of Alaska v. Earl G. Patterson, 46 IBLA 56 (Feb. 22, 1980)

State of Alaska v. Joan M. Newhall, 47 IBLA 85 (Apr. 21, 1980)

State of Alaska v. Moses Chythlook, 47 IBLA 249 (May 13, 1980)

State of Alaska, 48 IBLA 229 (June 17, 1980)

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

Where a Government contest complaint against a mining claim contains charges which, if proved, would render the claim invalid, and the contestee fails to file an answer to the complaint in accordance with Departmental regulations, the allegations of the complaint will be taken as admitted by the contestee, and the claim is properly declared null and void. The Secretary is without authority to waive the regulations to permit the late filing of an answer.

United States v. Dan Seslinger, 46 IBLA 76 (Feb. 22, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from an interlocutory decision which authorizes the State to initiate private contest proceedings to prove lack of qualification on the part of the Native. Rather, it may initiate the private contest within the time period prescribed, or it may appeal the decision of BLM, after it becomes final, to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, all else being regular.

State of Alaska v. Elsie John, 46 IBLA 137 (Mar. 19, 1980)

State of Alaska v. Daniel Jimmie, Bertha A. Williams, 48 IBLA 370 (July 11, 1980)

State of Alaska v. Cora John Smith, 50 IBLA 6 (Sept. 5, 1980)

Where Bureau of Land Management determines that an application for a Native allotment should be rejected for failure to establish use and occupancy of the land, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Estate of Guy C. Groat, Jr., Violet Boehl, 46 IBLA 165 (Mar. 21, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to the Bureau of Land Management that the Native applicant has met the requirements for patent, upon notification to the State, it has an election. The State may initiate a private contest proceeding during the time prescribed to prove lack of qualification of the Native, or the State may await final decision from BLM and then appeal to this Board.

State of Alaska v. Dora David and Cathy Dick, 46 IBLA 177 (Mar. 21, 1980)

Where Native allotment applicants who were 8 years and older at the date land was segregated from entry assert independent use and occupancy of the land then, the Bureau of Land Management should contest their applications, affording them notice and an opportunity for a hearing to prove the adequacy and independence of

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

their use and occupancy, rather than reject the applications without a hearing simply because of the applicant's age on the segregative date.

William Bouwens et al., 46 IBLA 366 (Apr. 8, 1980)

A Native allotment applicant who is a minor is not precluded from establishing use and occupancy of the land applied for. However, such use and occupancy must be achieved as an independent citizen in his own right and must be potentially exclusive. The question of a 14-year old's independent use and occupancy is best addressed at a contest proceeding.

Eleanor H. Wood, 46 IBLA 373 (Apr. 8, 1980)

Failure to file a timely answer to a mining claim contest complaint will result in the charges in the complaint being taken as admitted and the case being decided without a hearing.

United States v. William R. Soren, 47 IBLA 226 (May 13, 1980)

Where Bureau of Land Management determines that an application for a Native allotment is invalid because the facts are not as stated in the application, Bureau of Land Management should initiate a contest proceeding pursuant to 43 CFR 4.451 to 4.452-9.

Evan Chukwak, 47 IBLA 241 (May 13, 1980)

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

United States v. Gerlew C. Hooker et al., 48 IBLA 22 (May 27, 1980)

The assertion that annual assessment work has not been performed is the assertion of a negative fact. If an examination of the mining claims and the nearby lands does not reveal the accomplishment of the required work, and there is no record of any such work having been performed, then evidence to this effect would be sufficient to establish a prima facie case. It would then devolve upon the claimant to show by a preponderance of the countervailing evidence that he has substantially complied with the statute.

In a Government contest proceeding to determine the validity of a mining claim, the claimant is always the proponent of the rule or order, always the one claiming to have earned the benefit of the mining laws through his compliance therewith. Regardless of whether the issue on which the validity of the claim rests is discovery, mode of location, or performance of assessment work, the relative position and obligation of the contestant and the contestee remain the same.

Where the Government contests the validity of a mining claim for nonperformance of annual assessment work, there is nothing inherent or implied in that action which requires a conclusion that the claim is valid in all other respects, nor may the bringing of such an action be treated as tantamount to an admission by the

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

Government that "property rights in the claim have been established by the making of a valid location."

United States v. Catlin Bohne et al., United States v. Exxon Corp., et al., United States v. Adabelle Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 248

The motivation of any Government agency in initiating a contest against mining claims is irrelevant. The fact that such contest challenges the validity of certain mining claims and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

United States v. R. H. MacLaughlin, Christine MacLaughlin, 50 IBLA 176 (Sept. 30, 1980)

The procedure followed by the Department of the Interior in the initiation of mining contest cases is in compliance with the due process clause of the United States Constitution and the Administrative Procedure Act, 5 U.S.C. § 551 (1976).

United States v. Mary E. Gray, 50 IBLA 209 (Sept. 30, 1980)

The motivation of any Government agency in initiating a contest against mining claims is irrelevant. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

United States v. Leon R. Whitney, Cesar T. Hernandez, 51 IBLA 73 (Oct. 31, 1980)

Where a Government contest complaint, when filed and received by mineral claimants, correctly identifies all claimants as of that time, the substitution or addition of subsequent transferees is the obligation of those who have acquired such an interest and their failure to so move will not vitiate the effectiveness of an adjudication of the validity of a mining claim.

In order to sustain a charge that land embraced within a mining claim is not held in good faith for mining purposes the evidence relating to the mineral claimant's lack of good faith must be clear.

United States v. Virgil Prowell and Melinda Prowell, 52 IBLA 256 (Feb. 6, 1981)

A sufficient prima facie case by the Government does not require positive proof that there has been no discovery made or that the mining claim is nonmineral in character. Upon the Government's presentation of a prima facie case, the burden shifts to the claimant to prove by a preponderance of the evidence that he indeed has effected a discovery of a valuable mineral deposit within the limits of the claim.

United States v. Graham R. Combs, 53 IBLA 5 (Feb. 26, 1981)

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

The provisions of 25 U.S.C. § 194 (1976) relating to the placing of the burden of proof do not apply where the Government contests the qualifications of an allotment applicant. An allotment applicant in such a situation is the proponent of the rule and must show his or her entitlement to the land sought.

United States v. Donald E. Flynn and Heirs of Henry Crock (Deceased), 53 IBLA 208 (Mar. 18, 1981)
88 I.D. 373

In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the case on behalf of his client, and service of any document relating to the proceeding shall be made upon such attorney in addition to any other service specifically required by law or by rule, order, or regulation. 43 CFR 4.22(b).

Where a party fails to appear or participate in a hearing as scheduled even though no order postponing the hearing has been issued, the merits of the case may be reached and decided on the basis of the record completed at the hearing, despite the absence of evidence in support of the party's case.

United States v. Claude T. and Sarah E. Orme, 57 IBLA 373 (Sept. 8, 1981)

Absent a patent application, the dismissal of a contest complaint by an Administrative Law Judge does not establish the validity of the claim, but merely establishes that, on the issues raised by the evidence, the contestee has preponderated. Therefore, there is no requirement, beyond preponderation as to the issues raised by the evidence, that a mining claimant affirmatively establish the validity of a claim.

Absent a patent application, in a mining contest hearing where the Government's evidence of lack of discovery relates only to insufficient quality and quantity of mineralization and the mining claimant produces evidence sufficient to preponderate on those issues, the contest complaint is properly dismissed.

United States v. Malin M. Lewis, 58 IBLA 282 (Oct. 8, 1981)

Failure to obtain counsel at a hearing into the validity of a mining claim will afford the mining claimant no greater rights on appeal than if he had obtained counsel.

United States v. John Burt et al., 59 IBLA 326 (Nov. 5, 1981)

A contestee in Government contests, challenging the validity of his mining claim and millsite, must file answers to the complaints within 30 days of service, failing which BLM properly takes the truth of the allegation in the complaints as admitted without a hearing.

New evidence offered on appeal after BLM has rendered a determination that a mining claim is null and void, following the contestee's failure to answer the contest complaint, may be considered by the Board only to determine if BLM's ruling is so patently erroneous that there should be further inquiry into the facts. Appellant's unsupported suggestion that there might be rich ore on the claim does not justify further inquiry.

United States v. Anton V. Evalt, 62 IBLA 116 (Mar. 4, 1982)

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

In a mining contest, a matter not charged in the complaint cannot be used as a ground to invalidate a claim, unless it has been raised at the hearing and the contestee has not objected.

United States v. Robert R. Lara, 67 IBLA 48 (Sept. 9, 1982)

In an oil shale mining claim contest, the Government bears only the burden of going forward with sufficient evidence to establish a prima facie case of invalidity, and the burden then shifts to the claimant to overcome this showing by a preponderance of the evidence. However, since abandonment and lack of good faith are questions of intent, the Government bears the ultimate burden of proving these charges.

Where evidence creates only inferences of lack of good faith in the location and holding of mining claims and fails to show clearly that these claims were abandoned, these charges are not sustained.

United States v. Weber Oil Co., et al., 68 IBLA 37 (Oct. 21, 1982)
89 I.D. 538

Where the owner of an interest in a mining claim dies prior to the filing of a contest complaint against the claim, service of the complaint must be made on the claimant's heirs, or any adjudication following from the complaint does not affect the interest held by the heirs.

United States v. Joseph Laczkowski & Eula G. Jones (Montney), 71 IBLA 364 (Mar. 28, 1983)

It is not the function of the Board of Land Appeals to make an inquiry into the motivation of any Government agency which has initiated a contest against mining claims. The fact that such contest challenges the validity of certain mining claims, and not of others in the same general area does not constitute a denial of due process. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of mining claims when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claims.

United States v. Lee H. Rice, Goldie E. Rice, 73 IBLA 128 (May 23, 1983)

In a government contest of an association placer mining claim on a charge of nonperformance of annual labor as required by 30 U.S.C. § 28 (1976), each co-owner of the claim is an indispensable party to the proceeding, and a failure to properly serve and join each such party is fatal to the action, and a decision rendered therein purporting to void the fractional interests of those claimants who were properly served is a mere nullity and of no effect. Union Oil Co. of California (Swift), 72 I.D. 313 (1965) is overruled and rescinded on this point.

United States v. Energy Resources Technology Land, Inc., et al., 74 IBLA 117 (June 30, 1983)

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

Where conflicting evidence existing in the case file and submitted on appeal concerning a Native allotment applicant's use and occupancy of the land raises factual issues, the Bureau of Land Management should initiate a Government contest so that the factual issues can be resolved at a hearing.

Katmailand, Inc., et al., 77 IBLA 347 (Dec. 5, 1983)

In a mining contest initiated by the United States, there is no requirement that the contestee offer evidence concerning matters not placed in issue by the United States. Where the Administrative Law Judge incorrectly states a contrary rule, but in practice applies the correct standard, his decision is affirmed.

In a mining contest initiated by the United States where the Government mineral examiners testify they have examined the mineral claims at issue and found no evidence of mineralization to support a discovery, a prima facie case for the Government is established. This showing is not overcome by evidence of ore sample values offered by contestee to show mineralization, where contestee fails to show from which, of 10 claims at issue, the samples were taken.

Cactus Rodeo, Ltd., 79 IBLA 20 (Feb. 3, 1984)

Where the evidence submitted by a Government mineral examiner supports the conclusion that a 10-acre parcel of land in a placer location is not mineral in character, the burden devolves to the mineral claimant to overcome this showing by a preponderance of the evidence, failing in which that portion shall be declared invalid.

United States v. Robert B. Lara (On Reconsideration), 80 IBLA 215 (Apr. 30, 1984)

In determining the validity of a mining claim in a Government contest, the entire evidentiary record must be considered; therefore, if evidence presented by the contestees shows that there has not been a discovery, it may be used in reaching a decision that the claim is invalid because of a lack of discovery, regardless of any defects in the Government's prima facie case.

United States v. Oscar E. & Gary K. Anderson, 83 IBLA 170 (Oct. 15, 1984)

HEARINGS

Where a mining claim contestee fails to appear at a contest hearing and merely sends a message stating that he will not appear, without stating the reasons for his absence, a subsequent motion to reschedule the hearing and reopen the record is properly denied, as the regulations provide that a postponement may be granted only pursuant to a request made no later than the hearing date and stating in detail the reasons why a postponement is necessary.

The asserted inability of a contestee to drive an automobile due to his taking medication is not an extreme emergency which justifies beyond question the granting of a postponement of the hearing where it is not impossible to get to a hearing site by public transportation. Nor is restricted mobility due to arthritis justification for a postponement where the record shows that it is an ongoing condition which

RULES OF PRACTICE--Continued

HEARINGS--Continued

could have been anticipated, and that transportation to the hearing site could have been arranged by exercise of proper diligence.

Where a party fails to appear or participate in a hearing as scheduled even though no order postponing the hearing has been issued, the merits of the case may be reached and decided on the basis of the record as completed at the hearing, despite the absence of evidence in support of the party's case.

New evidence offered on appeal after an initial decision is rendered by an Administrative Law Judge may not be considered or relied upon in making a final decision but may only be considered to determine if there should be a further hearing.

United States v. Richard H. Franklin, 45 IBLA 54 (Jan. 14, 1980)

In a mining contest, a matter not charged in the complaint cannot be used as a ground to invalidate a claim, unless it has been raised at the hearing and the contestee has not objected.

United States v. Clara Williamson and Loring Pumice Co., 45 IBLA 264 (Feb. 4, 1980) 87 I.D. 34

It is a proper exercise of discretionary authority for a Bureau of Land Management office to suspend action on an oil and gas lease offer pending resolution of similar cases on appeal to the Board of Land Appeals and a court proceeding. However, where the court case is remanded to the Department of the Interior for further consideration and the Board has resolved cases with substantive issues similar to those in the case under consideration, it will set aside the Bureau's decision, and dismiss the protest and remand the case for action in accord with those rulings. Where there are no disputed factual issues controlling resolution of the case, the protestant's request for a hearing will be denied as well as his request for further suspension of the case.

Jack Tuckerman, 45 IBLA 337 (Feb. 7, 1980)

Timely appeal to the Board of Land Appeals suspends the effect of a Bureau of Land Management decision pending outcome of the appeal. Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

State of Alaska, 46 IBLA 12 (Feb. 20, 1980)

Where issues of material fact are in dispute, due process requires that an applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of favorable witnesses may be submitted before a decision is reached to reject an application for an allotment.

Estate of Guy C. Groat, Jr., Violet Roehl, 46 IBLA 165 (Mar. 21, 1980)

Evan Chukwak, 47 IBLA 241 (May 13, 1980)

Mary Semone, 49 IBLA 213 (Aug. 11, 1980)

Natalia Kaeuk et al., 51 IBLA 170 (Nov. 26, 1980)

RULES OF PRACTICE--Continued

HEARINGS--Continued

Billy Mokky, 72 IBLA 13 (Apr. 4, 1983)

Where a corporate simultaneous oil and gas lease offeror alleges no facts which could disprove its failure to comply with 43 CFR 3102.4-1, no hearing will be granted as requested.

Cheyenne Resources, Inc., 46 IBLA 277 (Mar. 27, 1980) 87 I.D. 110

A Native allotment application filed pursuant to the Alaska Native Allotment Act of 1906 must be rejected if it was not pending before the Department of the Interior on Dec. 18, 1971. Where there are factual questions concerning the pendency of an application they can best be resolved at a hearing pursuant to a Government contest.

A Native allotment applicant who is a minor is not precluded from establishing use and occupancy of the land applied for. However, such use and occupancy must be achieved as an independent citizen in his own right and must be potentially exclusive. The question of a 14-year old's independent use and occupancy is best addressed at a contest proceeding.

Eleanor H. Wood, 46 IBLA 373 (Apr. 8, 1980)

Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Alva F. Rockwell and Alva A. Rockwell, 47 IBLA 272 (May 13, 1980)

Max Weiss, 49 IBLA 332 (Aug. 25, 1980)

George H. Pennington et al., 50 IBLA 280 (Oct. 6, 1980)

Wayne N. Napp, 54 IBLA 8 (Apr. 6, 1981)

Earth Sciences, Inc., 80 IBLA 28 (Mar. 28, 1984)

Lamar Burkett et ux., 84 IBLA 166 (Dec. 19, 1984)

A reference in a letter to the Bureau of Land Management from the winning drawee in a simultaneous oil and gas lease filing to "majority owners" of the lease, by itself is not sufficient to show there were undisclosed parties in interest at the time the offer was filed, but it would ordinarily warrant further investigation. Where a hearing is ordered on other issues to determine if there was a violation of the regulations in the filing, evidence should also be presented on this issue to explain the meaning of the reference and to show whether someone other than the offeror had an interest in the offer at the time it was filed.

A fact-finding hearing is ordered by the Board of Land Appeals to determine whether there has been a violation of the regulations requiring disclosure of other parties in interest and prohibiting against multiple filings in simultaneous oil and gas lease filings by the contractual arrangement of Eden Capital Corp. and its clientele where there are ambiguities in the complex contract which provides for a preliminary division of lease obligations and proceeds and establishment of a lease escrow fund to protect funds promised to the client if the client exercises an option by which Eden will buy all leases in a particular lease program subscribed to by the client,

RULES OF PRACTICE--Continued

HEARINGS--Continued

and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical application they and other clients of Eden have given to the terms.

Harry S. Hills, Kenneth E. Roth, 48 IBLA 356 (July 11, 1980)

The Board of Land Appeals will not order a further hearing in a mining claim contest case where a patent application has been filed merely because the evidentiary record is inadequate to invalidate the claims for lack of a discovery of a valuable mineral deposit, if the claimant is found to have met the discovery test.

United States v. Albert Martinez et al., 49 IBLA 360 (Aug. 29, 1980) 87 I.D. 386

In proceedings before the Department to determine the validity of a mining claim, notice and an opportunity for a hearing is required only where there is a disputed question of fact. Where the validity of a claim turns on the legal effect to be given facts of record concerning the status of the land when the claim was located, no hearing is required.

John J. Schnabel, 50 IBLA 201 (Sept. 30, 1980)

Mackay Bar Corp., 69 IBLA 148 (Dec. 13, 1982)

The procedure followed by the Department of the Interior in the initiation of mining contest cases is in compliance with the due process clause of the United States Constitution and the Administrative Procedure Act, 5 U.S.C. § 551 (1976).

To warrant a further hearing in a mining claim contest, based upon asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Evidence of a past discovery is not sufficient by itself to indicate that a different result might now be obtained.

United States v. Mary E. Gray, 50 IBLA 209 (Sept. 30, 1980)

Where issues of material fact are in dispute, due process requires that, before a decision is reached to reject an application for an allotment, the applicant for a Native allotment be notified of the specific reasons for the proposed rejection, allowed to submit written evidence to the contrary, and granted an opportunity for an oral hearing before a trier of fact where evidence and testimony of witnesses may be submitted.

The Court of Appeals for the Ninth Circuit has held that application of the Departmental contest procedures to provide the allotment applicant with notice and an opportunity for a hearing prior to adverse action on the allotment application complies, at least facially, with the due process requirements set forth in the court's mandate in Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976). Pence v. Andrus, 586 F.2d 733 (9th Cir. 1978).

Mary DeVaney, 51 IBLA 165 (Nov. 26, 1980)

State of Alaska (Leland R. Estabrook), 54 IBLA 346 (May 12, 1981)

RULES OF PRACTICE--Continued

HEARINGS--Continued

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

John Swanson, 51 IBLA 239 (Dec. 15, 1980)

Willard Pease Oil & Gas Co., 52 IBLA 379 (Feb. 19, 1981)

The Board seriously questions the wisdom of the Government in not arranging for the audit of multi-million dollar claims apparently advanced in good faith by reputable contractors, noting that securing audits will not only facilitate the examination of witnesses with respect to quantum but are also likely to prove to be useful in establishing a basis for agreeing upon stipulations narrowing the issues in quantum areas or affording a basis for arriving at a settlement prior to the hearing, while it is in progress or after it has been concluded.

Appeal of Flour Utah, Inc., IBCA-1068-8-75 (Jan. 15, 1981) 88 I.D. 41

Where a Government contest complaint, when filed and received by mineral claimants, correctly identifies all claimants as of that time, the substitution or addition of subsequent transferees is the obligation of those who have acquired such an interest and their failure to so move will not vitiate the effectiveness of an adjudication of the validity of a mining claim.

United States v. Farrell Prowell and Melinda Prowell, 52 IBLA 256 (Feb. 6, 1981)

Due process does not require notice and a prior right to be heard in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Pearl C. Bennett, 52 IBLA 273 (Feb. 6, 1981)

James A. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

Robert J. Kinds, Jr. & K. Hollenbeak, 72 IBLA 75 (Apr. 12, 1983)

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Notice and an opportunity for a hearing is required only where there is a disputed question of fact and where validity of a millsite location turns on the legal effect to be given facts of record concerning the status of the land when the millsite was located, no hearing is required.

John C. and Martha M. Thomas d.b.a. Tumbleton Mining Co., 53 IBLA 142 (Mar. 17, 1981)

RULES OF PRACTICE--Continued

HEARINGS--Continued

A coal prospecting permittee who applies for a coal lease is entitled to a hearing before an Administrative Law Judge before his application is rejected, where the permittee alleges that the application contains data that commercial quantities of coal exist on the lands; however, where the permittee alleges that there is coal in commercial quantities in certain lands as measured by the mining industry standard BLM and Survey should have the opportunity to consider whether commercial quantities as measured by the mining industry is sufficient to comply with commercial quantities as defined in 43 CFR 3430.1-2.

Jesse H. Knight, 53 IBLA 300 (Mar. 24, 1981)

Where a Native allotment application declares that the applicant first initiated use and occupancy after the date that the land was segregated from appropriation by the filing of a selection application by the State of Alaska, allowance of the Native allotment application is precluded as a matter of law and may be properly rejected without a hearing.

Rosalyn Isaac (On Reconsideration), 53 IBLA 306 (Mar. 25, 1981)

Where the Bureau of Land Management has retained custody of wild free-roaming horses, adopted pursuant to the Act of Dec. 15, 1971, as amended, 16 U.S.C.A. § 1331 (West Supp. 1980), on the basis that the horses have been commercially exploited and the case presents substantial issues of fact, the assignees under the original cooperative agreements are entitled to a hearing before an Administrative Law Judge.

Geneva Berry et al., 54 IBLA 48 (Apr. 9, 1981)

Due process does not require notice and a right to a prior hearing in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Hugh A. Jobbins, 54 IBLA 144 (Apr. 17, 1981)

Anita Robinson, 71 IBLA 380 (Mar. 29, 1983)

Philip A. Cramer, 74 IBLA 1 (June 21, 1983)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording him notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

If BLM determines that a Native allotment application that conflicts with a state selection application may be allowed without a Government contest against the Native allotment applicant, it must notify the State of Alaska of this determination. Upon such notification, the State, if dissatisfied, has an election of remedies. It may initiate a private contest within the time period prescribed in the notice, or it may appeal the decision of BLM, after it becomes final, to this Board. If the Board concludes that the Native's application is deficient, it will order the initiation of a Government contest. But if it finds the allotment application

RULES OF PRACTICE--Continued

HEARINGS--Continued

acceptable, it will order the issuance of a patent, if all else be regular.

Daniel Johansen (On Reconsideration), 54 IBLA 295 (Apr. 29, 1981)

Mary A. A. Aspinwall (On Reconsideration), 66 IBLA 367 (Aug. 27, 1982)

Where a Native allotment application filed in 1961 is rejected, more than 13 years after applicant has submitted acceptable evidence of his use and occupancy of the land for more than the required 5-year period set out in the appropriate statute, solely on the basis of a Geological Survey report in 1974 that the land was believed to be prospectively valuable for phosphate, the decision rejecting the application will be set aside and the matter remanded to BLM to proceed to issuance of patent as land must be considered to be nonmineral in character absent a showing that minerals are present in such quantities and such qualities as would induce a person of ordinary prudence to expend time and money with a reasonable prospect of success in developing a paying mine thereon.

Heirs of Simon Pongok, 55 IBLA 305 (June 25, 1981)

A coal prospecting permittee who applies for a coal lease, alleging with supportive data that there is coal in commercial quantities within certain lands in its permit, is entitled to a hearing conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 554 (1976), before its application may be finally rejected because it has not shown coal in commercial quantities.

Mike Bell Mining and Oil Co., 55 IBLA 324 (June 26, 1981)

To warrant a further hearing in a mining claim contest based upon an asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Vague and unsupported assertions of mineralization do not establish equitable justification for reopening the hearing.

United States v. Arpad Speckert, 55 IBLA 340 (June 26, 1981)

Where a Native allotment application declares that the applicant first initiated use and occupancy after the date that the land was withdrawn for lighthouse purposes, allowance of the Native allotment application is precluded as a matter of law and may be properly rejected without a hearing.

Stanislaus Mike, 56 IBLA 69 (July 10, 1981)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the initial Bureau of Land Management decision, adverse to him, becomes final. Appeal to this Board satisfies the due process requirements.

Mary Willis, 56 IBLA 217 (July 22, 1981)

RULES OF PRACTICE--Continued

HEARINGS--Continued

Mining claims located on land previously withdrawn from mineral entry are null and void ab initio. However, where there are factual questions relating to whether action taken subsequent to a withdrawal is in the nature of an amendment to a previous location or whether it constitutes a relocation, the mineral claimant will be granted the opportunity to show that the subsequent action was a permissible amendment.

R. M. Polk, Gene L. Brown, 57 IBLA 117 (Aug. 25, 1981)

Where a party fails to appear or participate in a hearing as scheduled even though no order postponing the hearing has been issued, the merits of the case may be reached and decided on the basis of the record completed at the hearing, despite the absence of evidence in support of the party's case.

United States v. Claude T. and Sarah E. Cree, 57 IBLA 373 (Sept. 8, 1981)

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

Fahey Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

Rupert Thorpe, 58 IBLA 319 (Oct. 16, 1981)

Enterprise Mines, Inc., 58 IBLA 372 (Oct. 20, 1981)

Major G. Atkins, 60 IBLA 284 (Dec. 17, 1981)

El Capitan Oil Co., Inc., 62 IBLA 146 (Mar. 5, 1982)

Old Hundred Gold Mining Co., 63 IBLA 56 (Mar. 30, 1982)

Failure to obtain counsel at a hearing into the validity of a mining claim will afford the mining claimant no greater rights on appeal than if he had obtained counsel.

To warrant a further hearing in a mining claim contest based upon asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Evidence of a past discovery is not sufficient by itself to warrant a further hearing.

United States v. John Ruct et al., 59 IBLA 326 (Nov. 5, 1981)

While the requirement of 43 CFR 2802.1-7(e) (1979) for notice and opportunity for a hearing may be satisfied by a hearing before an Administrative Law Judge, that requirement may also be fulfilled at the State Office level in accordance with the basic procedural parameters set forth in Circle L, Inc., 36 IBLA 260 (1978).

American Telephone and Telegraph Co. (On Reconsideration), 59 IBLA 343 (Nov. 5, 1981)

Bell Telephone Co. of Nevada, 63 IBLA 9 (Mar. 25, 1982)

RULES OF PRACTICE--Continued

HEARINGS--Continued

The Board of Land Appeals will not order a fact-finding hearing to determine whether a pool agreement violates regulations requiring disclosure of other parties in interest in a simultaneous oil and gas lease filing where there are no ambiguities in the agreement and it is clear that there are other parties in interest to the lease offer other than appellant.

Elean M. Landis, 59 IBLA 353 (Nov. 9, 1981)

The Department of the Interior will not grant a hearing to examine a determination by the Forest Service that land is not chiefly valuable for agricultural or grazing uses where such determination is entrusted by statute to the Secretary of Agriculture.

Harold A. Goodwin, Sr., 60 IBLA 14 (Nov. 16, 1981)

A mining claim contest hearing will not be reopened to afford the claimants an opportunity to prove a discovery had been made on the claims in the absence of a tender of proof and evidence to show equitable justification for a further proceeding in the case. Also, the case will not be reopened where the Administrative Law Judge has ruled on the credibility of claimants' witnesses on issues going to their failure to present a case due to alleged Governmental interference, which is not supported by the record, and there is no persuasive showing of a denial of due process.

United States v. Sidney C. Downs and Goldfield Deep Mines Co. of Nevada, 61 IBLA 251 (Jan. 29, 1982)

The requirement of 43 CFR 2802.1-7(c) (1979), for notice and opportunity for a hearing, may be satisfied by a hearing at the State Office level in accordance with the basic procedural parameters set forth in Carole L. Ince, 36 IBLA 260 (1978).

American Telephone & Telegraph Co., 61 IBLA 363 (Feb. 11, 1982)

Mountain States Telephone & Telegraph Co., 64 IBLA 164 (May 25, 1982)

Due process does not require notice and a right to be heard in every case where a person is deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the adverse Bureau of Land Management decision becomes final. Appeal to this Board satisfies the due process requirements.

Francis Shaw, et al., 63 IBLA 235 (Apr. 19, 1982)

Upon a determination that an oil and gas lease terminated because no drilling operations were being performed on the leased lands, or for the lease under an approved communitization agreement, on the last day of the lease term, the lessee of record and its de facto assignee are entitled to a hearing on issues of fact, where they have alleged that the well was actually spudded prior to midnight on the relevant date.

Tenneco Oil Co., 63 IBLA 339 (Apr. 28, 1982)

RULES OF PRACTICE--Continued

HEARINGS--Continued

No rights inure to the estate of a deceased Native allotment applicant where the application does not show prima facie entitlement because the land was segregated by a State selection at the asserted time when use and occupancy commenced. A request for a hearing on appeal is properly denied in the absence of any evidence or allegation of use and occupancy predating the State selection.

Heirs of Howard Isaac, 63 IBLA 343 (Apr. 28, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a state selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a state selection application, it is improper to reject his application without affording his notice and opportunity for a hearing, and BLM must initiate contest proceedings against the application. The State of Alaska must be given an opportunity to participate as a party to such contest.

Victor A. Anahonak (On Reconsideration), 64 IBLA 289 (June 4, 1982)

To warrant a further hearing in a mining claim contest based upon an asserted lack of discovery, an appellant must make an evidentiary tender of proof of discovery. Vague and unsupported assertions of mineralization do not establish a basis for reopening the hearing. Because under 30 U.S.C. § 23 (1976) a mining claimant must make a discovery of a valuable mineral deposit prior to the location of the claim, it is presumed that when the validity of his claim is challenged, the mining claimant need only come forward with the evidence of discovery which he has already made.

United States v. Gary L. Murdock, 65 IBLA 239 (July 9, 1982)

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land.

William M. Tennyson, Sr., 66 IBLA 38 (July 23, 1982)

A continuance of a hearing into the validity of a mining claim will only be granted where the mining claimant presents sufficient reason to justify the grant of an additional opportunity to present his case, i.e., where circumstances have placed a substantial constraint upon his ability to obtain or offer samples or other evidence of a discovery. Furthermore, it must appear that the claimant is not using the additional time to make the requisite discovery.

United States v. Michael P. Buckley, Virginia R. Buckley, 66 IBLA 357 (Aug. 27, 1982)

In a mining contest, a matter not charged in the complaint cannot be used as a ground to invalidate a claim, unless it has been raised at the hearing and the contestee has not objected.

United States v. Robert E. Lara, 67 IBLA 48 (Sept. 9, 1982)

RULES OF PRACTICE--Continued

HEARINGS--Continued

An Administrative Law Judge has the authority to permit the use of interrogatories and requests for production of documents in a Government mining contest.

United States v. Pittsburgh Pacific Co., 68 IBLA 342 (Nov. 22, 1982) 89 I.D. 586

Due process does not require notice and a right to be heard in every case where a party may be deprived of property so long as notice and an opportunity to be heard are provided before the action becomes final.

Shell Pipe Line Corp., 69 IBLA 103 (Nov. 30, 1982)

Where there are disputed facts determinative of the legal issues posed therefrom, this Board has the discretionary authority to order a hearing on the matter before an Administrative Law Judge pursuant to 43 CFR 4.415.

Patricia C. Aiken, 70 IBLA 211 (Jan. 24, 1983)

No lease for lands on which there is a well capable of producing oil and gas in paying quantities shall expire because the lessee fails to produce, unless the lessee fails to place the well in a producing status within 60 days of receipt of notice to do so. Upon a BLM determination that a lease has expired at the end of its extended term because the well on the leasehold is not capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

C & K Petroleum, Inc., Ewan Arrow, Inc., 70 IBLA 354 (Feb. 3, 1983)

A hearing before an Administrative Law Judge is necessary only where there is a material issue of fact requiring resolution through the introduction of testimony and other evidence. In the absence of such an issue, no hearing is required.

Kerr-Mcgee Drilling Co., et al., 71 IBLA 53 (Feb. 22, 1983)

Alumina Development Corp. of Utah, 77 IBLA 366 (Dec. 7, 1983)

A request for postponement made at a hearing is properly denied where there has been no showing of an extreme emergency which could not have been anticipated and which justifies beyond question the granting of a postponement. This standard is not met by a request to postpone a hearing to obtain the testimony of additional witnesses when the need for the testimony was anticipated more than 1 month prior to the hearing and the party seeking postponement failed to file a proper motion at that time.

Geosearch, Inc., Lloyd Chemical Sales, Inc. v. Resource Service Co., Inc., Bureau of Land Management, 71 IBLA 138 (Mar. 9, 1983)

RULES OF PRACTICE--Continued

HEARINGS--Continued

Upon a determination that production has ceased on an oil and gas lease in its extended term by reason of such production because the well on the lease is no longer capable of production in paying quantities, the lessees of record are entitled to notice and an opportunity to request a hearing on the issue of the productive capacity of the well where they have presented evidence raising an issue of fact regarding the status of the well.

Impel Energy Corp., 71 IBLA 237 (Mar. 14, 1983)

The record established at the hearing in a mining claim contest is the sole basis for determining the validity of a claim.

United States v. Lee H. Rice, Goldie E. Rice, 73 IBLA 120 (May 23, 1983)

Where a notice of intent to hold a hearing pursuant to 30 U.S.C. § 621(b) and 43 CFR 3736.1(b), when transmitted and received by the locators of the claims at issue, correctly identifies all locators of record as of that time, the substitution or addition of subsequent transferees is the obligation of those who have acquired such an interest and their failure to participate in the hearing will not vitiate that hearing.

Grant B. Miller, 74 IBLA 205 (July 14, 1983)

Due process does not require notice of a right to a prior hearing in every case where an individual may be deprived of an asserted property right so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

John D. Archer et al., 75 IBLA 120 (Aug. 15, 1983)

If, prior to summary dismissal of a mining contest complaint, a contestee answers without questioning the service, any defect in service will be deemed waived as to such answering contestee.

United States v. Norman Montgomery et al., 75 IBLA 358 (Aug. 31, 1983)

Where an appellant establishes that an appraisal of the value of sand and gravel removed from land patented under the Stock-Raising Homestead Act, as amended, 43 U.S.C. § 291 (1970), did not consider the rights to compensation of the surface owner in its determination of trespass damages, the case may be referred to the Hearings Division for a fact-finding hearing.

Browne-Tankersley (Trust), 76 IBLA 48 (Sept. 19, 1983)

Where there exist factual questions about the location of a subdivisional corner in a dependent resurvey, the Board of Land Appeals may order a hearing pursuant to 43 CFR 4.415 to resolve these questions.

Elmer A. Swan et ux., 77 IBLA 99 (Nov. 14, 1983)

RULES OF PRACTICE--Continued

HEARINGS--Continued

In order to be entitled to an adjudicative hearing, as an adjunct of due process, a party must have a sufficient property interest in that which is the subject of the Government action.

Village & City Council of Alakanuk, Ray N. Olson, Lawrence Murphy, Sr., 77 IBLA 130 (Nov. 15, 1983)

Where a Native allotment applicant alleges use and occupancy prior to the filing of a State selection application, it is improper to reject his application without affording him notice and opportunity for a hearing. The Bureau of Land Management must initiate contest proceedings against the application and give the State of Alaska an opportunity to participate as a party to such contest.

Walter Titus (On Reconsideration), 77 IBLA 321 (Dec. 1, 1983)

The holder of a right-of-way issued pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1976), is required to pay annually, in advance, the fair market value of the grant. Appellant's contention that it should not pay annual rental is properly rejected where appellant's flood control project is completed but the right-of-way grant remains in effect and the land is being used for a dam, spillway, and reservoir.

Beach Lake Irrigation Co., 78 IBLA 305 (Jan. 12, 1984)

Under 43 CFR 2802.1-7(a) (1974), which provided that charges for use and occupancy of a right-of-way may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure where the right-of-way was issued pursuant to the Act of Mar. 4, 1911, as amended, 43 U.S.C. § 961 (1976), and has not been conferred to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1761-1771 (1982).

Colo Industries, Inc., 82 IBLA 289 (Aug. 31, 1984)

A hearing is not necessary in the absence of a material issue of fact, which, if proven, would alter the disposition of the matter. An oral hearing on a color-of-title application will be denied where there are no allegations of fact which would establish the color-of-title claim.

Kim C. Evans, 82 IBLA 319 (Sept. 6, 1984)

A second hearing will not be afforded to an Alaska Native allotment applicant where the applicant was afforded an initial hearing in accordance with due process, and where nothing has been submitted which suggests that an additional hearing would produce a different result. Where an applicant fails to introduce all relevant evidence at an initial hearing when such evidence was available and could have been submitted, he waives his right to introduce that evidence. A further hearing is not necessary in the absence of a material issue of fact which, if proven, would alter the disposition of the appeal.

Ouzinkie Native Corp., Inc. v. Edward W. Spheim, 83 IBLA 225 (Oct. 19, 1984)

RULES OF PRACTICE--Continued

HEARINGS--Continued

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land. But where the Native allotment applicant alleges use and occupancy prior to the filing of a State selection application, it is improper, as a general matter, to reject the application without affording the applicant notice and opportunity for a hearing.

Cleanna Hanson, 84 IBLA 150 (Dec. 12, 1984)

PRIVATE CONTESTS

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, if all else be regular.

State of Alaska v. Earl G. Patterson, 46 IBLA 56 (Feb. 22, 1980)

State of Alaska, 48 IBLA 229 (June 17, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from an interlocutory decision which authorizes the State to initiate private contest proceedings to prove lack of qualification on the part of the Native. Rather, it may initiate the private contest within the time period prescribed, or it may appeal the decision of BLM, after it becomes final, to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the allotment issued, all else being regular.

State of Alaska v. Elsie John, 46 IBLA 137 (Mar. 19, 1980)

State of Alaska v. Daniel Jimmie, Bertha A. Williams, 48 IBLA 370 (July 11, 1980)

State of Alaska v. Cora John Smith, 50 IBLA 6 (Sept. 5, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to the Bureau of Land Management that the Native applicant has met the requirements for patent, upon notification to the State, it has an election. The State may initiate a private contest proceeding during the time

RULES OF PRACTICE--Continued

PRIVATE CONTESTS--Continued

prescribed to prove lack of qualification of the Native, or the State may await final decision from BLM and then appeal to this Board.

State of Alaska v. Dora David and Cathy Dick, 46 IBLA 177 (Mar. 21, 1980)

When there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaska Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, BLM must notify the State that, if dissatisfied, it has an election of remedies. The State may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If on appeal, the Board concludes that the Native's application is deficient it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska v. Joan M. Newhall, 47 IBLA 85 (Apr. 21, 1980)

Where there is a conflict between an application by the State of Alaska to select land under the Statehood Act and an application by an Alaskan Native for allotment under the Act of May 17, 1906, and it appears to BLM that the Native applicant has met the requirements for patent, upon notice of this determination the State, if dissatisfied, has an election of remedies. It may not appeal from the "Notice," which is interlocutory, but it may initiate private contest proceedings to prove lack of qualification on the part of the Native, or it may appeal the subsequent decision of BLM to the Board of Land Appeals. If, on appeal, the Board concludes that the Native's application is deficient, it will order the institution of Government contest proceedings, but if it finds the allotment application acceptable, it will order the patent issued, if all else be regular.

State of Alaska v. Moses Chythlook, 47 IBLA 249 (May 13, 1980)

Where the State of Alaska lacks a cognizable interest in the specific land being sought by a Native allotment applicant because that land is either within the core township of a Native village or the Native village has received tentative approval for its selection, the State does not have standing to initiate a private contest under 43 CFR 4.450-1. It may, however, protest against the allowance of the allotment and appeal from an adverse decision under 43 CFR 4.410.

State of Alaska v. Steve Sarakovikoff et al., 50 IBLA 284 (Oct. 6, 1980)

It is proper to declare unpatented mining claims null and void without a hearing where the answer in a private contest complaint was not filed in accordance with the requirements set out in 43 CFR 4.450-6.

Phillips Petroleum Co. v. Melvin Bradshaw et al., 66 IBLA 234 (Aug. 17, 1982)

RULES OF PRACTICE--Continued

PRIVATE CONTESTS--Continued

Where the charges in a private contest complaint against a desert land entry are not corroborated as required by 43 CFR 4.450-4(c), the complaint must be dismissed.

A private contest against a desert land entry that is initiated prior to the expiration of the statutory life of the entry and charges that the entryperson will fail to meet the requirements of the law by the expiration date is premature. Since time remains for the entryperson to fulfill the requirements, it cannot be said with certainty that the contestant has alleged facts which if proved would require cancellation of the entry and thus the contest must be dismissed.

Dale M. Wright v. Joan L. Griffin, 68 IBLA 279 (Nov. 17, 1982)

Only an individual claiming "an interest in the land" embraced by a patent application has standing to initiate a private contest under 43 CFR 4.450-1. Such an "interest in the land" must be grounded in a specific statutory grant.

In re Pacific Coast Molybdenum Co., 68 IBLA 325 (Nov. 22, 1982)

Under 43 CFR 4.450-1, a private contest may be brought to have a claim invalidated for any reason not shown by the records of the BLM. Because compliance with sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), can only be resolved by the records of BLM, no private contest may be maintained solely on the basis of that issue.

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Where a statute limits the Department's authority to consider contests between rival mining claimants, the Department has no authority to consider favorably an argument that it is a denial of equal protection to recognize the right of a nonmineral claimant to contest a mining claim while denying such an opportunity to a rival mining claimant.

Gold Depository & Loan Co., Inc. v. Mary Brock et al., 69 IBLA 194 (Dec. 15, 1982)

Jurisdiction over disputes between rival mining claimants is reserved to the courts, and it is not for this Department to decide whether one claimant has a better right to a claim by virtue of his relocation of a claim following a rival claimant's alleged failure to file the documents required under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

IMCC Services, 73 IBLA 374 (June 15, 1983)

BLM may not summarily dismiss a private contest complaint against a homestead entry for failure to file with BLM proof of service on the contestee within 30 days of service, as required by 43 CFR 4.450-3, where the evidence indicates that the contestant

RULES OF PRACTICE--Continued

PRIVATE CONTESTS--Continued

actually served the complaint and the contestant files proof of such service on appeal.

BLM may not dismiss a private contest complaint against a homestead entry for failure to offer reasons, not a matter of public record, in accordance with 43 CFR 4.450-1, where the complaint alleges failure to establish a residence within 6 months after the date of entry, as required by 43 CFR 2567.5(a), and the BLM land report, which concluded that there was such failure, was based on an examination of the land prior to the last day on which a residence could be established.

BLM must dismiss a private contest complaint against a homestead entry where it is not supported by the affidavit of a corroborating witness which alleges facts which, if proved, would subject the homestead entry to cancellation as required by 43 CFR 4.450-4(c).

Joseph L. Wadsworth v. Glenn M. Price, 74 IBLA 373 (July 29, 1983) 90 I.D. 338

Patentees under the Stock-Raising Homestead Act of 1916 have an adverse interest sufficient to bring a private contest against allegedly invalid mining claims located for minerals reserved to the United States, which claims threaten to destroy the value of the surface of their patented lands.

Joanne M. Massirio v. Western Hills Mining Ass'n et al., 78 IBLA 155 (Dec. 29, 1983)

The validity of a mining claim on the issue of discovery of a valuable mineral deposit is not legally cognizable in a bond protest proceeding initiated by the surface owner under a Stock-Raising Homestead Act patent. Such a validity determination requires initiation of a contest with notice to the claimant and an opportunity for a hearing.

Robert M. Michael et ux., 79 IBLA 255 (Mar. 5, 1984)

PROTESTS

The right of appeal is limited to a party to a case adversely affected by a decision of the Bureau of Land Management, and an appeal from a timber sale notice will be remanded to the Bureau of Land Management for treatment as a protest. However, under the circumstances presented here, where the Bureau of Land Management has reviewed the protestant's reasons and, in effect, has made its decision communicating it to the protestant and this Board, no purpose would be served by remanding the case and the Board will consider the matter on its merits.

Julie Adams et al., 45 IBLA 252 (Feb. 4, 1980)

It is a proper exercise of discretionary authority for a Bureau of Land Management office to suspend action on an oil and gas lease offer pending resolution of similar cases on appeal to the Board of Land Appeals and a court proceeding. However, where the court case is remanded to the Department of the Interior for further consideration and the Board has resolved cases with substantive issues similar to those in the case under consideration, it will set aside the Bureau's decision, and dismiss the protest and remand the case for action in accord with those rulings. Where there are no disputed factual issues controlling resolution of the case, the protestant's request for a hearing

RULES OF PRACTICE--Continued

PROTESTS--Continued

will be denied as well as his request for further suspension of the case.

Jack Zuckerman, 45 IBLA 337 (Feb. 7, 1980)

A protest against the issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should have been disqualified, that assignees were not bona fide purchasers or that the leases should be cancelled.

Geosearch, Inc., 48 IBLA 51 (May 29, 1980)

Where a protestant challenges the bona fides of an oil and gas leaseholder, the burden is upon appellant, not the BLM, to establish by facts the substance of its charge.

Master Consulting Corp., 48 IBLA 166 (June 9, 1980)

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

Phillip A. Kulin, 53 IBLA 57 (Feb. 27, 1981)

Juan Martin, 71 IBLA 211 (Mar. 15, 1983)

BLM's decision to dismiss a protest by the holder of the surface estate in lands patented under the Stock-Raising Homestead Act against the sufficiency of the amount of a bond, put up by the claimant of mineral interests in these lands to cover damages to the surface estate from the claimant's mining and exploration activities, will be vacated and remanded for readjudication, where the record is devoid of facts of record to support this decision.

Soderberg Rawhide Ranch Co., 63 IBLA 260 (Apr. 19, 1982)

An assignee of an oil and gas lease offeror drawn with second or third priority has standing to protest the issuance of a lease to first-priority offeror, as well as standing to appeal from a rejection of such protest.

A protest against issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of noncompliance with leasing regulations and is unsupported by facts showing that the successful drawee should be disqualified.

Geosearch, Inc., 64 IBLA 149 (May 24, 1982)

Where an individual or organization files a protest to a mineral patent application, which protest is denied, and timely appeals from that denial, such individual or organization is "a party to the case" within the meaning of 43 CFR 4.410. In order to maintain the appeal, however, such a party must also show an interest which has been adversely affected by the decision appealed.

In re Pacific Coast Molybdenum Co., 68 IBLA 325 (Nov. 22, 1982)

RULES OF PRACTICE--Continued

PROTESTS--Continued

Under the Department's Rules of Practice, 43 CFR 4.450-2, a protest is any objection to an action proposed to be taken. A protest may not be used in a case where no appeal against a Bureau of Land Management decision was taken during the period allowed for such appeal.

Horizon Exploration Co., 72 IBLA 43 (Apr. 7, 1983)

A protest to issuance of an oil and gas lease filed after the lease has issued is not timely. Where, however, the "protest" is filed by an individual with subsidiary priority such protest shall be deemed to be an appeal from the rejection of the protestant's application or offer to lease.

Goldie Skodras, 72 IBLA 120 (Apr. 14, 1983)

Patricia C. Alker, 79 IBLA 123 (Feb. 22, 1984)

Where a protest is filed to a competitive phosphate lease offering, which protest is denied, and a timely appeal is filed by the protestant, the protestant is "a party to the case" within the meaning of 43 CFR 4.410. In order to maintain the appeal, however, such a party must also show an interest which has been adversely affected by the decision appealed.

John D. Archer, 74 IBLA 323 (July 28, 1983)

Where protests to a mineral patent application are denied and an appeal is taken, protestants have the burden of affirmatively establishing that patent should not issue and that BLM's decision was in error.

In re Pacific Coast Molybdenum Co., 75 IBLA 16 (Aug. 5, 1983) 90 I.D. 352

The validity of a mining claim on the issue of discovery of a valuable mineral deposit is not legally cognizable in a bond protest proceeding initiated by the surface owner under a Stock-Raising Homestead Act patent. Such a validity determination requires initiation of a contest with notice to the claimant and an opportunity for a hearing.

A decision approving a bond filed by a locator of mining claims for reserved minerals on land patented under the Stock-Raising Homestead Act will be affirmed in the absence of a showing that the amount of the bond is inadequate to cover damage to crops, improvements, and the value of the land for grazing purposes.

Robert M. Michael et ux., 79 IBLA 255 (Mar. 5, 1984)

The conclusion of proceedings under the Freedom of Information Act, as amended, 5 U.S.C. § 552 (1982), to acquire information related to the rationale for the production royalty set in a competitive coal lease does not constitute a final decision by BLM subject to an appeal to the Board, challenging the royalty. The appellant only had a right to protest the royalty set in the notice of the lease sale and to appeal from any denial of that protest.

Coastal States Energy Co., 80 IBLA 274 (May 4, 1984)

RULES OF PRACTICE--Continued

SUPERVISORY AUTHORITY OF THE SECRETARY

For the purposes of the proviso to 43 CFR 4.410, which grants any party to a case a right of appeal to the Board of Land Appeals "except * * * where a decision has been approved by the Secretary," the Under Secretary is vested with the authority of the Secretary to make decisions final for the Department and thus not subject to review by the Board.

DNA--People's Legal Services, 49 IBLA 307 (Aug. 20, 1980)

In the Department's appellate process involving review of decisions made by subordinate officers and employees, the Secretary, or an appeals board with authority to act as fully and finally as might the Secretary, is not so limited in the scope of review and decisionmaking as to be required to affirm such decisions as are supported merely by "substantial evidence" or which are perceived not to be arbitrary or capricious, unless such a limitation on the scope of appellate review has been imposed by the Secretary himself in a duly promulgated regulation or he has been so constrained by enacted law. Otherwise, the Secretary, as chief executive officer of the Department with full supervisory powers, has plenary authority to review de novo all official actions and to decide appeals on the basis of a preponderance of the evidence in cases involving substantive rights, or on the basis of public policy or public interest in cases involving the exercise of discretion.

United States Fish & Wildlife Service, 72 IBLA 218 (Apr. 25, 1983)

In exercising the full review authority of the Secretary of the Interior, the Board of Indian Appeals is not required to uphold a decision of the Bureau of Indian Affairs merely because it is reasonable and based upon substantial evidence in the record, but has the authority to review the decision de novo.

Pueblo of Laguna v. Assistant Secretary for Indian Affairs, 12 IBIA 80 (Dec. 7, 1983) 90 I.D. 521

WITNESSES

The Board refuses to draw inferences adverse to the Government by reason of its failure to have its project engineer testify in important areas and by reason of its failure to call as witnesses two or its employees who attended the hearing where the Board finds that the action of the Government is consistent with the principal defenses made to the differing site conditions claims asserted and where under long-established Board practice, the appellant could have called any or all of the Government's employees concerned as witnesses without making them appellant's witnesses for the purposes of impeachment.

The Board sustains the action of the hearing member in refusing to receive in evidence documents not identified by a witness through whose testimony their admission is being sought.

The Board seriously questions the wisdom of the Government in not arranging for the audit of multi-million dollar claims apparently advanced in good faith by reputable contractors, noting that securing audits will not only facilitate the examination of witnesses with respect to quantum but are also likely to prove to be useful in establishing a basis for agreeing upon stipulations narrowing the issues in quantum areas or affording a basis for arriving at a settlement prior

RULES OF PRACTICE--Continued

WITNESSES--Continued

to the hearing, while it is in progress or after it has been concluded.

Appeal of Flygt Utah, Inc., IBCA-1068-4-75 (Jan. 15, 1981) 88 I.D. 41

SCHOOL LANDS
(See also State Selections--if included in this Index.)

GRANTS OF LAND

Title to certain designated school sections granted to the State of Utah under the Act of July 16, 1894, vested as of the date of acceptance of the official survey of those sections following statehood if the lands were not known to be mineral at that time. Whether the lands were known to be mineral is a question of fact and this contest must be remanded for the hearing of evidence on that issue.

Frederick H. Larson v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

INDEMNITY SELECTIONS

The "grossly disparate value policy," under which the Department rejects States applications for lands in lieu of lands lost from their school grants by reason of settlements, etc., under 43 U.S.C. §§ 851, 852 (1976), where the value of the selected lands grossly exceeds the value of the lost base lands, is a lawful exercise of the Secretary's power and a valid ground to reject such an application. Accordingly, where the record indicates that the selected lands may be much more valuable than the base lands, the matter will be remanded to BLM for a determination of such values.

State of New Mexico (On Reconsideration), 50 IBLA 367 (Oct. 21, 1980)

Prior to the promulgation of 43 CFR 2091.2-6, the filing of a state indemnity selection application did not segregate the identified lands from operation of the mining laws prior to classification of the lands as suitable for indemnity selection.

Leo Rhea Partnership, 80 IBLA 1 (Mar. 27, 1984)

BLM may not declare a mining claim located on land subject to a State indemnity selection application null and void ab initio because of the segregative effect arising from the filing of the application pursuant to 43 CFR 2091.2-6 where the state's application was filed prior to promulgation of the regulation.

James R. Houghton, Wm. A. Houghton, 80 IBLA 195 (Apr. 24, 1984)

Where the State of Oregon has selected indemnity lands pursuant to the Act of Feb. 28, 1891, ch. 384, 26 Stat. 796, for school sections within an unsurveyed township in the Siskiyou National Forest and thereafter a reprotraction or survey is run revealing new fractional townships within the area originally protracted, the State is entitled to indemnity lands for those new townships in accordance with the compact it entered with the United States by Act of Feb. 14, 1859.

A state selecting indemnity lands pursuant to the Act of Feb. 28, 1891, ch. 384, 26 Stat. 796, for unsurveyed school sections within a national forest shall be entitled to select indemnity lands to the extent of two

SCHOOL LANDS--Continued

INDEMNITY SELECTIONS--Continued

sections for each of said townships in lieu of secs. 16 and 36 therein. Where a protraction on which the state relies to make its indemnity selections reveals that a fractional township is present, the state's entitlement to indemnity lands is calculated according to the pro rata rule set forth at 43 U.S.C. § 852 (1976).

Where a survey on which the state relies to make its indemnity selections pursuant to the Act of Feb. 28, 1891, reveals a fractional township with a school section in place, the state's entitlement should be in an amount equal to the acreage shown by the surveyed school section or in an amount determined by the pro rata rule at the election of the state.

Until a survey of public lands has been run and approved, the designated sections of a township are undefined and the lands are unidentified.

Where the State of Oregon makes an initial selection of indemnity lands pursuant to the Act of Feb. 28, 1891, ch. 384, 26 Stat. 796, for school sections within an unsurveyed fractional township in a national forest, it is not entitled to additional indemnity lands should a subsequent reprotraction or survey be made of the township.

State of Oregon et al., II, 80 IBLA 354 (May 10, 1984) 91 I.D. 212

A mining claim wholly located on land which has been segregated from mineral location by the filing of a state school land indemnity selection application is properly declared null and void ab initio.

When Arizona filed its original application for selection of land as part of its entitlement to compensation for deficiencies for school trust lands pursuant to its enabling act, the Department did not have segregation authority to protect the selections. During the promulgation of 43 CFR 2091.2-6, Arizona submitted a request to have the previous applications withdrawn, consolidated, and amended to include additional lands. This will be deemed a reapplication under the circumstances of this case, the filing of which enabled the Department to segregate the lands described therein under 43 CFR 2091.2-6. Mining claims subsequently initiated on lands that were segregated by the reapplication were properly declared null and void ab initio.

Amoco Minerals Co., 81 IBLA 23 (May 15, 1984)

MINERAL LANDS

Title to certain designated school sections granted to the State of Utah under the Act of July 16, 1894, vested as of the date of acceptance of the official survey of those sections following statehood if the lands were not known to be mineral at that time. Whether the lands were known to be mineral is a question of fact and this contest must be remanded for the hearing of evidence on that issue.

Frederick H. Larson v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

SECRETARY OF THE INTERIOR
(See also Administrative Authority--if included in this Index.)

The Department of the Interior, as an agency of the Executive Branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

Colorado-Ute Electric Ass'n, Inc., 46 IBLA 35 (Feb. 20, 1980)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of an order issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department, and an appeal which is limited to those issues must be dismissed.

Texas Oil & Gas Corp., 46 IBLA 50 (Feb. 20, 1980)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on environmental analysis reports for the Uinta National Forest, special protective stipulations are not unreasonable, per se.

Diane B. Katz, 47 IBLA 177 (May 7, 1980)

The validity or legality of regulations, orders, or policies formulated by the Secretary of the Interior are not issues within the appellate jurisdiction of the Board of Land Appeals. However, the Board may review decisions of the Geological Survey or the Bureau of Land Management to determine whether such Secretarial regulations, orders, or policies have been correctly implemented.

Bass Enterprises Production Co., 48 IBLA 11 (May 27, 1980)

The Secretary has broad power to regulate all on-lease activities by oil and gas lessees and operators pursuant to the conditions contained in oil and gas leases and his general regulatory authority under the Mineral Leasing Act. The procedures for regulating activities on oil and gas leases, established under Secretarial Order 2948 and the BLM-USGS Cooperative Procedures Agreement implementing that order, reserve to the Department the authority to protect the United States legal interests in the property. The Secretary has broad discretion either to continue this procedure, or to substitute any other delegation of his authority and any other reasonable regulatory procedure which he concludes would equally protect the United States interests.

Right-of-Way Requirements for Gathering Lines and Other Production Facilities Located Within Oil and Gas Leaseholds, M-36921 (June 19, 1980) 87 I.D. 291

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of an order, which temporarily suspended oil and gas leasing, and was issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department. An appeal which is limited to those issues must be dismissed.

William E. Jeffers, Jr., William E. Jeffers, 49 IBLA 264 (Aug. 18, 1980)

SECRETARY OF THE INTERIOR--Continued

Where the Secretary has decided that production from phosphate leases should be valued in accordance with a particular method and what the value should be, the Board's review authority is limited to determining whether the Geological Survey Area Supervisor who issues orders to the phosphate lessees has properly followed the Secretary's instructions. No hearing is required as a prerequisite to the order.

Where the Department has not formally adopted any methodology for determining the value of production from phosphate leases, but has instead allowed lessees simply to pay royalty based on the minimum value specified in the lease after having advised them that a new method of determining a realistic value was being developed, it may assert that royalty was incorrect even after it has accepted these royalty payments, and may impose the method as approved by the Secretary.

Stauffer Chemical Co. et al., 49 IBLA 381 (Sept. 5, 1980)

Under 43 U.S.C. § 1714(b) (1976) a publication in the Federal Register of notification of an application for withdrawal, which publication temporarily segregates land from the operation of the mining laws, does not withdraw the land, and therefore the notice need not be signed by the Secretary or an individual in the Office of the Secretary who has been appointed by the President, by and with the advice and consent of the Senate.

Stephen W. Fox, 50 IBLA 186 (Sept. 30, 1980)
87 I.D. 462

As the Department's final review authority on decisions relating to the public lands, the Board of Land Appeals exercises all the powers which the Department would have in making an initial decision.

Frederick H. Larson v. State of Utah, 50 IBLA 382 (Oct. 22, 1980)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of a policy directive issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department, and an appeal limited to those issues must be dismissed.

James R. Learned et al., 50 IBLA 416 (Oct. 24, 1980)

The Secretary of the Interior is authorized, and is under a duty to consider and determine what lands are public lands of the United States, and after having made that determination the Secretary has the authority to determine the validity of mining claims on any public lands of the United States after adequate notice and opportunity for a hearing. A mining contest may be initiated under the authority of the Secretary of the Interior by the Bureau of Land Management at the behest of the Forest Service and prosecuted by counsel employed by the Department of Agriculture, with Forest Service employees as witnesses, where such action is in accordance with a Memorandum of Understanding between the agencies.

United States v. W. S. Wood et al., 51 IBLA 301 (Dec. 18, 1980) 87 I.D. 628

SECRETARY OF THE INTERIOR--Continued

The Secretary of the Interior is charged with seeing that valid mining claims are recognized, invalid ones eliminated, and the rights of the public preserved.

United States v. Ernest Higbee et al., 52 IBLA 83 (Jan. 9, 1981)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect the wilderness characteristics of the land pending a study as required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulations are not unreasonable, per se.

John B. Anderson, 57 IBLA 149 (Aug. 25, 1981)

The validity or legality of regulations, orders, or policies formulated by the Secretary or the Interior are not issues within the appellate jurisdiction of the Board of Land Appeals. However, the Board may review decisions of the Geological Survey to determine whether such Secretarial regulations, orders, or policies have been correctly implemented.

Superior Oil Co., 57 IBLA 404 (Sept. 14, 1981)

The Secretary of the Interior may require an oil and gas lease applicant to accept a stipulation reasonably designed to protect a duly established subsurface oil and gas storage area as a condition precedent to the issuance of a lease.

M. Robert Paulee, 59 IBLA 192 (Oct. 27, 1981)

The Board of Land Appeals must defer to the Secretary's decision to allow herbicidal spraying for vegetative management purposes, and the Board has no jurisdictional authority to entertain appeals concerning matters covered by the Secretarial action except in the limited circumstance where the appellant's object clearly is to show BLM's noncompliance therewith.

A.C.O.T.S., 60 IBLA 1 (Nov. 12, 1981)

The Board of Land Appeals is without jurisdiction to review and decide the validity or legality of that portion of a State Director's decision which implements an order issued personally by the Secretary of the Interior in his capacity as chief executive officer of the Department and the appeal will be dismissed insofar as it relates to this issue.

Cascade Holistic Economic Consultants et al., 60 IBLA 293 (Dec. 18, 1981)

The Secretary of the Interior has been authorized by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1740 (1976), to "promulgate rules and regulations to carry out" its purposes. The regulations providing for the conclusive presumption of mining claim abandonment and voidance are directly authorized by correlative language in sec. 314 of FLPMA, 43 U.S.C. § 1744 (1976). The statutory presumption of abandonment operates as a matter of law, and no administrative involvement, including issuance of regulations, would be necessary to its operation.

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

SECRETARY OF THE INTERIOR--Continued

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect bighorn sheep habitat in an area where it is hoped that these animals will be reestablished, the imposition of protective stipulations will be affirmed.

Ted C. Findeiss, 65 IBLA 210 (June 30, 1982)

Because sec. 4 of the Federal Coal Leasing Amendments Act of 1976, amending 30 U.S.C. § 201(b) (1976), repealed the Secretary's authority to issue a coal prospecting permit on Federal lands, a coal prospecting permit application filed Oct. 18, 1979, is properly rejected. 30 U.S.C. § 201(b) (1976) and 43 CFR 3410 provide for the issuance of coal exploration licenses for lands subject to leasing.

Ronald K. Barr, Sr., Paul Brown, Sr., 65 IBLA 359 (July 20, 1982)

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is

SECRETARY OF THE INTERIOR--Continued

vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

Justheim Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect bighorn sheep habitat, the imposition of protective stipulations will be affirmed.

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect the wilderness characteristics of the land pending a study as required by sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), the special stipulations are not unreasonable, per se.

Ila Lee Anderson, John R. Anderson, 67 IBLA 340 (Oct. 5, 1982)

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest. However, if he decides to issue a lease, he may require the acceptance of stipulations reasonably designed to protect environmental and other land use values as a condition precedent to issuance of such a lease.

James M. Chudnow, John L. Messinger, 67 IBLA 360 (Oct. 7, 1982)

Fortuna Oil Co., 68 IBLA 288 (Nov. 19, 1982)

Ted C. Findeiss, 69 IBLA 34 (Nov. 29, 1982)

Carl J. Taffera, 71 IBLA 72 (Feb. 22, 1983)

The Bureau of Land Management may condition the issuance of an oil and gas lease on the execution of a no surface occupancy stipulation. Where the record shows that the Bureau has adequately considered the factors involved and that the stipulation is a reasonable means to accomplish proper Departmental purposes, a decision requiring the stipulations will be affirmed.

Ted C. Findeiss, 68 IBLA 167 (Oct. 29, 1982)

BLM is without jurisdiction to consider an application for the lease of public land near or adjacent to a hot springs where the land is within a national forest and the Act of Feb. 28, 1899, as amended, 16 U.S.C. § 495 (1976), vests the Secretary of Agriculture with exclusive jurisdiction with respect to the issuance of such leases.

Donn Hopkins, 68 IBLA 184 (Nov. 8, 1982)

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States, and he has the authority to extend or correct the surveys of public lands as may be necessary, including the surveying of

SECRETARY OF THE INTERIOR--Continued

lands omitted from earlier surveys, and making resurveys to reestablish corners and lines of earlier official surveys.

Mr. & Mrs. John Koopmans, 70 IBLA 75 (Jan. 11, 1983)

Elmer A. Swan et ux., 77 IBLA 99 (Nov. 14, 1983)

The Secretary of the Interior is not estopped by the principles of res judicata or finality of administrative action from correcting, reversing, or overruling an erroneous decision by subordinates or predecessors in interest. The Board of Land Appeals, in exercising the Secretary's review authority as fully and finally as might the Secretary, is not required to accept as precedent erroneous decisions made by the Secretary's subordinates.

Pathfinder Mines Corp., 70 IBLA 264 (Jan. 26, 1983)
90 I.D. 10

The Secretary of the Interior is authorized, and is under a duty to consider and determine what lands are public lands of the United States, and after having made that determination the Secretary has the authority to determine the validity of mining claims on any public lands of the United States, including lands in national parks, after adequate notice and opportunity for a hearing.

United States v. William Lavon Chappell et al., 72 IBLA 88 (Apr. 13, 1983)

In the Department's appellate process involving review of decisions made by subordinate officers and employees, the Secretary, or an appeals board with authority to act as fully and finally as might the Secretary, is not so limited in the scope of review and decisionmaking as to be required to affirm such decisions as are supported merely by "substantial evidence" or which are perceived not to be arbitrary or capricious, unless such a limitation on the scope of appellate review has been imposed by the Secretary himself in a duly promulgated regulation or he has been so constrained by enacted law. Otherwise, the Secretary, as chief executive officer of the Department with full supervisory powers, has plenary authority to review de novo all official actions and to decide appeals on the basis of a preponderance of the evidence in cases involving substantive rights, or on the basis of public policy or public interest in cases involving the exercise of discretion.

United States Fish & Wildlife Service, 72 IBLA 218 (Apr. 25, 1983)

The authority of BLM state directors to designate the boundaries of wilderness study areas derives from the Secretary, and their determinations are appealable to the Board of Land Appeals, which is empowered to decide such appeals as fully and finally as might the Secretary. The Board, therefore, may affirm, reverse or modify such boundary designations on appeal with finality, and BLM's ministerial implementation of such final decisions will not create a new right of appeal.

Phelps Dodge Corp. et al., 72 IBLA 226 (Apr. 26, 1983)

SECRETARY OF THE INTERIOR--Continued

Withdrawals remain in force until specifically revoked or modified by competent authority. The Alaska National Interest Lands Conservation Act, P.L. 96-478 (94 Stat. 2371), does not affect the existence or validity of Public Land Order No. 5250.

Larry McCracken et al., 76 IBLA 370 (Oct. 25, 1983)

In reviewing a decision of the Assistant Secretary for Indian Affairs referred to the Board of Indian Appeals by the Secretary of the Interior under 43 CFR 4.220(a)(2), the Board has the full authority of the Secretary to review questions both of law and of discretion.

Pueblo of Laguna Vs. Assistant Secretary for Indian Affairs, 12 IBLA 80 (Dec. 7, 1973) 90 I.D. 521

The Secretary of the Interior may require an oil and gas lease offeror to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease for land located in a national forest. Where on appeal an offeror registers objections concerning such stipulations, and the Forest Service subsequently clarifies the nature of the stipulations and the offeror raises no further complaints, the imposition of the stipulation will be upheld.

James M. Chudnow, Laurent A. Wiumbeat, 78 IBLA 317 (Jan. 24, 1984)

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States. He also has the authority to extend or correct the surveys of public lands as may be necessary.

Joan Ella, 78 IBLA 374 (Jan. 30, 1984)

A decision by an officer of the BLM which does not fall within any of the enumerated exceptions in 43 CFR 4.410 is subject to appeal to the Board of Land Appeals and a BLM officer is without authority to state otherwise.

Utah Wilderness Ass'n, 80 IBLA 64 (Mar. 30, 1984) 91 I.D. 165

A duly promulgated Departmental regulation has the force and effect of law and is binding upon all officials of the Department, including the Board of Land Appeals and the Secretary, and may not be waived.

R. Gr. Shaw, 82 IBLA 88 (July 17, 1984)

Joseph A. La Paire, 83 IBLA 145 (Oct. 9, 1984)

Lands classified as within a known geologic structure of a producing oil and gas field (KGS) at any time prior to lease issuance must be leased competitively. The simultaneous oil and gas lease offer for such lands must be rejected even though the KGS determination probably would not have been applied to the lands but for the delay in lease issuance caused by the Secretary's suspension of the simultaneous oil and gas leasing program. Furthermore, applicant's rights are not impaired in such a case because the drawing merely establishes the priority of filing an offer, it does not vest in the lease applicant the right to an oil and gas lease.

SECRETARY OF THE INTERIOR--Continued

The Secretary has the power to prescribe proper and necessary rules and regulations to accomplish the purpose of the Mineral Leasing Act, and pursuant to this and other authority, the Secretary has the power to create, and operate, or to suspend the simultaneous oil and gas leasing program which was designed to implement the noncompetitive leasing provisions of the Act.

Joseph A. Talladira, 83 IBLA 256 (Oct. 23, 1984)

Although Federal oil and gas leasing is subject to extensive supervision by the Secretary of the Interior, and although the Secretary has broad discretion over whether or not to lease particular lands within the public domain, once he has granted the lease he may not derogate the rights of the Federal lessee acquired under the Mineral Leasing Act and the lease granted pursuant thereto.

Federal Oil Corp., et al., 84 IBLA 36 (Nov. 27, 1984)

SEGREGATION

A permit allowing free use of mineral materials does not segregate the subject lands from further appropriation; rather, subsequent claims and entries are subject to the terms of the permit.

It is well established that an entry on public land under the laws of the United States segregates the land from the public domain, appropriates it to private use, and withdraws it from subsequent entry or acquisition until that entry is finally cancelled. Applications for interest in public lands must be rejected if the lands are not available for the requested disposition at the time they are filed or considered. Where a right-of-way was granted to lands subject at the time to a valid homestead entry, BLM properly declares the grant null and void ab initio.

State of Alaska, 46 IBLA 12 (Feb. 20, 1980)

Where an application for withdrawal, published in the Federal Register and noted on the State Office records, sets aside certain lands for geothermal resources leasing, and specifically precludes the operation of the remainder of the mineral leasing laws, it is proper to suspend an oil and gas lease offer for such segregated lands, pending action on the withdrawal application. After the withdrawal application has been cancelled without favorable action on the withdrawal request, the oil and gas offer may be considered on its merits.

Trent J. Parker, 49 IBLA 209 (Aug. 11, 1980)

Where an application for withdrawal, published in the Federal Register and noted on the State Office records, sets aside certain lands for airport purposes and specifically precludes the operation of the remainder of the mineral leasing laws, it is proper under the regulations to suspend an oil and gas lease offer for such segregated lands, pending action on the withdrawal application. After the withdrawal application has been cancelled without favorable action on the withdrawal request, the oil and gas offer may be considered on its merits.

Donald Eppersen, 50 IBLA 267 (Sept. 30, 1980)

SEGREGATION--Continued

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected land to the extent indicated in the notice, and applications for such land must be rejected.

Robert Dale Hairston et al., 51 IBLA 115 (Nov. 20, 1980)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated.

Stephen Kenyon et al., 51 IBLA 368 (Dec. 30, 1980)

Where BLM filed an application for a protective withdrawal pursuant to Exec. Order No. 10355 which would reserve the subject land from all forms of appropriation including location and entry under the mining laws and the application was duly noted on the official status plats, the lands were segregated from the date of notation to the extent that the withdrawal, if effected, would prevent such forms of appropriation. A protective withdrawal is not a temporary withdrawal under the Pickett Act, 43 U.S.C. § 141 (1970), and is not limited by the terms of 43 U.S.C. § 142 (1970) which provides that temporarily withdrawn lands shall remain open to location for metalliferous minerals.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981)
88 I.D. 31

Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected lands to the extent indicated in the notice, and subsequent Indian allotment applications for such lands must be rejected.

Samuel Lee Gifford et al., 53 IBLA 23 (Feb. 26, 1981)

Wanda Lois Lee McKinney et al., 53 IBLA 279 (Mar. 24, 1981)

Jan Christian Sykes, 55 IBLA 23 (May 26, 1981)

Terry Burl Fryrear, 58 IBLA 94 (Sept. 24, 1981)

Marvin Ray Gifford et al., 58 IBLA 98 (Sept. 24, 1981)

Lula Lorene McCracken Slower, 58 IBLA 202 (Sept. 29, 1981)

Betsy Romaine Bevill, 58 IBLA 260 (Oct. 6, 1981)

William Milton, Jr., Cordell Eldon Eugene Morgan, Myrna June Morgan, Jackie Lavern Jarman, 59 IBLA 182 (Oct. 27, 1981)

"Public land laws." Under 43 CFR 2091.2-3 (1979), a state exchange application segregated the selected public lands from appropriation under the public land laws, including the mining laws. The term "public land laws" is ordinarily used to refer to statutes governing the alienation of public land, and generally is distinguished from both "mining laws," referring to statutes governing the mining of hard minerals on public lands, and "mineral leasing laws," a term used to designate that group of statutes governing the leasing of public

SEGREGATION--Continued

lands for oil, gas, and other selected minerals. Udall v. Tallman, 380 U.S. 1, 19 (1965).

A state exchange application being processed under sec. 206 of the Federal Land Policy and Management Act of 1976 does not segregate the selected public lands from the operation of the mineral leasing laws. 43 CFR 2201.1(b).

Dale E. Armstrong, 53 IBLA 153 (Mar. 12, 1981)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands segregates the lands from all subsequent appropriation, including location under the mining laws; however, the application to select has no segregative effect when at the time the application is filed, the land is withdrawn from all forms of appropriation under the public land laws, including selections by a state.

John C. and Martha W. Thomas d.b.a. Tungsten Mining Co., 53 IBLA 182 (Mar. 17, 1981)

Publication in the Federal Register of a classification for multiple use management pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. § 1411 (1976), will segregate the affected land to the extent indicated in the notice, and applications for such land pursuant to sec. 4 of the Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), must be rejected.

Dorothy L. Standridge et al., 55 IBLA 131 (June 3, 1981)

Gladys Lee Cardwell Gifford, Betty Ann Gifford Jarman, 55 IBLA 332 (June 26, 1981)

"Notation rule." Under the notation rule a millsite claim, located at a time when the master title plat in the local Bureau of Land Management office shows that the lands embraced by the claim are included in a state selection application, is properly declared null and void ab initio because notation of the state selection application on the official records segregates the land from further appropriation. The rule applies even where the notation was posted in error, or where the segregative use so noted is void, voidable, or has terminated.

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands, where the filing is regular on its face, segregates the lands from all subsequent appropriation, including location and entry under the mining laws and a millsite located while the land is so segregated is null and void ab initio.

A mining claim or millsite located on land at a time when the land is segregated from the operation of the mining laws by a State selection application is properly declared null and void ab initio.

John C. and Martha W. Thomas, d.b.a. Tungsten Mining Co. (On Reconsideration), 59 IBLA 364 (Nov. 9, 1981)

Public land may be "appropriated" to a public project or purpose by a Federal or state agency if such appropriation is under authority of law and there is a physical devotion of the land to such use on the ground. Such an appropriation does not segregate or withdraw the land, but creates an easement which is protected, and any subsequent entry, claim, or location is subject thereto. Where a free-use material site permit with a fixed date of expiration is held by a state agency and the site is later included in a homestead entry application, after the rights of the entryman are vested the free-use permit may not be converted to a material site

SEGREGATION--Continued

right-of-way with an indefinite term, but the homestead entry remains subject to the permit until it expires.

Where a state agency which for many years has operated a material site under a free-use permit has applied to BLM for a material site right-of-way pursuant to the Federal Highway Act, and has received permission from BLM to construct (operate) in advance of the grant, and the Department of Commerce has certified that the right-of-way is in the public interest, and the application has been perfected by the applicant so that nothing remains to be done except the ministerial act of formally issuing the right-of-way, which act is required by regulation at that stage, a homestead applicant who then files an application for land which includes part of the material site and who pays the fees incident to such application will be held to have acquired his vested right to the homestead land subject to the material site right-of-way issued thereafter, and the homestead patent issued several years later was properly encumbered by a reservation of the right-of-way.

A homestead entryman who 22 years ago received a patent with a reservation of a material site right-of-way, but who accepted such patent without protest or appeal is not entitled to have the right-of-way canceled now on the basis of his assertion that the right-of-way was unauthorized.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

An exchange application being processed under sec. 206 of the Federal Land Policy and Management Act of 1976 does not segregate the selected public lands from the operation of the mineral leasing laws. 43 CFR 2201.1(b).

Where an applicant files an over-the-counter oil and gas lease offer for less than 640 acres and does not include adjacent land for which an exchange application was then pending because of his reliance on Departmental decisions, a BLM Information Memorandum, and a BLM State Office decision, all interpreting a regulation to mean that an exchange application segregates the selected land from mineral leasing, a subsequent reinterpretation of the salient regulation which holds that such lands are available for leasing will not compel rejection of the offer. A regulation should be so clear that there is no basis for an applicant's noncompliance with it before it may be interpreted and applied with retroactive effect so as to deprive him of a statutory priority.

Lane Lasrich, 63 IBLA 192 (Apr. 8, 1982)

Sec. 4 of the General Allotment Act of Feb. 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians only where the Indians have made settlement upon public lands "not otherwise appropriated." Applications for Indian allotments are properly rejected where the lands have been segregated from entry under the agricultural land laws (including the Act of Feb. 8, 1887) by the Secretary, under authority granted by the Act of Sept. 19, 1964, through notices of classification of lands for multiple use management, duly published in the Federal Register.

Mary Frances Stilow et al., 64 IBLA 361 (June 16, 1982)

Litha Muriel Bryant Smith et al., 66 IBLA 150 (Aug. 10, 1982)

Wesley Kenneth Phillips, Jr., 67 IBLA 168 (Sept. 21, 1982)

SEGREGATION--Continued

Where the descriptive language accompanying a United States survey of the exterior of an Alaskan townsite notes expressly that the "townsite" of Cuzinkie is comprised of three tracts ("A, B, and C") and mentions elsewhere a fourth tract ("D") as being part of the "village" of Cuzinkie, Tract "D" is not properly regarded as being within the "townsite" under the regulations, and approval of the survey does not segregate it as part of the townsite.

Stephen Kenyon et al. (On Reconsideration), 65 IBLA 44 (June 23, 1982)

Where land is within a grazing lease issued pursuant to the Act of Mar. 4, 1927, as amended, 43 U.S.C.A. § 316 (West Supp. 1982), and that fact is properly noted on the public land records, the land is segregated from entry as a trade and manufacturing site under sec. 10 of the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1976). Where, however, the record indicates that the Bureau of Land Management treated the entryman's notice of location of a settlement claim as a petition for determination under 43 CFR 4230.1 and approved it to the extent of any conflict with the grazing lease, the lease will not be a bar to the initiation of that settlement claim.

Henriette Roberts Vadon, 70 IBLA 171 (Jan. 20, 1983)

A mining claim located on land segregated and closed to mineral entry by notation or an application for withdrawal in the official BLM records is null and void ab initio.

J. Pat Kaufman, 71 IBLA 183 (Mar. 10, 1983)

Lamar & Christine Burnett, 78 IBLA 349 (Jan. 25, 1984)

Lamar Burnett et ux., 80 IBLA 166 (Dec. 19, 1984)

Where an act of Congress directs segregation of certain lands from "all forms of entry under the public land laws," the question of whether such a segregation prohibits mineral entry under the general mining laws is answered by determining congressional intent from the act itself, the legislative history of the act and, in addition, from historical interpretations of the Department concerning the act or other similar acts.

O. Glenn Oliver, 73 IBLA 56 (May 12, 1983)

John L. Grassmyer, 77 IBLA 156 (Nov. 16, 1983)

A mining claim located on land segregated from all forms of appropriation, including locations under the mining law, by a small tract classification order is null and void ab initio.

Ernest L. Brewington, 73 IBLA 167 (May 24, 1983)

BLM must reject an Indian allotment application filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), where the land has been segregated from all forms of entry under the public land laws pursuant to sec. 3 of the Act of Mar. 6, 1958, P.L. 85-339, 72 Stat. 31 (1958), and reserved for acquisition by the Colorado River Commission of the State of Nevada. The land remains segregated even where the segregation has expired by its terms, but it is still reflected on the public land records of BLM.

Melina Anne Jones, Claudia Lee Jones, 76 IBLA 17 (Sept. 6, 1983)

SEGREGATION--Continued

Mining claims located on land which has been classified for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), and subsequently leased pursuant thereto, are properly declared null and void ab initio because the land was segregated from mineral entry, even where the lease contained a mineral reservation to the United States.

In order to establish that a notice of location of a mining claim is an amended location which relates back prior to a BLM decision which classified the land for lease or sale pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. §§ 869 to 869-4 (1976), the mining claimant must submit proof of a chain of title to him. In the absence of such proof, the purported amendment must be treated as a relocation.

Ronald W. Graham, Dorothy L. Graham, 77 IBLA 174 (Nov. 17, 1983)

BLM may properly declare a mining claim null and void ab initio where located on land segregated from mineral entry on the date of location by a small tract classification order.

J. S. Bowers, 79 IBLA 298 (Mar. 20, 1984)

Where on appeal the Board determines that, in declaring a millsite claim null and void ab initio because it was located on land which had been patented to the state, BLM mistakenly fixed the situs of the claim and that the claim is actually on land open to entry, the Board will reverse the BLM decision.

Savage Construction Co., Inc., 79 IBLA 389 (Mar. 27, 1984)

Prior to the promulgation of 43 CFR 2091.2-6, the filing of a state indemnity selection application did not segregate the identified lands from operation of the mining laws prior to classification of the lands as suitable for indemnity selection.

Lee Rhue Partnership, 80 IBLA 1 (Mar. 27, 1984)

BLM may not declare a mining claim located on land subject to a State indemnity selection application null and void ab initio because of the segregative effect arising from the filing of the application pursuant to 43 CFR 2091.2-6 where the state's application was filed prior to promulgation of the regulation.

James H. Houghton, Mrs. A. Houghton, 80 IBLA 195 (Apr. 24, 1984)

When Arizona filed its original application for selection of land as part of its entitlement to compensation for deficiencies for school trust lands pursuant to its enabling act, the Department did not have segregation authority to protect the selections. During the promulgation of 43 CFR 2091.2-6, Arizona submitted a request to have the previous applications withdrawn, consolidated, and amended to include additional lands. This will be deemed a reapplication under the circumstances of this case, the filing of which enabled the Department to segregate the lands described therein under 43 CFR 2091.2-6. Mining claims subsequently initiated on lands that were segregated by the reapplication were properly declared null and void ab initio.

Amoco Minerals Co., 81 IBLA 23 (May 15, 1984)

SEGREGATION--Continued

A homestead application segregates land from subsequent entry by a Native seeking to establish use and occupancy under the Native Allotment Act until the homestead entry is canceled on the official records of the Bureau of Land Management.

Nick E. Demientieff, State of Alaska, 81 IBLA 303 (June 15, 1984)

A mining claim located on land segregated from such location by the filing of a state selection application is properly declared null and void at initio; however, where the case record is unclear whether the land embraced by the claim was segregated by an application predating the location or whether the land was segregated by an amendment to the application filed subsequent to the location, the decision will be set aside and the case remanded.

Elizabeth S. Mielken et al., 81 IBLA 341 (June 21, 1984)

Flaig Bay Stands, 82 IBLA 226 (Aug. 22, 1984)

Where a lode mining claim is located partially on withdrawn or patented land, it is not null and void at initio to the extent of its inclusion of such lands. A locator whose discovery is on lands open to location may extend the end lines and side lines of his claim across withdrawn or patented land to define the extralateral rights to lodes or veins which apex within the claim.

Western Nuclear, Inc., 82 IBLA 67 (July 12, 1984)

A mining claim located on land segregated from such location by the filing of a state selection application is properly declared null and void at initio.

Ronald E. Kotowski, 82 IBLA 317 (Sept. 6, 1984)

Where a lode mining claim is located partially on withdrawn land, it is not null and void at initio to the extent of its inclusion of such lands. A locator whose discovery is on lands opened to location may extend the end lines and side lines of his claim across withdrawn or patented land to define the extralateral rights to lodes or veins which apex within the claim.

Cominco American, Inc., 84 IBLA 209 (Dec. 27, 1984)

SMALL TRACT ACT

GENERALLY

Where BLM classifies a 4-acre tract as suitable for disposal under the Small Tract Act, thereby segregating it from acquisition under other public land laws, then grants an individual a lease thereon with option to purchase, pursuant to which the lessee constructs buildings and occupies the tract, the protest and application of an Alaska Native, made for the first time 12 years later, will be rejected, as a matter of law and equity where the Native was claiming 160 acres of different land during the preceding 6 years, and had made no assertion of interest in the small tract, but rather had expressly acknowledged the existence of the leasehold.

Evelyn Alexander, 45 IBLA 28 (Jan. 14, 1980)

SMALL TRACT ACT--Continued

GENERALLY--Continued

The Small Tract Act, 43 U.S.C. § 682a (1976) was repealed by sec. 702 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976.

Leon H. Rockwell et al., 72 IBLA 373 (May 4, 1983)

Bethe McConkey, Robert L. Cook, 74 IBLA 4 (June 21, 1983)

Gladys Yonich, Doris L. Hartley, 74 IBLA 285 (July 25, 1983)

Anthony Chiaverza et al., 74 IBLA 350 (July 28, 1983)

Russell R. Wilson, 76 IBLA 20 (Sept. 6, 1983)

Where BLM makes an unequivocal offer to sell a small tract and invites acceptance by submitting a prescribed amount as full payment, and where an individual submits the payment, a binding contract passing equitable title to the buyer is created. Thereafter, BLM holds legal title in trust for the purchaser and, as soon as any impediments to conveyance of full legal title are removed, it is obliged to convey title to him, without additional charge.

Although the Small Tract Act of June 1, 1938, was repealed by the Federal Land Policy and Management Act of 1976, this repeal was made expressly subject to any existing "land use right or authorization," including a vested contractual equitable property right. Thus, the repeal of the former by the latter did not remove the Department's authority to meet its ministerial duty to pass legal title where a binding contract to do so had been created prior to the enactment of FLPMA.

Chester E. Lawson, 73 IBLA 27 (May 9, 1983)

The Small Tract Act, 43 U.S.C. § 682a (1976) was repealed by sec. 702 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976.

The mere filing of a small tract application does not create in the applicant any right or interest in the land. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1976), cannot acquire any right or interest in the land by virtue of administrative delay in processing the application. When the current fair market value of the land has been determined in accordance with accepted procedures, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error.

John Dillingham et al., 73 IBLA 156 (May 24, 1983)

The Small Tract Act, 43 U.S.C. § 682a (1970), was repealed by sec. 702 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976.

M. Lawrence Bork, 81 IBLA 366 (June 27, 1984)

APPLICATIONS

The mere filing of a small tract application does not create in the applicant any right or interest in the land. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1976), cannot acquire any right or interest in the land by virtue of administrative delay in processing the application. When the current fair market value of the land has been determined in accordance with accepted procedures, the appraisal

SMALL TRACT ACT--Continued

APPLICATIONS--Continued

will not be disturbed in the absence of positive, substantial evidence that it is in error.

Leon H. Rockwell et al., 72 IBLA 373 (May 4, 1983)

The mere filing of a small tract application does not create in the applicant any right or interest in the land. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1976), cannot acquire any right or interest in the land by virtue of administrative delay in processing the application.

Gladys Yonich, Doris L. Hartley, 74 IBLA 285 (July 25, 1983)

Anthony Chiaverza et al., 74 IBLA 350 (July 28, 1983)

Russell R. Wilson, 76 IBLA 20 (Sept. 6, 1983)

The mere filing of a small tract application did not create in the applicant any right or interest in the land sought. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1970), did not acquire any right or interest in the land embraced in his application by virtue of administrative delay in processing the application.

M. Lawrence Bork, 81 IBLA 366 (June 27, 1984)

APPRAISALS

Where the current fair rental value of a small tract lease has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error.

Hyatt Lake Homeowners Ass'n, 48 IBLA 159 (June 9, 1980)

Where a lessee of a small tract lease contends the rental set by the Bureau of Land Management is too high, the burden is upon her to prove by positive and substantial evidence that the appraisal is in error.

Lucille S. Hoggard, 57 IBLA 74 (Aug. 20, 1981)

The mere filing of a small tract application does not create in the applicant any right or interest in the land. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1976), cannot acquire any right or interest in the land by virtue of administrative delay in processing the application. When the current fair market value of the land has been determined in accordance with accepted procedures, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error.

Bethe McConkey, Robert L. Cook, 74 IBLA 4 (June 21, 1983)

CLASSIFICATION

Where BLM classifies a 4-acre tract as suitable for disposal under the Small Tract Act, thereby segregating it from acquisition under other public land laws, then grants an individual a lease thereon with option to purchase, pursuant to which the lessee constructs buildings and occupies the tract, the protest and application of an Alaska Native, made for the first time 12 years later, will be rejected, as a matter of

SMALL TRACT ACT--Continued

CLASSIFICATION--Continued

law and equity where the Native was claiming 160 acres of different land during the preceding 6 years, and had made no assertion of interest in the small tract, but rather had expressly acknowledged the existence of the leasehold.

Evelyn Alexander, 45 IBLA 28 (Jan. 14, 1980)

A mining claim located on land segregated from all forms of appropriation, including locations under the mining law, by a small tract classification order is null and void ab initio.

Ernest L. Brewington, 73 IBLA 167 (May 24, 1983)

BLM may properly declare a mining claim null and void ab initio where located on land segregated from mineral entry on the date of location by a small tract classification order.

J. S. Bowers, 79 IBLA 298 (Mar. 20, 1984)

RENEWAL OF LEASE

Where the current fair rental value of a small tract lease has been determined in accordance with accepted appraisal procedures and the lessee contends that the rental is excessive, the burden is upon the lessee to prove by positive, substantial evidence that the appraisal is in error.

Hyatt Lake Homeowners Ass'n, 48 IBLA 159 (June 9, 1980)

SODIUM LEASES AND PERMITS
(See also Mineral Leasing Act--if included in this Index.)

GENERALLY

A natural brine containing water and ions of sodium, potassium, calcium, magnesium, and chlorine may be considered a valuable deposit of a sodium compound within the meaning of 30 U.S.C. § 262 (1976) if either of two contingencies occur. First, sodium must be present in sufficient quantity as to be commercially valuable. Second, sodium must be essential to the molecular structure of the valuable mineral.

Land is "known to be valuable" for a mineral subject to the Mineral Leasing Act of Feb. 25, 1920, as amended, when "known conditions at the time [of location] were plainly such as to engender the belief that the land contained mineral deposits of such quality and in such quantity as would render their extraction profitable and justify expenditures to that end." United States v. Southern Pacific Co., 251 U.S. 1, 13-14 (1919); Diamond Coal Co. v. United States, 233 U.S. 236, 239-40 (1914). In determining whether mineral deposits are such as to render their extraction profitable and justify expenditures, extrinsic factors, such as the cost of extraction, processing, transportation, and marketing must be considered.

Where sodium ions are commingled in a brine with calcium, potassium, and chlorine ions and no valuable deposit of a sodium or potassium compound is present, contestees' evaporation of such brine does not violate the Multiple Mineral Development Act, 30 U.S.C. §§ 521-531 (1976).

The Administrative Law Judge gave proper weight to Government testimony in dismissing the Government's contest complaint where the evidence supported a finding of the existence of a sodium-calcium-chloride brine, but did not support a finding that such brine was "known to be valuable" for a Leasing Act mineral.

The existence of a "related product" within the meaning of 30 U.S.C. § 262 (1976) presumes the existence of a valuable sodium compound deposit.

United States v. Leron Bardsley (Trustee), Marlene M. Bardsley, Individually and as Administratrix of the Estate of Donald M. Bardsley (Deceased), 45 IBLA 367 (Feb. 7, 1980)

LEASES

Sodium leases, which have a determinate 20-year primary term, are not automatically extended or renewed. The Secretary may renew the lease upon the lessee's timely application for renewal.

The lessee's preference right at the time of renewal under sec. 24 of the Mineral Lands Leasing Act is only to be preferred above other applicants and is not an entitlement, as against the United States, to a renewal lease.

In adjudicating an application for renewal of a sodium lease, the Secretary retains his discretion respecting whether or not to lease. That discretion is limited in that if the decision is made to lease, a preference is extended to the existing lessee who has made timely application.

Existing sodium leases which are beyond their primary term but for which the lessee has made timely application for renewal are continued in force by the provisions of sec. 9 of the Administrative Procedure Act so long as it takes the Department to adjudicate the application.

Sodium Lease Renewals, M-36983 (Mar. 18, 1982)
89 I.D. 173

A sodium prospecting permittee who applies for a preference right sodium lease, alleging with supportive data that he has discovered a valuable deposit of sodium and that the land is chiefly valuable for sodium, as required by sec. 24 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 262 (1976), is entitled to a hearing conducted in accordance with sec. 5 of the Administrative Procedure Act, 5 U.S.C. § 554 (1976), before his lease application may be finally rejected for failure to prove such a discovery.

Marine Minerals Corp., 76 IBLA 68 (Sept. 21, 1983)

PERMITS

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Under 43 CFR 3501.1-6, the Bureau of Land Management must reject applications for prospecting permits that are filed for lands not available for prospecting.

Irvin D. Bird, Jr., 73 IBLA 210 (May 27, 1983)

SODIUM LEASES AND PERMITS--Continued

PERMITS--Continued

A sodium prospecting permittee who applies for a preference right sodium lease, alleging with supportive data that he has discovered a valuable deposit of sodium and that the land is chiefly valuable for sodium, as required by sec. 24 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 262 (1976), is entitled to a hearing conducted in accordance with sec. 5 of the Administrative Procedure Act, 5 U.S.C. § 554 (1976), before his lease application may be finally rejected for failure to prove such a discovery.

Marlow Minerals Corp., 76 IBLA 68 (Sept. 21, 1983)

When deciding whether issuance of a sodium prospecting permit is appropriate, the Bureau of Land Management, as the delegate of the Secretary, is entitled to rely on the reasoned opinion of Minerals Management Service as its technical expert. A mineral determination made by Minerals Management Service will not be disturbed in the absence of a clear and definite showing of error.

Delta Chemical Co., 76 IBLA 111 (Sept. 21, 1983)

PREFERENCE RIGHT LEASES

BLM properly applied the regulations set forth in 43 CFR Subparts 3520-21, effective May 7, 1976, to preference right lease applications pending on the effective date of such regulations.

BLM properly excluded from an applicant's demonstrated reserves of trona those reserves which the applicant, by stipulation in the prospecting permit, had agreed would not be subject to mining or recovery operations.

An exchange application tendered pursuant to 43 CFR Subpart 3526 is properly rejected by BLM where a preference right lease applicant has not demonstrated to the Secretary that he has a preference right to a lease.

A hearing is properly ordered pursuant to 43 CFR 3521.1-1(j) where a preference right lease application for trona is rejected and the applicant has alleged in his application facts sufficient to show that he is entitled to a lease. At the hearing, the permittee shall have both the burden of going forward and the burden of proof, and must show by a preponderance of the evidence that he has discovered a valuable deposit of trona and that the land is chiefly valuable therefor.

John S. Wold, Eugene V. Simons, 48 IBLA 106 (May 30, 1980)

ROYALTIES

"Gross value at the point of shipment to market." The royalty rate for products mined and disposed under sodium leases must be imposed on the "gross value of the sodium compounds and other related products at the point of shipment to market," which means the gross value of a refined product for sale in an established market even when applied to an intermediate product and without deduction for the cost that would be incurred in producing a refined product.

Sales commissions are not an allowable deduction in the computation of royalty under sodium leases.

FMC Corp., 54 IBLA 77 (Apr. 14, 1981)

SODIUM LEASES AND PERMITS--Continued

ROYALTIES--Continued

Sales commissions are not an allowable deduction in the computation of royalty under sodium leases.

To the extent that a commission is granted to distributors or jobbers who purchase soda ash for resale, such a discount represents an allowable deduction from the royalty base; however, where one company has a managing interest in a second company and under a sales agreement the first company purchases all the second company's product and reimburses the second company on the basis of the "net sales proceeds" received by the first company minus a retained commission, the first company cannot be considered a distributor for resale so as to allow the retained commission to be deducted from the royalty base. In such a situation the retained commission is properly characterized as a sales commission and not deductible.

In computing royalty under sodium leases where one company has a managing interest in a second company and under a sales agreement the first company purchases all the second company's product, if the first company buys the soda ash for consumption at its own plants, it cannot use an unpublished preferential sales price in determining the amount owed the second company. The second company is properly required to pay royalties on the basis of the published delivered prices paid by the first company's customers less the customary rail freight equalization allowances.

In computing royalty under sodium leases where one company has a managing interest in a second company and under a sales agreement the first company purchases all the second company's product, exchange agreement billings by the first company, which amount to discounts, understate the gross value of the soda ash for royalty purposes.

Stauffer Chemical Co. of Wyoming, 54 IBLA 85 (Apr. 14, 1981)

SOLICITOR, DEPARTMENT OF THE INTERIOR

Where a counsel moves to reopen a Board decision and the motion is granted, and the parties are given a period substantially in excess of the time requested in which to submit additional evidence but both fail to do so, the Board is entitled to dispose of the case by a summary affirmation of the original decision.

Jean Rodgers et al. (On Reconsideration), 5 OHA 266 (Feb. 24, 1984)

SPECIAL USE PERMITS

The effect of a timely filed notice of appeal is to suspend the authority of the deciding official to exercise jurisdiction relating to the subject of the appeal. It does not have the effect, however, of suspending the authority of BLM to act on matters which, while related to the subject of the appeal, are nevertheless functionally independent therefrom.

Failure to pay the annual rental for a special land use permit constitutes sufficient ground for termination of the use. 43 CFR 2920.4(a).

East Canyon Irrigation Co., 47 IBLA 155 (May 6, 1980)

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SPECIAL USE PERMITS--Continued

BLM's decision to award the one special recreation permit to use the Rio Grande River in New Mexico for commercial river trips which is available to first-time applicants by placing all closely qualified first-time applications into a drawing is an equitable way to award the permit and will be affirmed.

BLM's decision to restrict to 12 the number of special recreation permits to use the Rio Grande River in New Mexico for commercial river trips will be affirmed where the record shows that congestion on the river justifies such a restriction.

Outdoor Adventures, S.A., 50 IBLA 90 (Sept. 17, 1980)

The issuance of special use permits is discretionary, and BLM may properly reject a permit application for commercial river rafting where the proposed use would exceed the river's carrying capacity and would be inconsistent with the objectives, responsibilities, or programs for the management of the public lands involved.

Whitewater Expeditions & Tours, 52 IBLA 80 (Jan. 9, 1981)

The issuance of special use permits is discretionary, and BLM may properly reject a permit application for an organized off-road motorcycle race where the proposed use would adversely affect critical deer winter range and would be inconsistent with the objectives, responsibilities, or programs for the management of the public lands involved.

Cascade Motorcycle Club, 56 IBLA 134 (July 20, 1981)

Public land may be "appropriated" to a public project or purpose by a Federal or state agency if such appropriation is under authority of law and there is a physical devotion of the land to such use on the ground. Such an appropriation does not segregate or withdraw the land, but creates an easement which is protected, and any subsequent entry, claim, or location is subject thereto. Where a free-use material site permit with a fixed date of expiration is held by a state agency and the site is later included in a homestead entry application, after the rights of the entryman are vested the free-use permit may not be converted to a material site right-of-way with an indefinite term, but the homestead entry remains subject to the permit until it expires.

State of Alaska, 62 IBLA 187 (Mar. 9, 1982)

BLM's decision to approve a transfer of a permit for authorized use on the Rogue River, designated as a wild and scenic river pursuant to the Wild and Scenic Rivers Act of 1968, 16 U.S.C. § 1271 (1976), from one commercial outfitter to another is proper where it maintains the 50/50 allocation of river use between commercial outfitters and private boaters.

Where the Bureau of Land Management has dismissed a protest to the transfer of a special use permit for river rafting without considering evidence in the record, which tends to support certain allegations in the protest, the case will be remanded to BLM for reconsideration of the evidence and a final determination of whether there has been a violation of the guidelines which state that an authorized outfitter's authorization to conduct float trips is not a salable commodity.

Wilderness Public Rights Fund, National Organization for River Sports, 63 IBLA 91 (Mar. 31, 1982)

SPECIAL USE PERMITS--Continued

An applicant for a special recreation use permit for river rafting will be considered as seeking a "commercial use" of the river, within the meaning of 43 CFR 8372.0-5(a), where the applicant or the applicant's employee makes a salary from or for services rendered to customers or participants in the permitted activity.

Wilderness/Challenge, Inc., 64 IBLA 44 (May 6, 1982)

A notice to cease trespass and order to remove improvements may be set aside to allow consideration of a special use permit with appropriate restrictions where appellant concedes lack of right to the land and it is not clear that a temporary use authorization would interefere with any immediate need of the land for public purposes.

Juliet Marsh Brown, 64 IBLA 379 (June 17, 1982)

The issuance of special use permits is discretionary, and BLM may accept or reject a permit application depending upon its consistency with the objectives, responsibilities, or programs for the management of the public lands involved. Where a duly authorized officer has exercised this responsibility, his actions will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

National Public Lands Task Force, Nevada Outdoor Recreation Ass'n., Inc., 70 IBLA 214 (Jan. 24, 1983)

Use fees for special recreation use permits for competitive use in areas other than developed recreational sites are calculated pursuant to 43 CFR 8372.4(b)(2). This section provides for a use fee of 5 percent of the gross receipts (with certain minimums). However, there is no definition of the term "gross receipts" in the pertinent regulations or enabling legislation. Therefore, if a permittee appeals from a determination of the use fee owing under a special recreation use permit, the permittee must ordinarily demonstrate that: (1) The fee calculation contained mathematical errors or errors with respect to the amount, in fact, received; (2) the fee calculation was made using a formula which differed from that specifically agreed upon or contained in the permit; or (3) the fee calculation was not the same as had been previously applied to the permit and the permittee had no reason to believe that the formula would not be the same.

Scors International, 78 IBLA 142 (Dec. 29, 1983)

The exercise of Secretarial discretion involved in the issuance of special use permits includes the authority to set permit conditions and establish penalties for violation of permit conditions. A temporary suspension of a permit imposed by the authorized officer for violations of permit conditions is found to be proper where it is shown the permit holder failed to make required reports and failed to mark boats to identify the permit holder as required by the permit conditions.

Osprey River Trips, Inc., 83 IBLA 98 (Oct. 1, 1984)

Collection of user fee pursuant to 43 CFR 8372.4 is proper where the commercial user was obligated to pay a fee for river rafting trips conducted in a special area under duly promulgated Departmental regulations even though Bureau of Land Management

SPECIAL USE PERMITS--Continued

officials have not collected a user fee from noncommercial users of the same area.

Rogue River Outfitters Ass'n, 83 IBLA 151 (Oct. 10, 1984)

A BLM determination to issue a special recreation use permit for a snowmobile race on the Iditarod National Historic Trail is not inconsistent with the nature and purpose of that trail which commemorates the Alaska gold rush era, where the permit contains numerous stipulations designed to protect the public and the environment.

The National Historic Preservation Act, 16 U.S.C. § 470f (1982), provides that the head of any Federal agency having authority to license any undertaking shall take into account the effect on any property eligible for inclusion on the Register of Historic Places and provide the Advisory Council on Historic Preservation the opportunity to comment. Consultation with the Advisory Council is not necessary, however, where during the consideration of an application for a special recreation use permit for the Iditarod National Historic Trail, BLM makes a determination of no effect pursuant to 36 CFR 800.4(b)(1) and that determination is supported by the record in the case.

Sharon Long et al., 83 IBLA 304 (Oct. 30, 1984)

STARE DECISIS

The Bureau of Land Management can recover the full cost of providing a service to an identifiable beneficiary regardless of the incidental public benefits flowing from that service. Charges may be made for environmental studies deemed appropriate for the proper consideration of the application.

Recognizing the principle of stare decisis, the Board nevertheless declines to follow a decision of the same district court involving the same statute where a circuit court decision, although arising under a different statute, is of more recent vintage, takes specific cognizance of the district court decision, and the circuit court decision comports with Departmental policies.

Colorado-Ute Electric Ass'n, Inc., 46 IBLA 35 (Feb. 20, 1980)

Failure to maintain a claim by doing assessment work each year may constitute evidence of abandonment. Independently, a failure to substantially comply with the requirement that annual assessment work be performed, 30 U.S.C. § 28 (1976), requires a finding that the claim has not been "maintained" within the meaning of sec. 37 of the Mineral Leasing Act, 30 U.S.C. § 193 (1976), and may result in a forfeiture of the claim. Nickel v. The Oil Shale Corp., 400 U.S. 48 (1970).

United States v. Catlin Bohne et al., United States v. Exxon Corp. et al., United States v. Aldabelle Brown et al., 48 IBLA 267 (June 30, 1980) 87 I.D. 248

STATE COURTS

The Secretary of the Interior, pursuant to the statutory duty to determine the heirs of deceased Indians for whom the United States holds property in trust, has the power to determine whether a state court had jurisdiction to enter a decree apparently affecting

STATE COURTS--Continued

the determination of heirs and to disregard such a state court decree under appropriate circumstances.

Estate of James Worby Pekah, 11 IBIA 237 (July 6, 1983)

Neither the Board of Indian Appeals nor the Department of the Interior has review authority over matters entrusted to state, Federal, or tribal courts.

Neither the Board of Indian Appeals nor the Department of the Interior is the proper forum for consideration of questions relating to nontrust property held by Indians.

Estate of Alice Mae Sasse, 12 IBIA 281 (June 25, 1984)

STATE EXCHANGES
(See also Exchanges of Land--if included in this Index.)

GENERALLY

A protest against approval of a state exchange application is properly dismissed where the exchange is shown to be in the public interest under sec. 206 of the Federal Land Policy and Management Act of 1976, and it is immaterial that the protestants may be permittees or licensees of the selected lands whose grazing privileges would have been lost upon completion of the exchange, in that neither a licensee nor a permittee has a vested right in the land covered by the license or permit and such land is available for selection by a state.

Bryant Wood, 52 IBLA 156 (Jan. 21, 1981) 88 I.D. 232

A decision rejecting an oil and gas lease offer will be affirmed where the lands described have been reconveyed to the United States in a land exchange to be administered by the Bureau of Land Management but the lands have not been opened to mineral leasing by an order noted on the public land records.

Tom Hotesting, 73 IBLA 320 (June 7, 1983)

Where a deed embracing certain base lands is tendered to the United States in an application for an exchange under the Forest Lieu Exchange Act, Act of June 4, 1897, 30 Stat. 31, which title is based on a deed issued for state school lands to a fictitious individual, such deed vests no title in the United States. Where, however, the state deed is issued to a real person, even though it may have been fraudulently obtained from the state, acceptance by the United States of the exchange application is sufficient to vest title in the United States to the base property, even though that title might be subject to defeasance in a proper proceeding.

Where the United States had accepted an application for a forest lieu exchange under the provisions of the Act of June 4, 1897, 30 Stat. 31, title to the base property vested in the United States. Such title was not divested by either the subsequent refusal of the United States to complete the exchange or by the acquisition of the selection rights emanating from the acceptance of the application by a third-party which had been defrauded of the base lands through the actions of the original applicant.

Where the United States had accepted an application for a forest lieu exchange under the provisions of the Act of June 4, 1897, 30 Stat. 31, which application was based on base lands fraudulently secured from a state, and the state subsequently obtained a quitclaim from the applicant of all his interest in the lands, the state did not regain title to the base lands but rather

STATE EXCHANGES--Continued

GENERALLY--Continued

was vested with all selection rights which had properly appertained to the exchange application.

Where the record establishes that, but for the actions of the Department in improperly approving an exchange, a state would have properly exercised its exchange rights pursuant to applicable law, the Department will be estopped from subsequently asserting the exchange was improper where, as here, it would no longer be possible for the state to exercise its exchange rights.

Under the United States Supreme Court's decision in Wyoming v. United States, 255 U.S. 489 (1921), an application for a forest lieu exchange was accepted by the filing of a proper exchange and the acceptability of an exchange was to be judged with reference to the facts existing at the time of filing. The actual acceptance of an exchange application, however, even if based on a misapprehension of the facts, vested title to the offered lands in the United States.

The classification of land as Supplement A, B, or C, by the Oregon Supreme Court in State v. Hyde, 88 Or. 1, 169 P. 757 (1918), is not binding on the United States as to the factual predicates thereof, particularly as the United States was not a party to the case.

When a state obtained a quitclaim deed from a forest lieu applicant whose application had been accepted by the United States, the state merely acquired the same rights to complete the selection which were possessed by the original applicant. Where the state failed to record this forest lieu selection right under the Act of Aug. 5, 1955, 69 Stat. 534, or tender such right for payment under the Act of July 6, 1960, 74 Stat. 334, all rights flowing from the forest lieu selection right to either complete an exchange or have the base property reconveyed terminated.

While it is a general rule that adverse possession does not run against a state, this rule does not apply as against the United States. Where the United States has maintained open and notorious possession of certain parcels of land for over 80 years, the United States has acquired title to those parcels through adverse possession even though the record title holder was a state.

State of Oregon et al., I, 78 IBLA 255 (Jan. 10, 1984)
91 I.D. 14

EFFECT OF APPLICATION

State exchange applications pending on Oct. 21, 1976, may be processed under sec. 8(c) of the Taylor Grazing Act, 43 U.S.C. § 315g(c) (1970), only if the state had complied with all the requirements necessary to vest rights to the exchange in the state; all other applications must be processed under sec. 206 of the Federal Land Policy and Management Act of 1976.

Bryner Hood, 52 IBLA 156 (Jan. 21, 1981) 88 I.D. 232

"Public land laws." Under 43 CFR 2091.2-3 (1979), a state exchange application segregated the selected public lands from appropriation under the public land laws, including the mining laws. The term "public land laws" is ordinarily used to refer to statutes governing the alienation of public land, and generally is distinguished from both "mining laws," referring to statutes governing the mining of hard minerals on public lands, and "mineral leasing laws," a term used to designate that group of statutes governing the leasing of public lands for oil, gas, and other selected minerals. Udall v. Tallman, 380 U.S. 1, 19 (1965).

State exchange applications pending on Oct. 21, 1976, may be processed under sec. 8(c) of the Taylor

STATE EXCHANGES--Continued

EFFECT OF APPLICATION--Continued

Grazing Act, 43 U.S.C. § 315g(c) (1970), only if the state had complied with all the requirements necessary to vest rights to the exchange in the state; all other applications must be processed under sec. 206 of the Federal Land Policy and Management Act of 1976.

A state exchange application being processed under sec. 206 of the Federal Land Policy and Management Act of 1976 does not segregate the selected public lands from the operation of the mineral leasing laws. 43 CFR 2201.1(b).

Dale E. Armstrong, 53 IBLA 153 (Mar. 12, 1981)

STATE GRANTS

Land which has been granted and approved to a state without a reservation of minerals to the United States is not available for the location of mining claims, and a mining claim located on such land after it is so conveyed is null and void ab initio.

While the Secretary of the Interior may recommend appropriate judicial action to cancel a conveyance and regain title if the circumstances warrant, a stranger to any prior claim or interest has no standing to seek cancellation of a state grant.

George Antungrich, John E. Curran, 76 IBLA 301 (Oct. 19, 1983)
90 I.D. 464

Where the State of Oregon has selected indemnity lands pursuant to the Act of Feb. 28, 1891, ch. 384, 26 Stat. 796, for school sections within an unsurveyed township in the Siskiyou National Forest and thereafter a reprotraction or survey is run revealing new fractional townships within the area originally protracted, the State is entitled to indemnity lands for those new townships in accordance with the compact it entered with the United States by Act of Feb. 14, 1859.

State of Oregon et al., II, 80 IBLA 354 (May 10, 1984)
91 I.D. 212

STATE LANDS

An oil and gas offer embracing land in the bed of a navigable river, which is State land, is properly rejected.

Lee E. McDonald, 68 IBLA 272 (Nov. 17, 1982)

Where the State of Oregon has selected indemnity lands pursuant to the Act of Feb. 28, 1891, ch. 384, 26 Stat. 796, for school sections within an unsurveyed township in the Siskiyou National Forest and thereafter a reprotraction or survey is run revealing new fractional townships within the area originally protracted, the State is entitled to indemnity lands for those new townships in accordance with the compact it entered with the United States by Act of Feb. 14, 1859.

State of Oregon et al., II, 80 IBLA 354 (May 10, 1984)
91 I.D. 212

STATE LAWS

Federal statutes governing mineral leasing on the public lands, and regulations duly promulgated pursuant thereto, supersede state laws governing agency relationships to the extent of any inconsistency therewith for purposes of determining the first-qualified offeror for a Federal oil and gas lease.

LSNJ Exploration Group, 63 IBLA 42 (Mar. 30, 1982)

LSNJ Exploration Group, 74 IBLA 185 (July 18, 1983)

LBS Associates, Inc., 74 IBLA 192 (July 18, 1983)

A corporate applicant for geothermal leases does not lose its priority as senior offeror because it has been temporarily suspended by its state of incorporation for failure to pay taxes, where the state has a policy that a suspended corporation may regain full status, without penalty, upon payment of its obligations.

California Energy Co., Inc., 70 IBLA 221 (Jan. 24, 1983)

When the Board of Indian Appeals finds that the decision in an appeal requires further extensive analysis of Federal and state law, the case will be remanded or referred to an Administrative Law Judge familiar with the legal issues.

Estate of James Henry Parish, 11 IBIA 237 (July 6, 1983)

The status and rights of a dissolved corporation are to be determined with reference to the law of the state of incorporation.

Idaho Middle Corp. v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 249 (July 29, 1983) 90 I.D. 329

A state retains extensive jurisdiction over Federal lands within its boundary, but Congress is authorized to enact legislation regarding the use and occupancy of the Federal lands. Provisions of state law regarding abandonment of a right-of-way within a reclamation withdrawal must recede where implementation thereof would interfere with the effort of reclamation officials to operate and maintain reclamation facilities as directed by Act of Congress.

County of Imperial, 5 OHA 286 (Mar. 16, 1984)

STATE SELECTIONS
(See also School Lands, Swamplands--if included in this Index.)

Applications filed for temporary withdrawals of land for proposed development under the Carey Act, 43 U.S.C. § 641 (1976), must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources, 48 IBLA 250 (June 26, 1980)

STATE SELECTIONS--Continued

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands segregates the lands from all subsequent appropriation, including location under the mining laws; however, the application to select has no segregative effect when at the time the application is filed, the land is withdrawn from all forms of appropriation under the public land laws, including selections by a state.

John C. and Martha W. Thomas d.b.a. Tungsten Mining Co., 53 IBLA 182 (Mar. 17, 1981)

Applications for Alaska Native allotments in "core" townships of Native villages are subject to the statutory approval contained in sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, notwithstanding a State selection or tentative approval thereof for the same lands prior to Dec. 18, 1971.

Agnes S. Samuelson, 56 IBLA 242 (July 22, 1981) 88 I.D. 663

"Notation rule." Under the notation rule a millsite claim, located at a time when the master title plat in the local Bureau of Land Management office shows that the lands embraced by the claim are included in a state selection application, is properly declared null and void ab initio because notation of the state selection application on the official records segregates the land from further appropriation. The rule applies even where the notation was posted in error, or where the segregative use so noted is void, voidable, or has terminated.

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands, where the filing is regular on its face, segregates the lands from all subsequent appropriation, including location and entry under the mining laws and a millsite located while the land is so segregated is null and void ab initio.

A mining claim or millsite located on land at a time when the land is segregated from the operation of the mining laws by a State selection application is properly declared null and void ab initio.

John C. and Martha W. Thomas, d.b.a. Tungsten Mining Co. (On Reconsideration), 59 IBLA 364 (Nov. 9, 1981)

A selection by the State of Alaska under sec. 6(b) of the Alaska Statehood Act is limited to public lands which are "vacant, unappropriated, and unreserved." A right-of-way for the Alaska Railroad across the public lands constitutes an easement which does not separate the servient estate from the public domain with the result that the land may be available for selection subject to reservation of a railroad right-of-way in any patent issued to the State.

The Alaska Railroad, 65 IBLA 376 (July 20, 1982)

The final approval of a list of state selected lands ended the Department's authority to resolve conflicting claims to those lands, including its authority to recognize the validity of mining claims situated thereon.

George Antypovich, John E. Curran, 76 IBLA 301 (Oct. 19, 1983) 90 I.D. 464

STATE SELECTIONS--Continued

Where on appeal the Board determines that, in declaring a millsite claim null and void ab initio because it was located on land which had been patented to the state, BLM mistakenly fixed the situs of the claim and that the claim is actually on land open to entry, the Board will reverse the BLM decision.

Savage Construction Co., Inc., 79 IBLA 389 (Mar. 27, 1984)

Prior to the promulgation of 43 CFR 2091.2-6, the filing of a state indemnity selection application did not segregate the identified lands from operation of the mining laws prior to classification of the lands as suitable for indemnity selection.

Leo Rhea Partnership, 80 IBLA 1 (Mar. 27, 1984)

BLM may not declare a mining claim located on land subject to a State indemnity selection application null and void ab initio because of the segregative effect arising from the filing of the application pursuant to 43 CFR 2091.2-6 where the state's application was filed prior to promulgation of the regulation.

James R. Houghton, Wm. A. Houghton, 80 IBLA 195 (Apr. 24, 1984)

Where the State of Oregon has selected indemnity lands pursuant to the Act of Feb. 28, 1891, ch. 384, 26 Stat. 796, for school sections within an unsurveyed township in the Siskiyou National Forest and thereafter a reprotraction or survey is run revealing new fractional townships within the area originally protracted, the State is entitled to indemnity lands for those new townships in accordance with the compact it entered with the United States by Act of Feb. 14, 1859.

A state selecting indemnity lands pursuant to the Act of Feb. 28, 1891, ch. 384, 26 Stat. 796, for unsurveyed school sections within a national forest shall be entitled to select indemnity lands to the extent of two sections for each of said townships in lieu of secs. 16 and 36 therein. Where a protraction on which the state relies to make its indemnity selections reveals that a fractional township is present, the state's entitlement to indemnity lands is calculated according to the pro rata rule set forth at 43 U.S.C. § 852 (1976).

Where a survey on which the state relies to make its indemnity selections pursuant to the Act of Feb. 28, 1891, reveals a fractional township with a school section in place, the state's entitlement should be in an amount equal to the acreage shown by the surveyed school section or in an amount determined by the pro rata rule at the election of the state.

Until a survey of public lands has been run and approved, the designated sections of a township are undefined and the lands are unidentified.

Where the State of Oregon makes an initial selection of indemnity lands pursuant to the Act of Feb. 28, 1891, ch. 384, 26 Stat. 796, for school sections within an unsurveyed fractional township in a national forest, it is not entitled to additional indemnity lands should a subsequent reprotraction or survey be made of the township.

State of Oregon et al., II, 80 IBLA 354 (May 10, 1984) 91 I.D. 212

STATE SELECTIONS--Continued

A mining claim wholly located on land which has been segregated from mineral location by the filing of a state school land indemnity selection application is properly declared null and void at initio.

When Arizona filed its original application for selection of land as part of its entitlement to compensation for deficiencies for school trust lands pursuant to its enabling act, the Department did not have segregation authority to protect the selections. During the promulgation of 43 CFR 2091.2-6, Arizona submitted a request to have the previous applications withdrawn, consolidated, and amended to include additional lands. This will be deemed a reapplication under the circumstances of this case, the filing of which enabled the Department to segregate the lands described therein under 43 CFR 2091.2-6. Mining claims subsequently initiated on lands that were segregated by the reapplication were properly declared null and void at initio.

Amoco Minerals Co., 81 IBLA 23 (May 15, 1984)

A mining claim located on land segregated from such location by the filing of a state selection application is properly declared null and void ab initio; however, where the case record is unclear whether the land embraced by the claim was segregated by an application predating the location or whether the land was segregated by an amendment to the application filed subsequent to the location, the decision will be set aside and the case remanded.

Elizabeth S. Hiellen et al., 81 IBLA 341 (June 21, 1984)

Elsie May Staude, 82 IBLA 226 (Aug. 22, 1984)

A mining claim located on land segregated from such location by the filing of a state selection application is properly declared null and void ab initio.

Ronald R. Kotovski, 82 IBLA 317 (Sept. 6, 1984)

STATUTES

One seeking an exemption from the coverage of a statute, especially a statute whose purpose is corrective, must affirmatively demonstrate entitlement to that treatment.

Daniel Bros. Coal Co., 2 IBSMA 45 (Apr. 10, 1980) 87 I.D. 138

All persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations regardless of their actual knowledge of what is contained in such statutes and regulations.

Eric Murray, 47 IBLA 112 (Apr. 28, 1980)

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

Armando Majalca, 48 IBLA 351 (July 11, 1980)

Pearl C. Barnett, 52 IBLA 273 (Feb. 6, 1981)

Joe Bastone, 52 IBLA 288 (Feb. 9, 1981)

L. L. Foltz, John E. Weeks, 52 IBLA 313 (Feb. 10, 1981)

STATUTES--Continued

James C. Prebelich, 53 IBLA 30 (Feb. 26, 1981)

W. Keith Howard, 53 IBLA 92 (Mar. 2, 1981) 88 I.D. 341

St. Francis Mining Co., 53 IBLA 133 (Mar. 5, 1981)

Paula Trouster Saragosa et al., 53 IBLA 247 (Mar. 19, 1981)

John Platt, Jr., et al., 53 IBLA 313 (Mar. 25, 1981)

Joseph Oiukovich, 54 IBLA 100 (Apr. 15, 1981)

Bill G. Ross, 54 IBLA 116 (Apr. 16, 1981)

Charles W. McGowan III, 54 IBLA 119 (Apr. 16, 1981)

Mascot Silver-Lead Mines, Inc., 54 IBLA 121 (Apr. 16, 1981)

James W. Quakenbush, 54 IBLA 155 (Apr. 21, 1981)

Dell Warren, 54 IBLA 159 (Apr. 21, 1981)

William I. Schindler, 54 IBLA 221 (Apr. 23, 1981)

Emery Crowley et al., 54 IBLA 229 (Apr. 27, 1981)

William E. Hand, 54 IBLA 303 (Apr. 29, 1981)

Sidney Hodges, John Golden, 55 IBLA 17 (May 26, 1981)

Karl Kreniller, 55 IBLA 28 (May 27, 1981)

Joe Benbae, 55 IBLA 45 (May 29, 1981)

Betty L. Henry, 55 IBLA 47 (May 29, 1981)

Vincent M. D'Amico, Walt C. Stempel, 55 IBLA 116 (June 3, 1981)

Bert I. Gilmore, 55 IBLA 128 (June 3, 1981)

Margaret E. Peterson, 55 IBLA 136 (June 4, 1981)

Alberta K. Roberio, 55 IBLA 140 (June 4, 1981)

Joseph Oiukovich, 55 IBLA 182 (June 15, 1981)

W. LeGrande Law, 55 IBLA 193 (June 16, 1981)

Thomas Williams, 56 IBLA 55 (July 10, 1981)

Gary M. Greenlaw, Ronald D. Shaer, 56 IBLA 109 (July 16, 1981)

Walter D. Condon, 56 IBLA 112 (July 16, 1981)

Stephen G. Rudisill, Evelyn J. Rudisill, 56 IBLA 158 (July 20, 1981)

Rolland Marshall, 56 IBLA 187 (July 20, 1981)

Allen Turner, 56 IBLA 280 (July 28, 1981)

Timothy Edward Noate, 56 IBLA 315 (July 29, 1981)

Fred W. Croxen III, 56 IBLA 318 (July 29, 1981)

Caroline E. Brown, 56 IBLA 334 (July 30, 1981)

Donald L. Black, 56 IBLA 354 (Aug. 3, 1981)

Estate of Mary B. Ritchie, 56 IBLA 361 (Aug. 3, 1981)

Edith Zion, 56 IBLA 375 (Aug. 3, 1981)

Lyle J. Fillmore, 56 IBLA 385 (Aug. 3, 1981)

Norman L. Moon, 57 IBLA 1 (Aug. 5, 1981)

Dave R. Herman, 57 IBLA 23 (Aug. 6, 1981)

Robert P. Wilson, 57 IBLA 40 (Aug. 10, 1981)

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L. Grace Wadsworth, 57 IBLA 242 (Aug. 27, 1981)

Intermountain Exploration Co., 57 IBLA 271 (Aug. 31, 1981)

Intermountain Exploration Co., 57 IBLA 274 (Aug. 31, 1981)

Del Rupp, 57 IBLA 297 (Aug. 31, 1981)

L. M. Pace, 57 IBLA 339 (Sept. 1, 1981)

Virgie Dowler, 57 IBLA 389 (Sept. 10, 1981)

Steven V. Miskoff, 58 IBLA 32 (Sept. 16, 1981)

James M. Tibbals, Janet D. Tibbals, 58 IBLA 42 (Sept. 17, 1981)

Donald Jardine, 58 IBLA 49 (Sept. 21, 1981)

Kathryn Mackenzie, 58 IBLA 64 (Sept. 22, 1981)

Fabey Group Mines, Inc., 58 IBLA 88 (Sept. 24, 1981)

Grant Kirkham, Roberta Kirkham, 58 IBLA 131 (Sept. 24, 1981)

Albert L. Fillerup, 58 IBLA 194 (Sept. 29, 1981)

Tom Applegarth, 58 IBLA 224 (Sept. 30, 1981)

Heirs of Raymond D. Carson et al., 58 IBLA 265 (Oct. 7, 1981)

Richard W. Thom, 58 IBLA 291 (Oct. 13, 1981)

Bernard E. Packard et al., 58 IBLA 308 (Oct. 16, 1981)

Lee P. Newson, 58 IBLA 325 (Oct. 16, 1981)

Wayne Cook, 58 IBLA 350 (Oct. 19, 1981)

Lloyd P. Webster, 58 IBLA 363 (Oct. 20, 1981)

Ben F. Powell III, 59 IBLA 146 (Oct. 26, 1981)

Bruce A. DeRosier, 59 IBLA 283 (Oct. 30, 1981)

John W. Baccus, 59 IBLA 288 (Oct. 30, 1981)

Anton J. Meyer, 59 IBLA 311 (Nov. 4, 1981)

Vivian Sullivan Karlson, 60 IBLA 10 (Nov. 13, 1981)

Frank E. Evans, 60 IBLA 44 (Nov. 17, 1981)

Dr. Jose Trabal, 60 IBLA 97 (Nov. 19, 1981)

Robert G. Milton, 60 IBLA 104 (Nov. 20, 1981)

James G. Robinson et al., 60 IBLA 134 (Nov. 24, 1981)

Ronald M. Gantert, Marion G. Gantert, 60 IBLA 200 (Nov. 27, 1981)

Carl B. Andersen, 61 IBLA 4 (Dec. 29, 1981)

Cimarron Corp., 61 IBLA 90 (Dec. 31, 1981)

Herman Piltz, 61 IBLA 113 (Jan. 6, 1982)

Dale I. Patchen, Guy W. Patchen, 61 IBLA 185 (Jan. 26, 1982)

Michael Mooney, 61 IBLA 210 (Jan. 26, 1982)

Dee Wright, 61 IBLA 356 (Feb. 16, 1982)

Jim W. Koonce, 62 IBLA 9 (Feb. 23, 1982)

Otay Mining Co., 62 IBLA 166 (Mar. 8, 1982)

Saredon Oil Corp., 62 IBLA 228 (Mar. 10, 1982)

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Martin Slipco et al., 62 IBLA 260 (Mar. 15, 1982)

Cheryl R. Cockerx, 62 IBLA 307 (Mar. 18, 1982)

Sidney O. Smith, 62 IBLA 378 (Mar. 24, 1982)

Martha E. Ehbrecht, 62 IBLA 387 (Mar. 24, 1982)

Calaba Mining Co., 63 IBLA 5 (Mar. 25, 1982)

Copper Cane Consolidated Mines, Inc., 63 IBLA 203 (Apr. 8, 1982)

Charles T. Neff, 64 IBLA 234 (May 27, 1982)

Marvin E. Mukala, 64 IBLA 313 (June 10, 1982)

Charles L. Roberts, 65 IBLA 67 (June 23, 1982)

W. A. Shepherd, Viola B. Shepherd, 65 IBLA 72 (June 23, 1982)

J. Barry Van Hooser, 65 IBLA 175 (June 29, 1982)

William Scott Olsen, 65 IBLA 274 (July 12, 1982)

Viola Peck Whitney, 65 IBLA 361 (July 20, 1982)

Joe Karren, Sr., et al., 65 IBLA 387 (July 23, 1982)

Dennis H. Joy, 66 IBLA 260 (Aug. 17, 1982)

Eugene J. Curless, 67 IBLA 135 (Sept. 16, 1982)

Keith E. Ferrell, 67 IBLA 181 (Sept. 21, 1982)

Robert J. Maby et al., 67 IBLA 370 (Oct. 8, 1982)

Gregory A. Yostsch, Sr., 69 IBLA 124 (Dec. 8, 1982)

Richard W. Rowe, 69 IBLA 135 (Dec. 8, 1982)

Dee Wright, 69 IBLA 309 (Dec. 23, 1982)

Erma Julian, Suzanne E. Harco, 70 IBLA 29 (Jan. 6, 1983)

Gervin Blake Riding, 70 IBLA 59 (Jan. 10, 1983)

Nicholas J. Murphy, 71 IBLA 368 (Mar. 28, 1983)

Eleanor A. Nelser, 72 IBLA 232 (Apr. 26, 1983)

Inez McDorman, Audrey Pilger, 72 IBLA 383 (May 5, 1983)

James D. Ross, Marie J. Ross, 72 IBLA 395 (May 5, 1983)

Adobe Oil & Gas Corp., 73 IBLA 263 (June 7, 1983)

Harold L. Long, 73 IBLA 280 (June 7, 1983)

Ray McKee, Cheryl McKee, 73 IBLA 311 (June 7, 1983)

Barbara Payne, 73 IBLA 381 (June 15, 1983)

Jacqueline Baker, 73 IBLA 383 (June 15, 1983)

Page Investment Co., 74 IBLA 163 (July 12, 1983)

Shirley Pomerinke, 74 IBLA 210 (July 18, 1983)

Hughes Minerals, Inc., 74 IBLA 217 (July 18, 1983)

Josephine Sloper, 74 IBLA 234 (July 19, 1983)

Paul T. Ryan, Melvin V. Lunt, 75 IBLA 76 (Aug. 10, 1983)

Harriet C. Shaftel, 79 IBLA 228 (Feb. 29, 1984)

STATUTES--Continued

All persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations.

Canyon View Mining Co., 49 IBLA 184 (July 31, 1980)

John Lincoln, Jr., 49 IBLA 335 (Aug. 25, 1980)

Gordon L. Cooper, 51 IBLA 191 (Dec. 5, 1980)

Santa Monica Hospital Medical Center Foundation, 51 IBLA 194 (Dec. 5, 1980)

Abram M. Kreider, 57 IBLA 68 (Aug. 18, 1981)

All persons dealing with the Government are presumed to have knowledge of relevant and duly promulgated statutes and regulations.

Hugh A. Johnson, 50 IBLA 47 (Sept. 9, 1980)

John F. Schaelzer, 51 IBLA 188 (Dec. 2, 1980)

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not the Federal Land Policy and Management Act of 1976 is constitutional.

Lowell L. Patten, 52 IBLA 299 (Feb. 10, 1981)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not the Federal Land Policy and Management Act of 1976 is constitutional.

Hugh A. Johnson, 54 IBLA 144 (Apr. 17, 1981)

Madison D. Locke et al., 65 IBLA 122 (June 25, 1982)

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

William Adolph Yonkee et al., 54 IBLA 232 (Apr. 27, 1981)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether or not a statute enacted by Congress is constitutional.

Harwell Mining Co., Milford F. Montgomery, 56 IBLA 236 (July 22, 1981)

John Murphy, Walter C. Henderson, 58 IBLA 75 (Sept. 22, 1981)

Virginia White, 62 IBLA 215 (Mar. 10, 1982)

STATUTES--Continued

Estoppel of the Government, especially where public lands are concerned, is an extraordinary remedy that can be successfully invoked only under truly extraordinary circumstances. An appellant mining claim owner may not claim that ignorance of applicable statutory and regulatory rules of recordation constitutes ignorance of a material fact, which is essential to estoppel, because all persons dealing with the Government are presumed to have knowledge thereof. That BLM did not notice the tardiness of appellant's submitted location notice, and then continued to record affidavits of labor, is unfortunate but is no ground for estoppel of the Government.

Harold E. Woods, 61 IBLA 359 (Feb. 16, 1982)

The presumption of abandonment under sec. 314 of FLPMA need not have been preceded by any particular notice from BLM, because the public is deemed to know the content of relevant statutes and regulations.

Like other entities of the executive branch of the Federal Government, the Board of Land Appeals is not empowered to adjudicate the constitutionality of a statute. That is the province of the judicial system.

David and Roirdon Dorsaus, 61 IBLA 367 (Feb. 17, 1982)

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

Ultimate control of the disposition of public lands and resources belongs to Congress, and the responsibility of the Interior Department is to administer them in accordance with the dictates of the legislative branch. The Board is obliged to affirm BLM's declaration of mining claim abandonment and voidance, irrespective of appellant's argument that such result is contrary to other policies legislated by Congress, where appellant has not complied with the clear requirements of the FLPMA recordation provision.

R. C. Miller, 63 IBLA 19 (Mar. 26, 1982)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether a statute enacted by Congress is constitutional.

United States v. Imperial Gold, Inc., 64 IBLA 241 (May 28, 1982)

Texaco Petroleum Corp., 65 IBLA 99 (June 24, 1982)

L. L. Anderson, 69 IBLA 304 (Dec. 23, 1982)

The Board of Indian Appeals will remand a case to the Bureau of Indian Affairs under 43 CFR 4.337(b) when legislation is passed during the pendency of an appeal that potentially gives the BIA discretionary authority to take action relative to the basis for the appeal.

Rosa Jones Pflaum v. Acting Area Director, Sacramento Area Office, Bureau of Indian Affairs, 71 IBLA 136 (Mar. 22, 1983)

STATUTES--Continued

An essential element of a claim for estoppel is that the party asserting it must be ignorant of the material facts. Since all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations, a party cannot successfully plead ignorance of the rules governing oil and gas rental payment procedures without presentation of extraordinary circumstances which overcome the presumption.

Francis X. Furlong II, 73 IBLA 67 (May 16, 1983)

The Department of the Interior, as an agency of the executive branch of the Government, is not the proper forum to decide whether a statute enacted by Congress is unconstitutional.

Joseph A. Barnes et al., 78 IBLA 46 (Dec. 13, 1983)
90 I.D. 550

An essential element of a claim for estoppel is that the party asserting it must be ignorant of the true facts. Since, however, all persons are presumed to have knowledge of relevant statutory and regulatory provisions, an individual may not premise a claim of estoppel on information or advice contrary to such a provision, since the individual is properly charged with knowledge of the true facts.

Tom Hurd, 80 IBLA 107 (Apr. 3, 1984)

STATUTORY CONSTRUCTION

GENERALLY

Interpretations of the mineral reservation in patents issued by the United States under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), must be consistent with the established rule that land grants are to be construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it.

In determining whether scoria is included in a mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), the interpretation of the reservation must take into account the intended use for which the land was conveyed and those uses which the Government intended to reserve.

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

In Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), it was held that "supplemental" mining claim information required only by the regulations, not FLPMA, is subject to cure. Failure to file a proof of labor timely or properly is not curable after the recordation deadline, because such filing is not "supplemental," being required by FLPMA itself.

Robert L. Nace et al., 63 IBLA 1 (Mar. 25, 1982)

When a statute analogous in text and history to one administered by the Department has been construed by the Supreme Court, but that Court has criticized its own construction even while failing to overrule it, the Department can regard the construction of the

STATUTORY CONSTRUCTION--Continued

GENERALLY--Continued

statute it administers as a matter not governed by the precedent on the otherwise analogous statute.

Railroad Affiliates & Coal Leasing, M-36945 (Dec. 6, 1982) 89 I.D. 610

The repeal of 43 U.S.C. § 733 (1970) (formerly 48 U.S.C. § 355a (1952)) by sec. 703(a) of the Federal Land Policy and Management Act of 1976 was intended to have future effect and not to alter rights or restrictions that had accrued under the provisions of the Alaska Native Townsite Act.

The fundamental principle of statutory construction that words are to be taken in their ordinary meaning unless they are technical terms or words of art is particularly applicable in the construction of statutes concerning Indians.

There is no indication of congressional intention that the restrictions upon land acquired under the Alaska Native Townsite Act be terminated upon a gift of that land from one Alaska Native to another.

Juanita Holsheimer v. Assistant Secretary for Indian Affairs, 11 IBIA 155 (Apr. 14, 1983) 90 I.D. 165

Although the Equal Access to Justice Act, 5 U.S.C. § 504 (1982), may be characterized as a remedial statute, this does not support the proposition that it should be construed liberally. Every waiver of sovereign immunity is remedial, and statutes waiving sovereign immunity such as the Equal Access to Justice Act must be strictly construed.

Kaycee Bentonite Corp., 79 IBLA 182 (Feb. 28, 1984) 91 I.D. 138

The language of sec. 601(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1781(f) (1982), was intended by Congress to have application to patents issued to mining claims perfected after passage of the Act. A patent to a mining claim which had been perfected prior to passage of the Act should, therefore, not contain the restrictive language contemplated by sec. 601(f).

Effect must be given, if possible, to every word, clause, and sentence in a statute. Therefore, the application of sec. 601(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1781(f) (1982), to mineral patent must be made in a manner which recognizes valid existing rights of a mineral claimant at the time of passage of the Act.

California Portland Cement Corp., 83 IBLA 11 (Sept. 18, 1984)

ADMINISTRATIVE CONSTRUCTION

Interpretation of the Alaska Native Claims Settlement Act by the Bureau of Indian Affairs contemporaneous with the enactment of the statute and continued over the succeeding 9 years is relevant to a determination of the application to be given to the statute. The Agency refusal to enroll persons who were not United States citizens on Dec. 18, 1971, the effective date of the Act, is a reasonable application of the Act and of Departmental regulations implementing the Act, and gives the language of the statute

STATUTORY CONSTRUCTION--Continued

ADMINISTRATIVE CONSTRUCTION--Continued

(43 U.S.C. § 1604 (1976)) its common and ordinary meaning.

United States v. Aimee Marion Bowen (Edenshaw) and Phyllis Josephine Kimball, 8 IBIA 218 (Feb. 12, 1981) 88 I.D. 261

In deciding whether to adopt a newly enunciated rule retroactively the Board of Land Appeals has adopted the balance test which essentially rests on balancing the adverse effects of retroactivity with any statutory interest in applying the rule.

Victor M. Cnet, Jr. (On Reconsideration), 82 IBLA 241 (Aug. 27, 1984)

IMPLIED REPEALS

The conclusion that the Appropriations Act is independent leasing authority is not an implied repeal, pro tanto, of the Mineral Leasing Act of 1920 because the Naval Petroleum Reserves Production Act of 1976 explicitly precluded the operation of the MLA on the NPR-A, and the Appropriations Act modified that withdrawal only for the purpose of the oil and gas leasing program authorized in the Appropriations Act.

Authorization for Oil and Gas Leasing on the National Petroleum Reserve--Alaska, M-36940 (Oct. 15, 1981) 91 I.D. 1

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

INDIANS

Ambiguities in Federal treaties or statutes dealing with Indians must be resolved favorably to the Indians.

Transwestern Pipeline Co. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 49 (Oct. 28, 1983) 90 I.D. 474

LEGISLATIVE HISTORY

The legislative history of sec. 6 of the Federal Coal Leasing Amendments Act shows that the revision of sec. 7 of the MLA (30 U.S.C. § 207) was not retroactive, but applied to new leases and to "old" leases upon readjustment. The ten-year production period and revised royalty rates of amended sec. 7 must be imposed on "old" coal leases at readjustment. The legislative history to the 1978 coal leasing revisions (Act of Oct. 30, 1978) discloses that Congress understood and acted on the assumption that the amended sec. 7 royalty rates did apply to all "old" leases upon readjustment.

Whether Leases Issued Prior to August 4, 1976, Subject to Readjustment after that Date must be Readjusted to Conform to the Federal Coal Leasing Amendments Act of 1976, M-36939 (Sept. 17, 1981) 88 I.D. 1003

STATUTORY CONSTRUCTION--Continued

LEGISLATIVE HISTORY--Continued

The position that only companies actually operating common carrier railroads and their "alter egos" are prohibited from holding federal coal leases by sec. 2(c) of the Mineral Lands Leasing Act and the position that affiliates of such companies are also prohibited are both reasonable, judicially defensible constructions of an ambiguous provision of law. The legislative history of sec. 2(c) fails to answer clearly the question whether affiliates of railroad companies are included in or excluded from the coverage of sec. 2(c).

Railroad Affiliates & Coal Leasing, M-36945 (Dec. 6, 1982) 89 I.D. 610

An application for a quitclaim deed under sec. 6 of the Act of Apr. 28, 1930, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, is properly rejected because the Act of July 6, 1960, precludes the Department from utilizing the 1930 Act for that purpose.

Masonic Homes of California, 70 IBLA 46 (Jan. 10, 1983)

D. R. Herndon, 76 IBLA 353 (Oct. 24, 1983)

The legislative history of the Act of July 6, 1960, shows the Congress fully considered the constitutionality of the compensation provisions contained therein. The Department is bound to follow these provisions.

Soda Flat Co., Inc., 75 IBLA 388 (Sept. 2, 1983)

O. J. Shay et al., 75 IBLA 396 (Sept. 2, 1983)

Legislative history of the Act of July 6, 1960, clearly shows that Congress concluded that the Federal Government holds title to land relinquished to the Federal Government in anticipation of a forest lieu exchange, notwithstanding the failure to consummate the exchange.

Andy D. Rutledge et al., 82 IBLA 89 (July 17, 1984)

The language of sec. 601(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1781(f) (1982), was intended by Congress to have application to patents issued to mining claims perfected after passage of the Act. A patent to a mining claim which had been perfected prior to passage of the Act should, therefore, not contain the restrictive language contemplated by sec. 601(f).

California Portland Cement Co., 83 IBLA 11 (Sept. 18, 1984)

STOCK-RAISING HOMESTEADS
(See also Homesteads (Ordinary)--if included in this Index.)

Interpretations of the mineral reservation in patents issued by the United States under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), must be consistent with the established rule that land grants are to be construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it.

In determining whether scoria is included in a mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), the interpretation of the reservation must take into account the intended use for which the land was conveyed and those uses which the Government intended to reserve.

A patent of land under the Stock-Raising Homestead Act, 43 U.S.C. § 291 (1970), was not generally intended to give the grantee the right to use the land for mineral development, but mineral development was to proceed only under the mineral laws.

The mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 291 (1970), includes mineral substances which can be taken from the soil and which have a separate value, including those marketable minerals found at or near the surface, and which have no rare or exceptional character, regardless of whether they are subject to disposition under 30 U.S.C. § 601 (1976) or other existing statutory authority.

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), contemplates that the Department of the Interior retains continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 3602.1 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Under the Stock-Raising Homestead Act, 43 U.S.C. §§ 291-301 (1970), there is no equitable basis for excluding valuable deposits of scoria from the scope of a Federal mineral reservation although the Government has successfully contended in other cases that common or surface minerals are not included in mineral reservations to the United States, because the rules of construction of private conveyances differ from those which govern Federal grants, and because 30 U.S.C. § 54 (1976) provides compensation for damage to surface owners' crops, improvements and grazing values.

Scoria which is valuable for surfacing roads is a mineral reserved to the United States in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976), contemplates that the Department of the Interior retains continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976).

The mineral reservation in a patent issued under the Stock-Raising Homestead Act, 43 U.S.C. § 291 (1976), includes mineral substances which can be taken from the soil and which have a separate value, including those marketable minerals found at or near the surface, and which have no rare or exceptional character, regardless of whether they are subject to disposition under 30 U.S.C. § 601 (1976) or other existing statutory authority.

Scoria which is valuable for surfacing roads is a mineral reserved to the United States in patents issued under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976). However, in a case where scoria is used no differently from common earth, the record must demonstrate that the deposit of scoria has commercial value independent of such use.

Texaco, Inc., 59 IBLA 155 (Oct. 26, 1981)

STOCK-RAISING HOMESTEADS--Continued

BLM's decision to dismiss a protest by the holder of the surface estate in lands patented under the Stock-Raising Homestead Act against the sufficiency of the amount of a bond, put up by the claimant of mineral interests in those lands to cover damages to the surface estate from the claimant's mining and exploration activities, will be vacated and remanded for readjudication, where the record is devoid of facts of record to support this decision.

Sedgeberg Hayhide Ranch Co., 63 IBLA 260 (Apr. 19, 1982)

The removal of sand and gravel for commercial purposes from land patented under the Stock-Raising Homestead Act, as amended, 43 U.S.C. § 291 (1970), constitutes a trespass since such sand and gravel has been reserved under the Act.

Bryson-Tankersley (Trust), 76 IBLA 48 (Sept. 19, 1983)

Patentees under the Stock-Raising Homestead Act of 1916 have an adverse interest sufficient to bring a private contest against allegedly invalid mining claims located for minerals reserved to the United States, which claims threaten to destroy the value of the surface of their patented lands.

Joanne M. Gazzola v. Western Hills Mining Ass'n et al., 78 IBLA 155 (Dec. 29, 1983)

A decision approving a bond filed by a locator of mining claims for reserved minerals on land patented under the Stock-Raising Homestead Act will be affirmed in the absence of a showing that the amount of the bond is inadequate to cover damage to crops, improvements, and the value of the land for grazing purposes.

Robert M. Michael et ux., 79 IBLA 255 (Mar. 5, 1984)

SUBMERGED LANDS

The Department of the Interior under provisions of ANCSA and regulations in 43 CFR has both the authority and responsibility to determine which lands, including submerged lands, are "public lands" within the definition of § 3(e) of ANCSA and are therefore available for selection by a Native corporation.

Doyon, Ltd. and State of Alaska, 5 ANCAB 324 (June 26, 1981) 88 I.D. 636

The Bureau of Land Management under provisions of ANCSA and regulations in 43 CFR has both the authority and responsibility to determine which lands, including submerged lands, are "public lands" within the definition of § 3(e) of ANCSA and are therefore available for selection by a Native corporation.

Doyon, Ltd., 5 ANCAB 368 (July 27, 1981)

Doyon, Ltd., 6 ANCAB 27 (Aug. 19, 1981)

Doyon, Ltd., 6 ANCAB 32 (Aug. 19, 1981)

Gana-a' Yoo, Ltd., 6 ANCAB 45 (Aug. 24, 1981)

Gana-a' Yoo, Ltd., 6 ANCAB 50 (Aug. 24, 1981)

Gana-a' Yoo, Ltd., 6 ANCAB 55 (Aug. 24, 1981)

Doyon Ltd., 6 ANCAB 60 (Aug. 24, 1981)

Doyon, Ltd., 6 ANCAB 219 (Dec. 14, 1981) 88 I.D. 1086

SUBMERGED LANDS--Continued

Doyon, Ltd., 6 ANCAB 242 (Dec. 16, 1981) 88 I.D. 1105

Doyon, Ltd. and NANA, Ltd., 6 ANCAB 270 (Jan. 25, 1982) 89 I.D. 1

Doyon, Ltd., 6 ANCAB 364 (Feb. 24, 1982)

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977

GENERALLY.

Where a surface coal mining operation affects previously mined lands, the fact that an alleged violation could have existed before the present operation does not relieve the permittee from responsibility for the violation.

Central Oil and Gas, Inc., 2 IBSMA 308 (Oct. 23, 1980) 87 I.D. 494

Assuming, arguendo, that jurisdiction existed in the Board to review the merits of the proceedings below, it is clear that the Office of Surface Mining Reclamation and Enforcement possessed regulatory authority over appellant's surface mining operation and that appellant failed to raise any defense to the fact of violation, after being given full opportunity to do so.

William M. Johnson v. Office of Surface Mining Reclamation & Enforcement, 84 IBLA 169 (Dec. 19, 1984)

ABATEMENT

Generally

A permittee's noncompliance with an order by OSM to abate an alleged violation of the backfilling and grading requirements of 30 CFR 715.14 cannot serve to excuse the permittee's noncompliance with an order by OSM to abate an alleged violation of the revegetation requirements of 30 CFR 715.20.

Old Home Ranch, Inc., 3 IBSMA 241 (Aug. 13, 1981) 88 I.D. 737

Where the record evidence does not support a finding that the recipient of a notice of violation requested an extension of time to abate a violation charged in the notice, prior to OSM's issuance of a cessation order for failure to abate the violation within the time prescribed for abatement, OSM's cessation order is properly upheld against the recipient's claim that conditions at the mine site warranted an extension of the abatement time.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

Remedial Actions

When a permittee does not have approval from the regulatory authority for an exemption from the requirements of the Act at the time of an OSM inspection, the inspector may properly require remedial action of a reclamation nature in a notice of violation.

Hardy Able Coal Co., 2 IBSMA 270 (Sept. 24, 1980) 87 I.D. 434

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

ABATEMENT--Continued

Remedial Actions--Continued

A notice of violation requiring a permittee to submit a drainage design for regulatory authority approval is proper even when such a design might include disturbance of an area within 100 feet of an intermittent or perennial stream because the regulatory authority could grant an exemption for that area under either 30 CFR 717.17(a) or 715.17(d)(3).

Under the circumstances of this case, the Board declines to uphold a cessation order that forces a permittee to take an illegal action.

Little Bird Coal Co., Inc., 3 IBSMA 136 (Apr. 30, 1981) 88 I.D. 503

The Board declines to hold that the permit boundary, as identified in a state permit, protects a permittee in all cases from being required to abate the off-site detrimental consequences of its operations.

Carbon Fuel Co., 3 IBSMA 207 (July 17, 1981) 88 I.D. 660

The Board will not uphold a cessation order issued for a failure to abate a violation charged where that failure is premised on noncompliance with a remedial measure which has no rational relationship to the violation charged.

West Virginia Energy, Inc., 3 IBSMA 301 (Sept. 17, 1981) 88 I.D. 831

ADMINISTRATIVE PROCEDURE

Generally

Affidavits to support allegations of fact in a motion for summary decision filed pursuant to 43 CFR 4.1125 are not necessary when there is no disputed issue as to any material fact.

Daniel Bros. Coal Co., 2 IBSMA 45 (Apr. 10, 1980) 87 I.D. 138

Under 43 CFR 4.1153 OSM has an absolute right to submit an answer to a petition within 30 days from receipt of a copy of the petition. After that time, the Administrative Law Judge has discretion to regulate the scope of the answer in any reasonable manner.

Addington Bros. Mining, Inc., 2 IBSMA 90 (May 22, 1980) 87 I.D. 186

The Board will not rule on the merits of a notice of violation that is not properly before it.

Kaiser Steel Corp., 2 IBSMA 158 (July 25, 1980) 87 I.D. 324

Pursuant to 43 CFR 4.1161-.1162, it was error for the Administrative Law Judge not to dismiss an application for review filed with the Hearings Division after the time prescribed for such applications.

Green Coal Co., 2 IBSMA 199 (Aug. 19, 1980) 87 I.D. 362

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

ADMINISTRATIVE PROCEDURE--Continued

Generally--Continued

Under the circumstances of this case, it was error for the Administrative Law Judge to vacate a notice of violation on his own motion on the grounds that it lacked reasonable specificity as required by sec. 521(a)(5) of the Act when the parties expressed no confusion about the nature of the alleged violation.

Grafton Coal Co., Inc., 2 IBSMA 316 (Nov. 4, 1980) 87 I.D. 521

Under 43 CFR 4.1153 OSM has an absolute right to submit an answer to a petition within 30 days of its receipt of a copy of the petition. After that time, an Administrative Law Judge has discretion to regulate the scope of OSM's answer in a manner reasonably related to any prejudice suffered by the opposing party as a result of OSM's delay.

When an answer is filed by OSM after the time prescribed in 43 CFR 4.1153 but before any claim of prejudice from the delay is raised by the petitioner, it is an abuse of discretion for an Administrative Law Judge to issue, sua sponte, a summary decision in favor of the petitioner on the basis of presumed prejudice to the petitioner.

Lake Coal Co., Inc., 3 IBSMA 9 (Feb. 17, 1981) 88 I.D. 266

Although an Administrative Law Judge has discretion to take appropriate action to correct the late filing of an answer in a proceeding to review a notice of violation or a cessation order, except in extreme circumstances it is not appropriate to vacate the notice or order.

William Francis Rice, 3 IBSMA 17 (Feb. 19, 1981) 88 I.D. 269

A determination by an Administrative Law Judge, sua sponte, that an application for review is not in compliance with 43 CFR 4.1164 relieves OSM of its obligation to answer the application, and, unless otherwise ordered, OSM is entitled to the full 20 days prescribed in 43 CFR 4.1165(a) to answer an amended application.

Concord Coal Corp., 3 IBSMA 26 (Feb. 19, 1981) 88 I.D. 273

An Administrative Law Judge has discretion to determine appropriate action to correct the late filing of an answer in a proceeding to review a notice of violation; however, vacation of the notice of violation is not appropriate action when the applicant has shown no prejudice resulting from a late answer.

Peabody Coal Co., Inc., 3 IBSMA 32 (Mar. 3, 1981) 88 I.D. 344

An applicant for review of a notice of violation who voluntarily failed to appear at the scheduled review hearing was properly deemed to have waived its right to a hearing, and the Administrative Law Judge could accept as true the allegations of fact contained in the notice of violation under review.

Thoroughbred Coal Co., 3 IBSMA 72 (Mar. 25, 1981) 88 I.D. 406

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

ADMINISTRATIVE PROCEDURE--Continued

Generally--Continued

Knowledge possessed by an Administrative Law Judge but not appearing of record in the case before the Board is not a sufficient basis for upholding a decision in a formal proceeding under the Administrative Procedure Act.

Capital Coal Corp., 4 IBSMA 179 (Nov. 23, 1982) 89 I.D. 594

Where an application for review alleges only that a notice of violation or cessation order is "improper" and the applicant does not amend or move to amend the application to specifically contest the fact of violation and does not object to exclusion of that issue at the hearing, the hearing may properly be limited to the issue of the jurisdiction of the Office of Surface Mining Reclamation and Enforcement.

Titan Coal Corp. v. Office of Surface Mining Reclamation and Enforcement, 78 IBLA 205 (Jan. 5, 1984)

When the record accompanying a decision by the Office of Surface Mining Reclamation and Enforcement responding to a citizen complaint filed pursuant to 30 CFR 721.13 provides no information upon which an objective, independent review of the basis for the decision can be conducted by the Board, the decision will be set aside and the case remanded for further consideration.

Fred D. Zerfoss et ux., 81 IBLA 14 (May 14, 1984)

Burden of Proof

In a civil penalty proceeding when OSM's prima facie case as to the fact of violation is effectively controverted by the person charged with the violation, the violation must be vacated because OSM has the ultimate burden of persuasion in accordance with 43 CFR 4.1155.

Belva Coal Co., Inc., 3 IBSMA 83 (Apr. 17, 1981) 88 I.D. 448

In a civil penalty proceeding to review an alleged violation of the requirement of 30 CFR 717.17(a)(1) that drainage be passed through a sedimentation pond, OSM bears the ultimate burden of persuasion as to three basic elements of proof: (1) The existence of surface drainage which came into contact with disturbed area; (2) that this drainage did not pass through a sedimentation pond; and (3) that this drainage flowed off the permit area.

The burden of proving facts and circumstances to support an exemption from regulation by OSM rests with the party claiming the exemption.

Avanti Mining Co., Inc., 4 IBSMA 101 (July 16, 1982) 89 I.D. 378

A prima facie case is made where sufficient evidence is presented to establish the essential facts. It is evidence that will justify but not compel a finding in favor of the one presenting it, unless it is contradicted and overcome by other evidence. How much evidence is required may vary with the nature of the case and with the relative availability of the evidence

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

ADMINISTRATIVE PROCEDURE--Continued

Burden of Proof--Continued

to the person charged with the burden of establishing the prima facie case.

Rhonda Coal Co., Inc., 4 IBSMA 124 (Sept. 21, 1982) 89 I.D. 460

An applicant for review claiming that the effluent limitations set forth in 30 CFR 715.17(a) are not applicable to discharges from its sedimentation pond bears the burden of proving the facts upon which the claim of inapplicability is based.

Jeffco Sales & Mining Co., Inc., 4 IBSMA 140 (Sept. 21, 1982) 89 I.D. 467

OSM makes a prima facie case by submitting sufficient evidence to establish the essential facts of the violation; when it makes that showing and the showing goes unrebutted, it also carries its ultimate burden of persuasion.

Tiger Corp., 4 IBSMA 202 (Dec. 17, 1982) 89 I.D. 622

One claiming an exemption from regulation under the Act bears the burden of affirmatively demonstrating entitlement to the exemption.

Jewell Smokeless Coal Corp., 4 IBSMA 211 (Dec. 17, 1982) 89 I.D. 624

OSM makes a prima facie case by submitting sufficient evidence to establish the essential facts of the violation; when it makes that showing and the showing goes unrebutted, the violation must be sustained.

Dorsac Coal Co., 74 IBLA 100 (June 30, 1983)

In an application for review proceeding a person contesting the jurisdiction of the Office of Surface Mining must plead and prove the basis for its claim as an affirmative defense.

Where an applicant for review fails to establish by a preponderance of evidence that a violation did not occur, a notice of violation will be sustained.

Harry Smith Construction Co. v. Office of Surface Mining Reclamation & Enforcement, 78 IBLA 27 (Dec. 13, 1983)

The application of the general rule that in hearing proceedings initiated by a petition for review OSM has the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the fact of violation and as to the amount of the penalty must take into account the issues actually raised in a petition for review. Where a petitioner did not specify any error in OSM's calculation of a proposed civil penalty, OSM's evidentiary burden in the review proceeding was limited to prevailing in its case in support of the merits of the alleged violations.

OSM satisfied the burden of persuasion in support of an alleged violation of the permit requirement in 30 CFR 710.11(a)(2) when, in an evidentiary hearing, OSM demonstrated that the subject mining activity was conducted after May 3, 1978, and that OSM had been unable to discover evidence of a state permit covering

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

ADMINISTRATIVE PROCEDURE--Continued

Burden of Proof--Continued

the activity, and the person charged with the violation did not offer any documentary evidence in support of the assertion that the subject mining activity was covered by an existing state permit.

Bell Coal Co. v. Office of Surface Mining Reclamation & Enforcement (On Reconsideration), 81 IBLA 385 (June 28, 1984)

Findings

When a cessation order indicates that it is being issued both because the condition, practice, or violation is causing or can reasonably be expected to cause significant, imminent environmental harm and because there has been a failure to abate a violation listed in a notice of violation, a finding of either of those grounds is sufficient to sustain the cessation order.

Hayden & Hayden Coal Co., 2 IBSMA 238 (Sept. 12, 1980) 87 I.D. 414

Modification of a notice of violation or cessation order must be based on findings of fact and conclusions of law after a hearing with notice to the parties.

Harry Smith Construction Co. v. Office of Surface Mining Reclamation & Enforcement, 78 IBLA 27 (Dec. 13, 1983)

Intervention

An order by an Administrative Law Judge denying a petition to intervene may be appealed to the Board under 43 CFR 4.1271(a).

Where a corporation petitions to intervene in a suspension or revocation proceeding on its own behalf and not as a representative of its members, but alleges no injury to itself, it is not entitled to intervene as a matter of right under 43 CFR 4.1110(c)(2).

Where the only interest asserted by one petitioning to intervene in a suspension or revocation proceeding is in the precedential effect of the ruling to be made, and the ultimate interest of petitioner may be asserted in another, more appropriate proceeding, denial of permission to intervene under 43 CFR 4.1110(d) is not an abuse of discretion.

Rebel Coal Co., Inc., Island Creek Coal Co., 4 IBSMA 69 (June 24, 1982) 89 I.D. 331

Scope of Review

The Interior Board of Surface Mining and Reclamation Appeals is not the proper forum to consider the constitutionality of regulations promulgated by the Secretary.

Amanda Coal Co., 2 IBSMA 395 (Dec. 22, 1980) 87 I.D. 643

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

ADMINISTRATIVE PROCEDURE--Continued

Scope of Review--Continued

The Interior Board of Surface Mining and Reclamation Appeals is not the proper forum to decide constitutional issues.

Gobel Bartley, 4 IBSMA 219 (Dec. 17, 1982) 89 I.D. 628

Where an application for review alleges only that a notice of violation or cessation order is "improper" and the applicant does not amend or move to amend the application to specifically contest the fact of violation and does not object to exclusion of that issue at the hearing, the hearing may properly be limited to the issue of the jurisdiction of the Office of Surface Mining Reclamation and Enforcement.

Titan Coal Corp. v. Office of Surface Mining Reclamation and Enforcement, 78 IBLA 205 (Jan. 5, 1984)

APPEALS

Generally

Once a right to appeal a decision of an OSM official has been granted, that right cannot be revoked without some express statement of and explanation for the revocation.

Under 43 CFR 4.1282(b), an appeal of a decision of an OSM official must be filed within 30 days of the date of the decision, if the person filing the appeal did not receive a copy of the decision.

The West Virginia Highlands Conservancy, 3 IBSMA 154 (May 28, 1981) 88 I.D. 570

An order by an Administrative Law Judge denying a petition to intervene may be appealed to the Board under 43 CFR 4.1271(a).

Rebel Coal Co., Inc., Island Creek Coal Co., 4 IBSMA 69 (June 24, 1982) 89 I.D. 331

Except for decisions on citizens' complaints, to which a different rule applies, an OSM State Director's decision is appealable to the Board under 43 CFR 4.1281 only if the decision states the right of appeal.

Donald St. Clair et al., 77 IBLA 283 (Nov. 30, 1983) 90 I.D. 496

Where an application for review alleges only that a notice of violation or cessation order is "improper" and the applicant does not amend or move to amend the application to specifically contest the fact of violation and does not object to exclusion of that issue at the hearing, the hearing may properly be limited to the issue of the jurisdiction of the Office of Surface Mining Reclamation and Enforcement.

Titan Coal Corp. v. Office of Surface Mining Reclamation and Enforcement, 78 IBLA 205 (Jan. 5, 1984)

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

APPEALS--Continued

Generally--Continued

OSM properly refused to conduct a Federal inspection or undertake enforcement action where a mine owner continued to conduct only reclamation operations under an interim permit after 8 months following approval of a state's permanent program. SMCRA and the applicable regulations do not require an operator who has ceased all mining operations prior to the approval of a state's permanent program to obtain a permanent program permit.

Citizens for the Preservation of Knox County, 81 IBLA 209 (June 5, 1984)

Under 43 CFR 4.1271, notice of appeal must be filed on or before 30 days from date of receipt of the order or decision sought to be reviewed. The timely filing of a notice of appeal is jurisdictional and failure to file the appeal within the time allowed requires dismissal of the appeal.

William H. Johnson v. Office of Surface Mining Reclamation & Enforcement, 84 IBLA 169 (Dec. 19, 1984)

APPLICABILITY

Generally

"Extraction of coal as an incidental part." For the purposes of 30 U.S.C. § 1278(3) (Supp. II 1978) and 30 CFR 700.11(d), which exclude the "extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction" from the coverage of Federal performance standards otherwise applicable to surface coal mining operations, the phrase "extraction of coal as an incidental part" means, in accordance with 30 CFR 707.5, the extraction of coal which is necessary, from an engineering standpoint, to enable the construction to be accomplished and does not mean the extraction of coal for the purpose of financing the construction.

Concord Coal Corp., 3 IBSMA 92 (Apr. 17, 1981) 88 I.D. 456

"Roads maintained with public funds." Under an agreement with the West Virginia Department of Highways whereby the right-of-way for a secondary road has been reopened and maintained by a coal company for its use and that of the general public, the resulting road is not one "maintained with public funds" that is excluded from the definition of "roads" in 30 CFR 710.5 and, thus, the road is subject to the construction standards in 30 CFR 715.17(1)(2).

Bayle Coal Co., 3 IBSMA 111 (Apr. 27, 1981) 88 I.D. 492

Proof of the intention to mine coal and of a disturbance is sufficient to establish OSM's authority to regulate a site.

Russell Prater Land Co., Inc., 3 IBSMA 124 (Apr. 27, 1981) 88 I.D. 498

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

APPLICABILITY--Continued

Generally--Continued

Release of a portion of a permittee's performance bond by a state does not reduce OSM's authority to regulate that permittee.

Grafton Coal Co., Inc., 3 IBSMA 175 (June 26, 1981) 88 I.D. 613

Where an operator removes coal in the process of rehabilitating a State road but there is no proof that the State expended funds to finance the project comprising at least 50 percent of the cost of the project, the project does not fall within the definition of "Government-financed construction" in 30 CFR 707.5, and the operator therefore cannot claim the exemption from applicability of the Act appearing in sec. 528(3).

West Virginia Energy, Inc., 3 IBSMA 301 (Sept. 17, 1981) 88 I.D. 831

A road used in surface coal mining and reclamation operations is subject to regulation by OSM, in accordance with the performance standards at 30 CFR 715.17(1)(2)(iv), unless it is shown to be maintained with public funds.

Fetterolf Mining Sales, Inc., 4 IBSMA 29 (Mar. 15, 1982)

The mere nominal status of a road as a public road is not enough to bring the road within the exclusionary language of 30 CFR 710.5.

To be exempt from regulation under the Act, in accordance with the exclusionary language of the definition of "roads" in 30 CFR 710.5, a road must be shown to be maintained with public funds.

"Roads maintained with public funds." Where an access and haul road's public status is conditioned on a coal operator's agreement to be primarily responsible for maintaining the road, it is not a road "maintained with public funds" within the meaning of this phrase in the definition of "roads" in 30 CFR 710.5.

Jewell Smokeless Coal Corp., 4 IBSMA 51 (June 18, 1982) 89 I.D. 313

A coal mine operator cannot avoid coverage under the Act by simply contracting to mine two less-than 2-acre sites for different owners, where the sites are adjacent, the operator treats them as related, and where, taken together, they encompass more than 2 acres.

The purpose of the 2-acre exemption was to avoid the heavy burden on both the miner and the regulatory authority that would result from regulating small operations that cause very little environmental damage. The burden of proving entitlement to such an exemption is upon the person claiming it.

Mullins and Bolling Contractors, 4 IBSMA 156 (Sept. 21, 1982) 89 I.D. 475

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

APPLICABILITY--Continued

Generally--Continued

A road used in surface coal mining and reclamation operations is subject to regulation by OSM, unless it is shown to be maintained with public funds.

Virginia Fuels, Inc., 4 IBSMA 185 (Nov. 30, 1982) 89 I.D. 604

Virginia Fuels, Inc., 5 IBSMA 1 (Jan. 19, 1983) 90 I.D. 1

Mud Fork Coal Corp., 5 IBSMA 44 (Apr. 28, 1983) 90 I.D. 181

An access and/or haul road is subject to regulation as part of a surface coal mining operation in the absence of an affirmative demonstration that the road is maintained with public funds.

Jewell Smokeless Coal Corp., 4 IBSMA 211 (Dec. 17, 1982) 89 I.D. 624

In an application for review proceeding a person contesting the jurisdiction of the Office of Surface Mining must plead and prove the basis for its claim as an affirmative defense.

Harry Smith Construction Co. v. Office of Surface Mining Reclamation & Enforcement, 78 IBLA 27 (Dec. 13, 1983)

One claiming an exemption from regulation under the Act bears the burden of affirmatively demonstrating entitlement to that exemption.

Titan Coal Corp. v. Office of Surface Mining Reclamation and Enforcement, 78 IBLA 205 (Jan. 5, 1984)

Where the Office of Surface Mining Reclamation and Enforcement issued a notice of violation charging a violation of regulations in 30 CFR Part 211 (1980) at a surface coal mining operation on Indian land, the notice was properly vacated since the scope provision of those regulations, 30 CFR 211.1(a), specifically excluded from the coverage of 30 CFR Part 211 operations on Indian land.

Peabody Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 79 IBLA 14 (Feb. 3, 1984)

One claiming an exemption from regulation under the Surface Mining Control and Reclamation Act of 1977 bears the burden of affirmatively demonstrating entitlement to the exemption.

A coal mine which disturbs less than 2 acres of surface land is exempt from the application of the Surface Mining Control and Reclamation Act of 1977. However, an operation which is less then 2 acres in size can be under the purview of the Act if it is one of a number of operations which are collectively disturbing in excess of 2 acres and which can logically be considered to be one mine. The party claiming that an operation is, in fact, one of a number of sites which make up a single mine disturbing in excess of 2 acres carries the burden of establishing that fact.

S & H Coal Co. & Jewell Smokeless Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 79 IBLA 350 (Mar. 22, 1984) 91 I.D. 159

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

APPLICABILITY--Continued

Initial Regulatory Program

The Office of Surface Mining Reclamation and Enforcement has jurisdiction to enforce the initial Federal performance standards against a surface disturbance in Kentucky of less than 2 acres and the Federal 2-acre exemption set forth in 30 CFR 700.11(b) is not applicable where the disturbance is physically related to a surface coal mining operation under permit from the Commonwealth of Virginia, and where the disturbance is not a discrete operation but was undertaken in furtherance of the Virginia operation.

Blackwood Fuel Co., Inc., 2 IBSMA 359 (Nov. 24, 1980) 87 I.D. 579

The initial program regulations are applicable to a surface coal mining operation immediately when a state permit for the operation is issued on or after Feb. 3, 1978.

Universal Coal Co., 3 IBSMA 200 (July 16, 1981) 88 I.D. 657

Compliance with state mining permit conditions does not excuse noncompliance with the initial Federal performance standards.

Greater Pardee, Inc., 3 IBSMA 313 (Sept. 24, 1981) 88 I.D. 846

As a general performance obligation under the initial Federal regulatory program, a person who conducts surface coal mining and reclamation operations on and after May 3, 1978, must obtain a state permit for the operations if required to do so under state law. When state law defines surface coal mining to include exploration activity, the Federal performance obligation extends to such activity.

The general performance obligation under the initial Federal regulatory program that a person who conducts surface coal mining and reclamation operations on and after May 3, 1978, must obtain a state permit for the operations if required to do so under state law is applicable to persons who allow mining operations on lands under their legal control even when the persons are not actually engaged in the mining operations.

The obligation under the Federal initial regulatory program of a person who conducts surface coal mining and reclamation operations to obtain a state permit for the operations if required to do so under state law is applicable only in the context of mining operations conducted on and after May 3, 1978; therefore, action by OSM to enforce the obligation was not properly upheld in the absence of evidence that the subject mining activity occurred after that date.

OSM satisfied the burden of persuasion in support of an alleged violation of the permit requirement in 30 CFR 710.11(a)(2) when, in an evidentiary hearing, OSM demonstrated that the subject mining activity was conducted after May 3, 1978, and that OSM had been unable to discover evidence of a state permit covering the activity, and the person charged with the violation did not offer any documentary evidence in support of the assertion that the subject mining activity was covered by an existing state permit.

OSM lacked regulatory authority to enforce the special performance standards in 30 CFR 716.5(b) (applicable to anthracite surface coal mining and reclamation operations in the Commonwealth of Pennsylvania) with respect to surface coal mining and

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

APPLICABILITY--Continued

Initial Regulatory Program--Continued

reclamation operations conducted only before May 3, 1978.

Where OSM demonstrated in an evidentiary hearing that particular surface coal mining and reclamation operations were not covered by a state approved mining plan at the time of OSM's inspection of the operations, OSM was precluded, as a matter of law, from establishing its allegation that the person conducting the mining operations had failed to accomplish backfilling in accordance with an approved mining plan.

Bull Coal Co. v. Office of Surface Mining Reclamation & Enforcement (On Reconsideration), 81 IBLA 385 (June 28, 1984)

Postmining Land Use

The extraction of coal as an incidental part of privately financed construction is not an activity excluded as such from the coverage of the performance requirements of the initial regulatory program.

Gobel Hartley, 4 IBSMA 219 (Dec. 17, 1982) 89 I.D. 628

APPROXIMATE ORIGINAL CONTOUR

Generally

Elimination of a highwall is a specific requirement of 30 CFR 715.14 which must be satisfied in order to achieve approximate original contour. If a highwall has not been eliminated, it necessarily follows that return to approximate original contour has not been accomplished.

Little Sandy Coal Sales, 2 IBSMA 25 (Feb. 19, 1980) 87 I.D. 61

The augering of a coal seam in an orphan highwall may make a permittee responsible for returning the entire highwall to approximate original contour.

Miami Springs Properties, 2 IBSMA 399 (Dec. 23, 1980) 87 I.D. 645

"Appropriate contour." "Appropriate contour," as used in 30 CFR 715.14(e), is not synonomous with "approximate original contour."

Wayne Yarnell, 3 IBSMA 188 (July 15, 1981) 88 I.D. 652

The complete elimination of highwalls is an absolute requirement of the Surface Mining Control and Reclamation Act and its implementing regulations and neither that Act nor those regulations provide authority for an evaluation of comparative environmental harm from eliminating highwall exposures or allowing such exposures to remain.

"Highwall." Where a rock face is shown to be the result of a slope failure and is not an open cut through overburden made to expose coal in a mining operation, the face is not properly considered as "highwall," as this term is defined in 30 CFR 710.5, for the purposes of the requirement in 30 CFR 715.14

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

APPROXIMATE ORIGINAL CONTOUR--Continued

Generally--Continued

that all highwalls created in the course of a mining operation must be completely eliminated during reclamation of the minesite.

The responsibility of a surface coal mine operator to ensure that highwalls created during its mining operations remain covered after backfilling and grading in accordance with 30 CFR 715.14 continues at least for a sufficient period of time to allow the regulatory authority to determine that the highwall has in fact been covered and that the backfill material has been placed and compacted in a manner that properly takes into account the expected settling.

River Processing, Inc. v. Office of Surface Mining Reclamation & Enforcement, 76 IBLA 129 (Sept. 26, 1983) 90 I.D. 425

AREAS UNSUITABLE FOR SURFACE COAL MINING

Areas Designated by Congress

"Valid existing rights." To demonstrate "valid existing rights," and thereby avoid a restriction on surface coal mining under sec. 522(e) of the Act and 30 CFR Part 761, the claimant must show that it held property rights on Aug. 3, 1977, that were created by a legally binding conveyance, lease, deed, contract or other document which authorizes the claimant to produce coal by a surface coal mining operation.

"Valid existing rights." Relevant state law is a proper aid in the interpretation of the terms of the document relied upon to establish "valid existing rights" under sec. 522(e) of the Act and 30 CFR Part 761.

"Valid existing rights." When the document relied upon to establish "valid existing rights" to surface mine coal is a deed which conveys both the mineral and overlying surface estates, authorization to surface mine will be presumed, for the purposes of sec. 522(e) of the Act and 30 CFR 761.5, in the absence of language to the contrary in the conveyance.

"Valid existing rights." A local government's zoning ordinance which contains restrictions on surface coal mining will not be considered to preclude "valid existing rights," under sec. 522(e) of the Act and 30 CFR 761.5, where it is shown that the restrictions of the local ordinance have been preempted by state law.

Ronald W. Johnson, 5 IBSMA 19 (Feb. 4, 1983) 90 I.D. 54

ATTORNEYS' FEES/COSTS AND EXPENSES

Bad Faith/Harassment

The fact that a permittee prevailed before the Hearings Division does not establish that OSM's enforcement action was undertaken in bad faith and for the purpose of harassing or embarrassing the permittee.

Delta Mining Corp., 3 IBSMA 252 (Aug. 13, 1981) 88 I.D. 742

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

ATTORNEYS' FEES/COSTS AND EXPENSES--Continued

Final Order

A qualitative analysis of any order asserted to be a final order of the Office of Hearings and Appeals which is a prerequisite to an award of costs and expenses under the Act must be done before such an award may be considered further; the regulations contemplate that such a qualifying final order will have been issued by OHA setting forth a judgment on the merits of the resolution of the administrative proceeding. Here no such order has been issued and an award would thus be inappropriate.

Council of the Southern Mountains, Inc. v. Office of Surface Mining Reclamation and Enforcement, 3 IBSMA 44 88 I.D. 394 (Mar. 23, 1981)

Standards for Award

The Office of Hearings and Appeals will follow the standards for award of costs and expenses including attorneys' fees set out by the D.C. Circuit Court of Appeals in Copeland v. Marshall, F.2d (1980).

Council of the Southern Mountains, Inc. v. Office of Surface Mining Reclamation and Enforcement, 3 IBSMA 44 88 I.D. 394 (Mar. 23, 1981)

Substantial Contribution

Where, largely due to what may have earlier appeared to have been a Board indication that it had resolved the compensation issue in petitioner's favor, petitioner made a substantial contribution to the determination of the standards to be used in cases for award of costs and expenses, it would be grossly unfair not to compensate petitioner for that contribution.

Council of the Southern Mountains, Inc. v. Office of Surface Mining Reclamation and Enforcement, 3 IBSMA 44 88 I.D. 394 (Mar. 23, 1981)

BACKFILLING AND GRADING REQUIREMENTS

Generally

Elimination of a highwall is a specific requirement of 30 CFR 715.14 which must be satisfied in order to achieve approximate original contour. If a highwall has not been eliminated, it necessarily follows that return to approximate original contour has not been accomplished.

Little Sandy Coal Sales, 2 IBSMA 25 (Feb. 19, 1980) 87 I.D. 61

Under the circumstances of this case, sufficient evidence was presented to show that unforeseen circumstances arose during regrading, that the state regulatory authority approved a change to the permit under its established procedures, and that the change was carried out in accordance with the requirements of 30 CFR 715.14(b).

Grafton Coal Co., Inc., 2 IBSMA 316 (Nov. 4, 1980) 87 I.D. 521

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

BACKFILLING AND GRADING REQUIREMENTS--Continued

Generally--Continued

Backfilling and grading requirements of 30 CFR 715.14 are to be satisfied as contemporaneously as possible with surface coal mining operations to accomplish timely reclamation of disturbed areas.

Whether particular backfilling and grading activity is timely must be determined taking into account the overall circumstances of a surface coal mining and reclamation operation.

Old Home Manor, Inc., 3 IBSMA 241 (Aug. 13, 1981) 88 I.D. 737

Highwall Elimination

In a steep slope mining operation all highwalls must be completely backfilled after mining is concluded, even where retention of an access road has been approved as part of a postmining land use.

Tollage Creek Elkhorn Mining Co., 2 IBSMA 341 (Nov. 24, 1980) 87 I.D. 570

The augering of a coal seam in an orphan highwall may make a permittee responsible for returning the entire highwall to approximate original contour.

Miami Springs Properties, 2 IBSMA 399 (Dec. 23, 1980) 87 I.D. 645

Elimination of that portion of a highwall created before May 3, 1978, will not be required when OSM, after negotiations with the permittee, agrees that pre-May 3 highwalls need not be eliminated and does not dispute that part of the highwall was created before that date, and when there is no evidence that post-May 3 operations had any adverse physical impact on the pre-May 3 highwall.

Atomic Fuel Coal Co., Inc., 3 IBSMA 107 (Apr. 23, 1981) 88 I.D. 477

Even where approval has been granted to construct a cut-and-fill terrace, 30 CFR 715.14(b)(2)(iii) requires that no highwalls be left.

Grafton Coal Co., Inc., 3 IBSMA 175 (June 26, 1981) 88 I.D. 613

The complete elimination of highwalls is an absolute requirement of the Surface Mining Control and Reclamation Act and its implementing regulations and neither that Act nor those regulations provide authority for an evaluation of comparative environmental harm from eliminating highwall exposures or allowing such exposures to remain.

"Highwall." Where a rock face is shown to be the result of a slope failure and is not an open cut through overburden made to expose coal in a mining operation, the face is not properly considered as "highwall," as this term is defined in 30 CFR 710.5, for the purposes of the requirement in 30 CFR 715.14 that all highwalls created in the course of a mining operation must be completely eliminated during reclamation of the minesite.

The responsibility of a surface coal mine operator to ensure that highwalls created during its mining operations remain covered after backfilling and grading

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

BACKFILLING AND GRADING REQUIREMENTS--Continued

Highwall Elimination--Continued

in accordance with 30 CFR 715.14 continues at least for a sufficient period of time to allow the regulatory authority to determine that the highwall has in fact been covered and that the backfill material has been placed and compacted in a manner that properly takes into account the expected settling.

River Processing, Inc. v. Office of Surface Mining Reclamation & Enforcement, 76 IBLA 129 (Sept. 26, 1983) 90 I.D. 425

Previously Mined Lands

The augering of a coal seam in an orphan highwall may make a permittee responsible for returning the entire highwall to approximate original contour.

Miami Springs Properties, 2 IBSMA 399 (Dec. 23, 1980) 87 I.D. 645

The backfilling and grading requirements of 30 CFR 715.14 apply to previously mined lands where surface coal mining operations result in an adverse physical impact to the preexisting highwall which is reaffected by such operations.

Mountain Enterprises Coal Co., 3 IBSMA 338 (Sept. 25, 1981) 88 I.D. 861

BONDS

Release of

Release of a portion of a permittee's performance bond by a state does not reduce OSM's authority to regulate that permittee.

Grafton Coal Co., Inc., 3 IBSMA 175 (June 26, 1981) 88 I.D. 613

CESSATION ORDERS

Generally

A cessation order is not properly issued under sec. 521(a)(2) of the Act unless the environmental harm alleged to be significant may be described objectively on the basis of observations or measurements.

A cessation order is not properly issued under sec. 521(a)(2) of the Act when the evidence does not support a finding that significant environmental harm may reasonably be expected to occur before the expiration of an abatement period that would be set pursuant to sec. 521(a)(3) of the Act.

Claypool Construction Co., Inc., 2 IBSMA 81 (May 16, 1980) 87 I.D. 168

Where OSM fails to hold an informal assessment conference within 60 days of the request and the person assessed a civil penalty timely objects to the date of the conference but alleges no actual prejudice, no relief is appropriate.

Where OSM fails to hold an informal assessment conference within 60 days of the request and the person assessed a civil penalty timely objects to the date of the conference but then does not forward the proposed

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

CESSATION ORDERS--Continued

Generally--Continued

penalty with its petition for review, the petition must be dismissed.

Badger Coal Co., 2 IBSMA 147 (July 25, 1980) 87 I.D. 319

When a cessation order indicates that it is being issued both because the condition, practice, or violation is causing or can reasonably be expected to cause significant, imminent environmental harm and because there has been a failure to abate a violation listed in a notice of violation, a finding of either of those grounds is sufficient to sustain the cessation order.

Hayden & Hayden Coal Co., 2 IBSMA 238 (Sept. 12, 1980) 87 I.D. 414

OSM has established a prima facie case that a cessation order was properly issued when it shows a violation, practice, or condition that is causally connected to significant, imminent environmental harm or a reasonable expectation of such harm.

Cessation orders are extreme sanctions and should not be issued indiscriminately, but where the prerequisites for a cessation order are found, there need be no hesitation in closing the operation or its relevant portion.

Under the circumstances of this case, a cessation order requiring that all underground pumping of slurry be stopped was not overly broad.

Island Creek Coal Co., 3 IBSMA 165 (June 15, 1981) 88 I.D. 581

The Board will not uphold a cessation order issued for a failure to abate a violation charged where that failure is premised on noncompliance with a remedial measure which has no rational relationship to the violation charged.

West Virginia Energy, Inc., 3 IBSMA 301 (Sept. 17, 1981) 88 I.D. 831

Modification of a notice of violation or cessation order must be based on findings of fact and conclusions of law after a hearing with notice to the parties.

Harry Smith Construction Co. v. Office of Surface Mining Reclamation & Enforcement, 76 IBLA 27 (Dec. 13, 1983)

OSM properly takes enforcement action against the owner of a surface coal mining operation who fails to submit a timely and complete application for a permanent program permit and who continues to operate under an interim permit after 8 months following approval of a state's permanent program.

Virginia Citizens for Better Reclamation, Virginia E. Hill, 82 IBLA 37 (July 10, 1984) 91 I.D. 247

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

CITIZEN COMPLAINTS

Generally

When the record accompanying a decision by the Office of Surface Mining Reclamation and Enforcement responding to a citizen complaint filed pursuant to 30 CFR 721.13 provides no information upon which an objective, independent review of the basis for the decision can be conducted by the Board, the decision will be set aside and the case remanded for further consideration.

Fred D. Zurface et al., 81 IBLA 14 (May 14, 1984)

The Office of Surface Mining may properly decline to take enforcement action on a citizen's complaint alleging improper restoration of the citizen's land under 30 CFR 721.13 where multiple inspections fail to confirm the allegations made.

Kenneth Marsh, 82 IBLA 3 (July 2, 1984)

CIVIL PENALTIES

Generally

43 CFR 4.1260 does not authorize temporary relief from the requirement of 43 CFR 4.1152(b) that a proposed civil penalty be paid into escrow pending a final determination on the merits of the case.

30 CFR 723.14(a) does not authorize an Administrative Law Judge to reduce the number of days for which a civil penalty may be assessed when the obligation to abate the violation has not been suspended.

Gravat Coal Co., Inc., 2 IBSMA 249 (Sept. 23, 1980), 87 I.D. 416

A civil penalty will not be disturbed when the person assessed does not seek review of the penalty amount, and the underlying violation is not vacated.

Little Byrd Coal Co., Inc., 3 IBSMA 136 (Apr. 30, 1981) 88 I.D. 503

Although the Hearings Division is not bound to accept the OSM Assessment Branch's evaluation of the evidence in terms of assigning civil penalty points, where an Administrative Law Judge finds a violation occurred, he is required to adhere to the point system in 30 CFR 723.13 unless he determines that a waiver would further abatement of violations of the Act.

Diamond Coal Co., 3 IBSMA 292 (Sept. 17, 1981) 88 I.D. 826

Under 43 CFR 4.1157, the Administrative Law Judge in a civil penalty hearing, if he finds that a violation occurred, is required to determine the amount of the penalty. He is not bound by the proposed assessment, regardless of whether there has previously been an assessment conference.

Consolidation Coal Co., 5 IBSMA 6 (Feb. 2, 1983) 90 I.D. 49

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

CIVIL PENALTIES--Continued

Generally--Continued

The failure of an Administrative Law Judge to impose a civil penalty simply because the total points assigned to a notice of violation are less than 31 may constitute an abuse of discretion if multiple violations are involved.

Mud Fork Coal Corp., 5 IBSMA 44 (Apr. 28, 1983) 90 I.D. 181

Amount

A civil penalty assessment based on a part of a cessation order that is vacated after administrative review cannot be upheld whether or not review was sought of the penalty amount.

Little Byrd Coal Co., Inc., 3 IBSMA 136 (Apr. 30, 1981) 88 I.D. 503

Under 30 CFR 723.15(b), OSM is required to assess a civil penalty of not less than $750 per day for each day during which a cessation order properly remains outstanding, up to a limit of 30 days.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

Under 43 CFR 4.1157, the Administrative Law Judge in a civil penalty hearing, if he finds that a violation occurred, is required to determine the amount of the penalty. He is not bound by the proposed assessment, regardless of whether there has previously been an assessment conference.

Consolidation Coal Co., 5 IBSMA 6 (Feb. 2, 1983) 90 I.D. 49

An Administrative Law Judge in a civil penalty proceeding must determine whether to impose a civil penalty for more than 1 day whenever he finds that the violation under review has not been abated and that the exceptions set forth in 30 CFR 723.15(b)(1) do not apply.

Mud Fork Coal Corp., 5 IBSMA 44 (Apr. 28, 1983) 90 I.D. 181

Hearings Procedure

Under 43 CFR 4.1153 OSM has an absolute right to submit an answer to a petition within 30 days from receipt of a copy of the petition. After that time, the Administrative Law Judge has discretion to regulate the scope of the answer in any reasonable manner.

Addington Bros. Mining, Inc., 2 IBSMA 90 (May 22, 1980) 87 I.D. 186

Where OSM fails to hold an informal assessment conference within 60 days of the request and the person assessed a civil penalty timely objects to the date of the conference but alleges no actual prejudice, no relief is appropriate.

Where OSM fails to hold an informal assessment conference within 60 days of the request and the person assessed a civil penalty timely objects to the date of the conference but then does not forward the proposed

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

CIVIL PENALTIES--Continued

Hearings Procedure--Continued

penalty with its petition for review, the petition must be dismissed.

Badger Coal Co., 2 IBSMA 147 (July 25, 1980)
87 I.D. 319

Under 43 CFR 4.1153 OSM has an absolute right to submit an answer to a petition within 30 days of its receipt of a copy of the petition. After that time, an Administrative Law Judge has discretion to regulate the scope of OSM's answer in a manner reasonably related to any prejudice suffered by the opposing party as a result of OSM's delay.

When an answer is filed by OSM after the time prescribed in 43 CFR 4.1153 but before any claim of prejudice from the delay is raised by the petitioner, it is an abuse of discretion for an Administrative Law Judge to issue, sua sponte, a summary decision in favor of the petitioner on the basis of presumed prejudice to the petitioner.

Lake Coal Co., Inc., 3 IBSMA 9 (Feb. 17, 1981)
88 I.D. 266

In a civil penalty proceeding when OSM's prima facie case as to the fact of violation is effectively controverted by the person charged with the violation, the violation must be vacated because OSM has the ultimate burden of persuasion in accordance with 43 CFR 4.1155.

Belva Coal Co., Inc., 3 IBSMA 83 (Apr. 17, 1981)
88 I.D. 448

Even where the petitioner, in a civil penalty proceeding, admits the validity of the issuance of a notice of violation and the hearing proceeds on the penalty amount issues only, the Administrative Law Judge is not bound to accept the admission when the penalty amount evidence raises a question in his mind whether the violation in fact occurred.

Where the parties have agreed to the existence of a violation and a penalty hearing is conducted on the basis of that agreement, if the Administrative Law Judge determines, either during or after the hearing, that the evidence may not support a violation, he shall make that determination known to the parties and, if necessary, reopen the hearing to allow OSM an opportunity to prove its case and the operator to counter that proof.

Diamond Coal Co., 3 IBSMA 292 (Sept. 17, 1981)
88 I.D. 826

Where OSM fails to serve permittee with copy of a proposed assessment and of the worksheets showing the computation within 30 days of the issuance of the notice of violation, pursuant to regulation, such failure shall not result in administrative relief since the regulation is directory rather than mandatory.

Sahara Coal Co., 3 IBSMA 371 (Nov. 30, 1981) 88 I.D. 1025

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

CIVIL PENALTIES--Continued

Hearings Procedure--Continued

The provision of 30 CFR 723.17(b), that OSM shall serve notice of a civil penalty assessment within 30 days of the issuance of the underlying enforcement document, is directory, not mandatory; and OSM's failure to comply with this provision is not a bar to an assessment in the absence of a showing of prejudice resulting from the noncompliance.

Where OSM erroneously includes a violation that has previously been vacated in assessing and pleading the amount of a civil penalty prior to the hearing in a review proceeding, but then discovers its error and substitutes a different violation in its point computation at the time of the hearing, such substitution is proper under 43 CFR 4.1157(b)(1) unless the petitioner can demonstrate prejudice.

Sahara Coal Co., Inc., 4 IBSMA 166 (Oct. 12, 1982)
89 I.D. 505

Under 43 CFR 4.1157, the Administrative Law Judge in a civil penalty hearing, if he finds that a violation occurred, is required to determine the amount of the penalty. He is not bound by the proposed assessment, regardless of whether there has previously been an assessment conference.

Consolidation Coal Co., 5 IBSMA 6 (Feb. 2, 1983)
90 I.D. 49

An Administrative Law Judge in a civil penalty proceeding must determine whether to impose a civil penalty for more than 1 day whenever he finds that the violation under review has not been abated and that the exceptions set forth in 30 CFR 723.15(b)(1) do not apply.

Mud Fork Coal Corp., 5 IBSMA 44 (Apr. 28, 1983)
90 I.D. 181

DISCRIMINATION

Generally

Sec. 703 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1293 (1982), prohibits any "person" from discriminating against any employee by reason of his involvement in any proceeding under the Act. An aggrieved employee may file an application for review of any such discrimination with the Department of the Interior. For purposes of sec. 703 employee protection proceedings, the state agency charged with enforcement of the Act is not deemed a person within the meaning of the statute where review of alleged discriminatory action is sought by one of its employees.

James E. Leber v. Pennsylvania Dept. of Environmental Resources, 80 IBLA 200 (Apr. 24, 1984) 91 I.D. 197

EMPLOYEE PROTECTION

Generally

Sec. 703 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1293 (1982), prohibits any "person" from discriminating against any employee by reason of his involvement in any proceeding under the Act. An aggrieved employee may file an application for review of any such discrimination with the Department of the Interior. For purposes of sec. 703 employee protection proceedings, the state agency

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

EMPLOYEE PROTECTION--Continued

Generally--Continued

charged with enforcement of the Act is not deemed a person within the meaning of the statute where review of alleged discriminatory action is sought by one of its employees.

James E. Leber v. Pennsylvania Dept. of Environmental Resources, 80 IBLA 200 (Apr. 24, 1984) 91 I.D. 197

ENFORCEMENT PROCEDURES

Generally

The Office of Surface Mining Reclamation and Enforcement is authorized to issue a notice of violation for noncompliance with the initial regulatory program even if a state has already initiated enforcement action for the same violation.

Eastover Mining Co., 2 IBSMA 5 (Jan. 21, 1980) 87 I.D. 9

The Secretary of the Interior, through the promulgation of regulations, has determined that sec. 521(a)(1) of the Act does not apply during the initial regulatory program.

OSM is required to issue a notice for violations of the initial regulatory program even if a state has already taken enforcement action against the same violation.

Kaiser Steel Corp., 2 IBSMA 158 (July 25, 1980) 87 I.D. 324

Because elapsed time is not a reason for failure to cite a violation of the Act and regulations discovered during an inspection, the fact that a permittee manages to complete an illegal action between inspections does not of itself protect it against a citation for the violation.

Wayne Yarnell, 3 IBSMA 188 (July 15, 1981) 88 I.D. 652

Filing an application for review of a notice of violation does not stay that notice.

Atomic Fuel Co., Inc., 3 IBSMA 287 (Sept. 17, 1981) 88 I.D. 824

ENVIRONMENTAL HARM

Generally

OSM has established a prima facie case that a cessation order was properly issued when it shows a violation, practice, or condition that is causally connected to significant, imminent environmental harm or a reasonable expectation of such harm.

Island Creek Coal Co., 3 IBSMA 165 (June 15, 1981) 88 I.D. 581

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

ENVIRONMENTAL HARM--Continued

Imminence

A cessation order is not properly issued under sec. 521(a)(2) of the Act when the evidence does not support a finding that significant environmental harm may reasonably be expected to occur before the expiration of an abatement period that would be set pursuant to sec. 521(a)(3) of the Act.

Claypool Construction Co., Inc., 2 IBSMA 81 (May 16, 1980) 87 I.D. 168

Significance

A cessation order is not properly issued under sec. 521(a)(2) of the Act unless the environmental harm alleged to be significant may be described objectively on the basis of observations or measurements.

Claypool Construction Co., Inc., 2 IBSMA 81 (May 16, 1980) 87 I.D. 168

EVIDENCE

Generally

Since the reviewing authority may use interference with an inspection against the permittee in any way deemed appropriate, a permittee who interferes with an inspection does so at the risk of severely prejudicing its own case.

Eastover Mining Co., 2 IBSMA 70 (May 16, 1980) 87 I.D. 172

The existence of an intermittent stream at the time of an OSM inspection and at subsequent inspections and the statements of mine officials that an intermittent stream existed before the initial inspection raise a rebuttable presumption that an intermittent stream subject to the requirements of 30 CFR 715.17(d) existed prior to mining.

Persuasive, uncontradicted evidence that the state regulatory authority considered a stream to be ephemeral before the granting of a permit, coupled with other evidence to the same effect, is sufficient under the circumstances to rebut the presumption that an intermittent stream existed prior to mining.

Sunbeam Coal Corp., 2 IBSMA 222 (Aug. 29, 1980) 87 I.D. 383

It is not error for an Administrative Law Judge to rely on hearsay evidence of chain of custody when the permittee challenges that evidence only by asserting that it is hearsay.

Roberts Brothers Coal Co., Inc., 2 IBSMA 284 (Sept. 26, 1980) 87 I.D. 439

Under the circumstances of this case, sufficient evidence was presented to show that unforeseen circumstances arose during regrading, that the state regulatory authority approved a change to the permit under its established procedures, and that the change was carried out in accordance with the requirements of 30 CFR 715.14(b).

Grafton Coal Co., Inc., 2 IBSMA 316 (Nov. 4, 1980) 87 I.D. 521

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

EVIDENCE--Continued

Generally--Continued

A prima facie case for the existence of a human burial ground can be established by evidence that stones at the purported site of the burial ground bear inscriptions generally associated with gravemarkers, combined with evidence that the site is described as a "cemetery" in a coal lease pertinent to land that includes the site.

Marietta Coal Co., 2 IBSMA 382 (Nov. 26, 1980)
87 I.D. 589

In this case, because OSM presented sufficient evidence to establish a prima facie case that the permittee had auger-mined the coal seam at the base of an orphan highwall and that that mining had an adverse physical impact on the highwall, it was error for the Administrative Law Judge to grant a motion to dismiss made at the conclusion of OSM's evidence.

Miami Springs Properties, 2 IBSMA 399 (Dec. 23, 1980)
87 I.D. 645

In a civil penalty proceeding when OSM's prima facie case as to the fact of violation is effectively controverted by the person charged with the violation, the violation must be vacated because OSM has the ultimate burden of persuasion in accordance with 43 CFR 4.1155.

Belva Coal Co., Inc., 3 IBSMA 83 (Apr. 17, 1981)
88 I.D. 448

Competent evidence that the person listed in state records as permittee over an area had no legal right under state law to mine or reclaim that area and that the person was not conducting mining or reclamation operations there as contemplated in 30 CFR 700.5 (1978) is sufficient to rebut a prima facie showing that the person is the permittee.

Marco, Inc., 3 IBSMA 128 (Apr. 27, 1981) 88 I.D. 500

OSM is entitled to determine, on the basis of the evidence available to it, that a violation could not be proven, even if one had occurred.

Wayne Yarnell, 3 IBSMA 188 (July 15, 1981) 88 I.D. 652

A negative determination on the existence of prime farmlands issued by a state after the permittee has been cited by OSM for violating the prime farmlands regulations may be submitted as evidence of whether or not prime farmlands exist on the site, but it is not necessarily entitled to retroactive effect.

Universal Coal Co., 3 IBSMA 200 (July 16, 1981)
88 I.D. 657

An alleged violation of the effluent limitation for iron set forth in 30 CFR 715.17(a) is properly upheld on the basis of a Hach test showing total iron in discharges from a sedimentation pond to be in excess of 10 milligrams per liter, in the absence of evidence that the Hach test was not properly administered.

D & D Mining Co., 4 IBSMA 113 (Aug. 24, 1982)
89 I.D. 409

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

EVIDENCE--Continued

Generally--Continued

A prima facie case is made where sufficient evidence is presented to establish the essential facts. It is evidence that will justify but not compel a finding in favor of the one presenting it, unless it is contradicted and overcome by other evidence. How much evidence is required may vary with the nature of the case and with the relative availability of the evidence to the person charged with the burden of establishing the prima facie case.

Rhonda Coal Co., Inc., 4 IBSMA 124 (Sept. 21, 1982)
89 I.D. 460

In a proceeding to review an alleged violation of the effluent limitations for iron and pH expressed in 30 CFR 715.17(a), OSM met its burden of establishing a prima facie case by its evidence that tests of water samples taken at the point or discharge of drainage from the sedimentation pond which received surface drainage from the areas disturbed by the surface coal mining and reclamation operations showed iron and pH levels outside the applicable limits.

Jeffco Sales & Mining Co., Inc., 4 IBSMA 140 (Sept. 21, 1982)
89 I.D. 467

It is error for an Administrative Law Judge to fail to admit evidence of laboratory tests of water quality samples when the permittee challenges that evidence only by asserting that it is hearsay because of a failure to establish the chain of custody of the samples. Such an objection goes to the weight to be given to the evidence, not to its admissibility.

Parmac Coal Co., 74 IBLA 100 (June 30, 1983)

A prima facie case is made where sufficient evidence is presented to establish the essential facts. Prima facie evidence is that evidence that will justify a finding in favor of the one presenting the evidence. It is not necessary to present evidence that is compelling, and the determination must be made on a case-by-case basis. An important factor in making a determination regarding the amount of evidence required for a prima facie case is the availability of the evidence and the difficulty which may reasonably be encountered in obtaining the evidence.

S & P Coal Co. & Jewell Smokeless Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 79 IBLA 350 (Mar. 22, 1984)
91 I.D. 159

HEARINGS

Generally

Since the reviewing authority may use interference with an inspection against the permittee in any way deemed appropriate, a permittee who interferes with an inspection does so at the risk of severely prejudicing its own case.

Eastover Mining Co., 2 IBSMA 70 (May 16, 1980)
87 I.D. 172

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

HEARINGS--Continued

Generally--Continued

Knowledge possessed by an Administrative Law Judge but not appearing of record in the case before the Board is not a sufficient basis for upholding a decision in a formal proceeding under the Administrative Procedure Act.

Capital Coal Corp., 4 IBSMA 179 (Nov. 23, 1982)
89 I.D. 594

OSM makes a prima facie case by submitting sufficient evidence to establish the essential facts of the violation; when it makes that showing and the showing goes unrebutted, it also carries its ultimate burden of persuasion.

Tiger Corp., 4 IBSMA 202 (Dec. 17, 1982) 89 I.D. 622

OSM makes a prima facie case by submitting sufficient evidence to establish the essential facts of the violation; when it makes that showing and the showing goes unrebutted, the violation must be sustained.

Parmac Coal Co., 74 IBLA 100 (June 30, 1983)

The application of the general rule that in hearing proceedings initiated by a petition for review OSM has the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the fact of violation and as to the amount of the penalty must take into account the issues actually raised in a petition for review. Where a petitioner did not specify any error in OSM's calculation of a proposed civil penalty, OSM's evidentiary burden in the review proceeding was limited to prevailing in its case in support of the merits of the alleged violations.

Bell Coal Co. v. Office of Surface Mining Reclamation & Enforcement (On Reconsideration), 81 IBLA 385 (June 28, 1984)

Notice

Parties are entitled to written, advance notice of the time, place, and nature of a hearing to review a cessation order, in accordance with the provisions of 43 CFR 4.1123(b) and 4.1167.

Crystal Coal Co., 2 IBSMA 136 (July 3, 1980)
87 I.D. 308

Modification of a notice of violation or cessation order must be based on findings of fact and conclusions of law after a hearing with notice to the parties.

Harry Smith Construction Co. v. Office of Surface Mining Reclamation & Enforcement, 78 IBLA 27 (Dec. 13, 1983)

Procedure

Although an Administrative Law Judge has discretion to take appropriate action to correct the late filing of an answer in a proceeding to review a notice of violation or a cessation order, except in extreme

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

HEARINGS--Continued

Procedure--Continued

circumstances it is not appropriate to vacate the notice or order.

William Francis Rice, 3 IBSMA 17 (Feb. 19, 1981)
88 I.D. 269

A determination by an Administrative Law Judge, sua sponte, that an application for review is not in compliance with 43 CFR 4.1164 relieves OSM of its obligation to answer the application, and, unless otherwise ordered, OSM is entitled to the full 20 days prescribed in 43 CFR 4.1165(a) to answer an amended application.

Concord Coal Corp., 3 IBSMA 26 (Feb. 19, 1981)
88 I.D. 273

An Administrative Law Judge has discretion to determine appropriate action to correct the late filing of an answer in a proceeding to review a notice of violation; however, vacation of the notice of violation is not appropriate action when the applicant has shown no prejudice resulting from a late answer.

Peabody Coal Co., Inc., 3 IBSMA 32 (Mar. 3, 1981)
88 I.D. 304

An applicant for review of a notice of violation who voluntarily failed to appear at the scheduled review hearing was properly deemed to have waived its right to a hearing, and the Administrative Law Judge could accept as true the allegations of fact contained in the notice of violation under review.

Thoroughfare Coal Co., 3 IBSMA 72 (Mar. 25, 1981)
88 I.D. 406

Even where the petitioner, in a civil penalty proceeding, admits the validity of the issuance of a notice of violation and the hearing proceeds on the penalty amount issues only, the Administrative Law Judge is not bound to accept the admission when the penalty amount evidence raises a question in his mind whether the violation in fact occurred.

Where the parties have agreed to the existence of a violation and a penalty hearing is conducted on the basis of that agreement, if the Administrative Law Judge determines, either during or after the hearing, that the evidence may not support a violation, he shall make that determination known to the parties and, if necessary, reopen the hearing to allow OSM an opportunity to prove its case and the operator to counter that proof.

Diamond Coal Co., 3 IBSMA 292 (Sept. 17, 1981)
88 I.D. 826

Modification of a notice of violation or cessation order must be based on findings of fact and conclusions of law after a hearing with notice to the parties.

Harry Smith Construction Co. v. Office of Surface Mining Reclamation & Enforcement, 78 IBLA 27 (Dec. 13, 1983)

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

HEARINGS--Continued

Procedure--Continued

Where an application for review alleges only that a notice of violation or cessation order is "improper" and the applicant does not amend or move to amend the application to specifically contest the fact of violation and does not object to exclusion of that issue at the hearing, the hearing may properly be limited to the issue of the jurisdiction of the Office of Surface Mining Reclamation and Enforcement.

Titan Coal Corp. v. Office of Surface Mining Reclamation and Enforcement, 78 IBLA 205 (Jan. 5, 1984)

HYDROLOGIC SYSTEM PROTECTION

Generally

The sedimentation pond requirement of 30 CFR 715.17(a) is a preventive measure and proof of the occurrence of the harm it is intended to prevent is not necessary to establish a violation of that requirement.

Black Fox Mining & Development Corp., 2 IBSMA 110 (June 6, 1980)
87 I.D. 207

"Underground operations." Because of the definition of "underground operations" in 30 CFR 717.11(a)(1), the ground water monitoring requirements of sec. 717.17(h)(1) and (h)(2) of 30 CFR do not apply to an inactive mine where the only underground activity is the mechanical removal of accumulated water.

Consolidation Coal Co., 3 IBSMA 228 (July 31, 1981)
88 I.D. 685

Effluent limitations are applicable under 30 CFR 715.17 to discharges of drainage from areas disturbed by surface coal mining and reclamation operations, and not only to discharges of drainage from an "active mine area," as defined in the U.S. Environmental Protection Agency's regulations for effluent limitations under the coal mining point source category, set forth at 40 CFR Part 434.

Under the provisions of 30 CFR 715.17, the effluent limitations are not applicable to any discharge or overflow caused by precipitation or snowmelt in accordance with the regulations of the U.S. Environmental Protection Agency in 40 CFR Part 434.

Entitlement to an exemption from the application of effluent limitations to discharges from a sedimentation pond resulting from a precipitation event is conditioned on a demonstration that the sedimentation pond was constructed and has been maintained to contain or treat the volume of water which would run off into the pond during a 10-year 24-hour or greater precipitation event.

The U.S. Environmental Protection Agency's provisions, at 40 CFR 122.63(g) and (h), for a credit for pollutants in discharges attributable to intake waters, if applicable under 30 CFR 715.17, require that the credit be authorized in a permit for a surface coal mining and reclamation operation on the basis of a demonstration that the intake water is drawn from the same body of water into which discharges are made.

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

HYDROLOGIC SYSTEM PROTECTION--Continued

Generally--Continued

Under 30 CFR 715.17, the effluent limitations are to be applied at the point of discharge from a sedimentation pond or the last pond in a series of sedimentation ponds, absent express prior approval to the contrary by the regulatory authority.

Inland Creek Coal Co., 3 IBSMA 383 (Dec. 23, 1981)
88 I.D. 1122

A regulatory authority can grant an exemption from the requirement in 30 CFR 715.17(a) that all surface drainage from the disturbed area must be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area only upon a showing that the disturbed drainage area within the total disturbed area is small and that sedimentation ponds are not necessary to meet the prescribed effluent limitations and to maintain water quality in downstream receiving waters.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

The requirement of 30 CFR 717.17(a)(1) that all surface drainage from the disturbed area be passed through a sedimentation pond before it leaves the permit area is a preventative measure; a showing of the occurrence of the harm it is intended to prevent is not necessary to establish a violation of the regulation.

Under 30 CFR 717.17(a) the regulatory authority may grant exemptions from the requirement that drainage from disturbed area be passed through a sedimentation pond, but only on the basis of a permittee's showings (1) that the disturbed drainage area within the total disturbed area is small and (2) that a sedimentation pond is not necessary to meet effluent limitations and to maintain water quality in downstream receiving waters.

"Disturbed area." The term "disturbed area," for the purposes of the provisions of 30 CFR 717.17(a) for hydrologic system protection, may refer to an area affected by the construction and use of a tool shed.

Avanti Mining Co., Inc., 4 IBSMA 101 (July 16, 1982)
89 I.D. 378

The general rule is that all discharges from a sedimentation pond which receives surface drainage from areas disturbed by ongoing surface coal mining and reclamation operations must meet the effluent limitations expressed in 30 CFR 715.17(a), even when part of the drainage received by a particular sedimentation pond emanates from areas not disturbed by current operations.

Jeffco Sales & Mining Co., Inc., 4 IBSMA 140 (Sept. 21, 1982)
89 I.D. 467

The sedimentation pond requirement of 30 CFR 717.17(a) is a preventive measure; thus, proof of the occurrence of the harm it is intended to prevent is not necessary to establish a violation of the requirement.

The elements of proof of a violation of the sedimentation pond requirement are: (1) the existence of surface drainage from areas disturbed in the course of

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

HYDROLOGIC SYSTEM PROTECTION--Continued

Generally--Continued

mining and reclamation operations; (2) that such drainage was not passed through a sedimentation pond; and (3) that the drainage left the permit area.

An operator of an underground coal mine must undertake practices to control and minimize water pollution which include, but are not limited to, preventing water contact with acid- or toxic-forming materials and minimizing water contact time with waste materials.

An alleged violation of the effluent limitations prescribed in 30 CFR 717.17(a) cannot be upheld where the evidence shows that the drainage identified in the notice of violation neither originated in an area disturbed by the surface coal mining and reclamation operations nor became commingled with drainage from that disturbed area.

The effluent limitations prescribed in 30 CFR 717.17(a) apply to all discharges that include drainage from areas disturbed by surface coal mining and reclamation operations.

Consolidation Coal Co., 4 IBSMA 227 (Dec. 17, 1982)
89 I.D. 632

30 CFR 715.17(f) is a preventive measure, and proof of the occurrence of the harm it is intended to prevent is not necessary to establish a violation of its requirement.

Amax Coal Co., 74 IBLA 48 (June 25, 1983)

An alleged violation of the effluent limitation for pH set forth in 30 CFR 715.17(a) is properly upheld on the basis of a Hach test showing an acidity reading of 4 or lower, in the absence of evidence that the Hach test was not properly administered.

Where there is no adverse physical impact from current mining on water quality resulting from previous mining, there is no disturbance that requires compliance with 30 CFR 715.17(a).

Dorsey Coal Co., 74 IBLA 100 (June 30, 1983)

IMPOUNDMENTS

Generally

"Appropriate contour." "Appropriate contour," as used in 30 CFR 715.14(e), is not synonomous with "approximate original contour."

Although, in general, a permanent impoundment should be contoured before it is filled with water, on the evidence available in this case, we decline to hold that the reclamation techniques used were illegal.

Wayne Harnell, 3 IBSMA 188 (July 15, 1981) 88 I.D. 652

INITIAL REGULATORY PROGRAM

Generally

The Secretary of the Interior, through the promulgation of regulations, has determined that sec. 521(a)(1) of the Act does not apply during the initial regulatory program.

OSM is required to issue a notice for violations of the initial regulatory program even if a state has

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

INITIAL REGULATORY PROGRAM--Continued

Generally--Continued

already taken enforcement action against the same violation.

Kaiser Steel Corp., 2 IBSMA 158 (July 25, 1980)
87 I.D. 324

Sec. 521(a)(1) of the Act does not have effect during the initial regulatory program.

Capitol Fuels, Inc., 2 IBSMA 261 (Sept. 24, 1980)
87 I.D. 430

Compliance with state mining permit conditions does not excuse noncompliance with the initial Federal performance requirements.

Tollage Creek Elkhorn Mining Co., 2 IBSMA 341 (Nov. 24, 1980) 87 I.D. 570

During the initial regulatory program a critical determinant of the jurisdiction of the Office of Surface Mining Reclamation and Enforcement over a surface coal mining operation conducted on lands within a state is whether the operation is subject to state regulation within the scope of any of the initial Federal performance standards.

The Office of Surface Mining Reclamation and Enforcement has jurisdiction to enforce the initial Federal performance standards against a surface disturbance in Kentucky of less than 2 acres and the Federal 2-acre exemption set forth in 30 CFR 700.11(b) is not applicable where the disturbance is physically related to a surface coal mining operation under permit from the Commonwealth of Virginia, and where the disturbance is not a discrete operation but was undertaken in furtherance of the Virginia operation.

Blackwood Fuel Co., Inc., 2 IBSMA 359 (Nov. 24, 1980)
87 I.D. 579

Because compliance with state mining permit conditions does not excuse noncompliance with the initial Federal performance requirements, a decision by a state regulatory authority not to include a haul road within the area under state permit does not preclude application of the Federal requirements to the road.

Bayle Coal Co., 3 IBSMA 111 (Apr. 27, 1981)
88 I.D. 492

During the initial regulatory program, OSM may defer to the state for an initial determination on valid existing rights, but when that determination is properly questioned, OSM has an independent responsibility to review it to ensure that it was made in compliance with the initial program regulations.

Ronald M. Johnson, 3 IBSMA 118 (Apr. 27, 1981)
88 I.D. 495

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

INITIAL REGULATORY PROGRAM--Continued

Generally--Continued

Compliance with state mining permit conditions does not excuse noncompliance with the initial Federal performance standards.

Mountain Enterprises Coal Co., 3 IBSMA 338 (Sept. 25, 1981)
88 I.D. 861

"Permittee." For purposes of the initial regulatory program, one who conducts a surface coal mining operation is a "permittee," whether or not required to hold a permit under state law, and is responsible for compliance with performance standards applicable to the operation.

Jewell Smokeless Coal Corp., 4 IBSMA 211 (Dec. 17, 1982)
89 I.D. 624

Under 30 CFR 710.11(2)(i) of the initial regulatory program, a person conducting coal mining operations must obtain a permit if a permit is required by the State in which the mining occurs.

The extraction of coal as an incidental part of privately financed construction is not an activity excluded as such from the coverage of the performance requirements of the initial regulatory program.

Gobel Partlow, 4 IBSMA 219 (Dec. 17, 1982) 89 I.D. 628

The owner of a surface coal mining operation who operates a coal refuse disposal area without a permit required by State regulation may properly be cited by OSM for violation of 30 CFR 710.11(a)(2), which requires compliance with State permit requirements.

Republic Steel Corp. & HCNB Mining Corp. v. Office of Surface Mining Reclamation & Enforcement, 79 IBLA 315 (Mar. 21, 1984)

As a general performance obligation under the initial Federal regulatory program, a person who conducts surface coal mining and reclamation operations on and after May 3, 1978, must obtain a state permit for the operations if required to do so under state law. When state law defines surface coal mining to include exploration activity, the Federal performance obligation extends to such activity.

The general performance obligation under the initial Federal regulatory program that a person who conducts surface coal mining and reclamation operations on and after May 3, 1978, must obtain a state permit for the operations if required to do so under state law is applicable to persons who allow mining operations on lands under their legal control even when the persons are not actually engaged in the mining operations.

The obligation under the Federal initial regulatory program of a person who conducts surface coal mining and reclamation operations to obtain a state permit for the operations if required to do so under state law is applicable only in the context of mining operations conducted on and after May 3, 1978; therefore, action by OSM to enforce the obligation was not properly upheld in the absence of evidence that the subject mining activity occurred after that date.

OSM satisfied the burden of persuasion in support of an alleged violation of the permit requirement in 30 CFR 710.11(a)(2) when, in an evidentiary hearing, OSM demonstrated that the subject mining activity was conducted after May 3, 1978, and that OSM had been

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

INITIAL REGULATORY PROGRAM--Continued

Generally--Continued

unable to discover evidence of a state permit covering the activity, and the person charged with the violation did not offer any documentary evidence in support of the assertion that the subject mining activity was covered by an existing state permit.

OSM lacked regulatory authority to enforce the special performance standards in 30 CFR 716.5(b) (applicable to anthracite surface coal mining and reclamation operations in the Commonwealth of Pennsylvania) with respect to surface coal mining and reclamation operations conducted only before May 3, 1978.

Where OSM demonstrated in an evidentiary hearing that particular surface coal mining and reclamation operations were not covered by a state approved mining plan at the time of OSM's inspection of the operations, OSM was precluded, as a matter of law, from establishing its allegation that the person conducting the mining operations had failed to accomplish backfilling in accordance with an approved mining plan.

Bell Coal Co. v. Office of Surface Mining Reclamation & Enforcement (On Reconsideration), 81 IBLA 385 (June 28, 1984)

INSPECTIONS

Generally

Where extraordinary circumstances exist an entry made by an inspector without prior presentation of credentials complies with the requirements of 30 CFR 721.12(a).

Consolidation Coal Co., 2 IBSMA 21 (Feb. 13, 1980)
87 I.D. 59

An inspector may document conditions or practices discovered during an inspection that are believed to violate the Act or regulations by taking photographs.

Eastover Mining Co., 2 IBSMA 70 (May 16, 1980)
87 I.D. 172

The regulation, 30 CFR 715.11(b), requiring that authorizations to operate be available for inspection at or near the minesite obligates the permittee or mine operator to maintain those authorizations where they are readily available for review by an inspector during an on-site inspection. However, if the authorizations are not immediately available and the inspector wants to review them, he or she must specifically direct that they be produced within a reasonable time.

Brashear and Baker Coal Co., Inc., 2 IBSMA 209 (Aug. 28, 1980)
87 I.D. 377

An OSM inspector who, after a reasonably diligent search, does not find a mine employee with some degree of management or supervisory authority and who is not asked for identification by other employees, may conduct an inspection without the prior presentation of credentials.

Capitol Fuels, Inc., 2 IBSMA 261 (Sept. 24, 1980)
87 I.D. 430

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

INSPECTIONS--Continued

Generally--Continued

Prior presentation of credentials by an OSM inspector is not required when no employee of the operator is present on the minesite.

Grafton Coal Co., Inc., 3 IBSMA 175 (June 26, 1981)
88 I.D. 613

OSM has a duty to investigate thoroughly a citizen's accusation that a state has failed to meet its obligations.

Wayne Yarnell, 3 IBSMA 188 (July 15, 1981) 88 I.D. 652

OSM inspectors are not required by sec. 517(b)(3) of the Act and 30 CFR 721.12(a) to present their credentials prior to inspecting an inactive minesite at which no one associated with the mining operation is present.

William M. Johnson, 3 IBSMA 377 (Dec. 18, 1981)
88 I.D. 1112

Where a State has acquired primacy over the regulation of surface mining operations within the State, OSM is required to conduct an immediate Federal inspection on the basis of a citizens' complaint under 30 CFR 842.11(b)(1) only if the person requesting the inspection provides adequate proof that an imminent danger exists and that the State regulatory authority has failed to take appropriate action.

Donald St. Clair et al., 77 IBLA 283 (Nov. 30, 1983)
90 I.D. 496

Interference

A permittee's refusal to allow OSM to take photographs is an interference with the inspection that is sanctionable under the Act.

Since no provision in the regulations makes interference with an inspection administratively sanctionable, a notice of violation is not proper.

Since the reviewing authority may use interference with an inspection against the permittee in any way deemed appropriate, a permittee who interferes with an inspection does so at the risk of severely prejudicing its own case.

Eastover Mining Co., 2 IBSMA 70 (May 16, 1980)
87 I.D. 172

NOTICES OF VIOLATION

Generally

The Office of Surface Mining Reclamation and Enforcement is authorized to issue a notice of violation for noncompliance with the initial regulatory program even if a state has already initiated enforcement action for the same violation.

Eastover Mining Co., 2 IBSMA 5 (Jan. 21, 1980)
87 I.D. 9

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

NOTICES OF VIOLATION--Continued

Generally--Continued

Since no provision in the regulations makes interference with an inspection administratively sanctionable, a notice of violation is not proper.

Eastover Mining Co., 2 IBSMA 70 (May 16, 1980)
87 I.D. 172

Where OSM fails to hold an informal assessment conference within 60 days of the request and the person assessed a civil penalty timely objects to the date of the conference but alleges no actual prejudice, no relief is appropriate.

Where OSM fails to hold an informal assessment conference within 60 days of the request and the person assessed a civil penalty timely objects to the date of the conference but then does not forward the proposed penalty with its petition for review, the petition must be dismissed.

Badger Coal Co., 2 IBSMA 147 (July 25, 1980)
87 I.D. 319

OSM is required to issue a notice for violations of the initial regulatory program even if a state has already taken enforcement action against the same violation.

Kaiser Steel Corp., 2 IBSMA 158 (July 25, 1980)
87 I.D. 324

Violations of sec. 522(e) of the Act may be the subject of notices of violation under 30 CFR 722.12.

Hardly Able Coal Co., 2 IBSMA 270 (Sept. 24, 1980)
87 I.D. 434

A modification of a notice of violation can change obligations in any way necessary to ensure compliance with the Act and regulations so long as the specificity requirements of sec. 521(a)(5) of the Act are met.

OSM does not have authority to extend the abatement period in a notice of violation beyond 90 days.

Universal Coal Co., 3 IBSMA 218 (July 28, 1981)
88 I.D. 672

Where OSM fails to serve permittee with copy of a proposed assessment and of the worksheets showing the computation within 30 days of the issuance of the notice of violation, pursuant to regulation, such failure shall not result in administrative relief since the regulation is directory rather than mandatory.

Sahara Coal Co., 3 IBSMA 371 (Nov. 30, 1981) 88 I.D. 1025

Where OSM erroneously includes a violation that has previously been vacated in assessing and pleading the amount of a civil penalty prior to the hearing in a review proceeding, but then discovers its error and substitutes a different violation in its point computation at the time of the hearing, such substitution is

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

NOTICES OF VIOLATION--Continued

Generally--Continued

proper under 43 CFR 4.1157(b)(1) unless the petitioner can demonstrate prejudice.

Sahara Coal Co., Inc., 4 IBSMA 166 (Oct. 12, 1982)
89 I.D. 505

Under 30 CFR 722.14(a), issuance of a notice of violation is complete only when the notice is either personally served by physical tender to an appropriate person or actually or constructively received by such person in the mails. The mere mailing of the notice does not constitute issuance, even if there has been oral notification to the recipient of its mailing.

Consolidation Coal Co., 5 IBSMA 6 (Feb. 2, 1983)
90 I.D. 49

Where the Office of Surface Mining Reclamation and Enforcement issued a notice of violation charging a violation of regulations in 30 CFR Part 211 (1980) at a surface coal mining operation on Indian land, the notice was properly vacated since the scope provision of those regulations, 30 CFR 211.1(a), specifically excluded from the coverage of 30 CFR Part 211 operations on Indian land.

Peabody Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 79 IBLA 14 (Feb. 3, 1984)

The owner of a surface coal mining operation who operates a coal refuse disposal area without a permit required by State regulation may properly be cited by OSM for violation of 30 CFR 710.11(a)(2), which requires compliance with State permit requirements.

Republic Steel Corp. & BCNR Mining Corp. v. Office of Surface Mining Reclamation & Enforcement, 79 IBLA 315 (Mar. 21, 1984)

Permittees

A permittee is a proper party to be issued a notice of violation under the Act and a lease agreement between a permittee and a private party cannot relieve the permittee from its responsibilities under the Act.

Wilson Farms Coal Co., 2 IBSMA 118 (June 27, 1980)
87 I.D. 245

OSM may rely on state records to determine the permittee of an area.

Competent evidence that the person listed in state records as permittee over an area had no legal right under state law to mine or reclaim that area and that the person was not conducting mining or reclamation operations there as contemplated in 30 CFR 700.5 (1978) is sufficient to rebut a prima facie showing that the person is the permittee.

Marco, Inc., 3 IBSMA 120 (Apr. 27, 1981) 88 I.D. 500

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

NOTICES OF VIOLATION--Continued

Permittees--Continued

During the initial regulatory program the person named in the state permit for a surface coal mining operation is the permittee with respect to that operation and, as such, a proper person to be issued a notice of violation concerning the operation.

Pierce Coal and Construction, Inc., 3 IBSMA 350 (Sept. 25, 1981)
88 I.D. 867

Under the initial regulatory program one who conducts a surface coal mining operation regulated by a state under state law is a permittee whether or not required to hold a permit under state law. The permittee is responsible for compliance with the performance standards applicable to the operation. If there is question as to who is responsible for compliance with those standards, it is proper for the inspector issuing the notice of violation to cite all of the parties who may be responsible. If a cited party can submit sufficient proof that it is not responsible for compliance, the violation will not be considered a violation by that party.

Under the initial regulatory program, if there is no valid permit in existence with respect to a coal mining operation and the coal is being mined pursuant to an oral lease, both the party extracting the coal and the lessor can be considered to be permittees, as both have the ability to exercise control over the operations.

S & M Coal Co. & Jewell Smokeless Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 79 IBLA 350 (Mar. 22, 1984)
91 I.D. 159

Remedial Actions

When a permittee does not have approval from the regulatory authority for an exemption from the requirements of the Act at the time of an OSM inspection, the inspector may properly require remedial action of a reclamation nature in a notice of violation.

Hardly Able Coal Co., 2 IBSMA 270 (Sept. 24, 1980)
87 I.D. 434

The remedial action required in a notice of violation may be modified in the document terminating the notice if the termination clearly shows in writing the remedial action accepted by OSM as an alternative abatement.

Drummond Coal Co., 3 IBSMA 100 (Apr. 21, 1981)
88 I.D. 474

Specificity

The failure of an OSM inspector to set forth with reasonable specificity in a notice of violation the nature of the alleged violation and the required remedial action will result in a vacation of the notice.

Old Ben Coal Co., 2 IBSMA 38 (Apr. 3, 1980) 87 I.D. 119

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

NOTICES OF VIOLATION--Continued

Specificity--Continued

A notice of violation containing an improper citation to the regulations is reasonably specific where the narrative description of the alleged violation accurately notifies the permittee of the nature of the alleged violation.

Island Creek Coal Co., 2 IBSMA 125 (July 1, 1980)
87 I.D. 304

Under the circumstances of this case, it was error for the Administrative Law Judge to vacate a notice of violation on his own motion on the groundn that it lacked reasonable specificity as required by sec. 521(a)(5) of the Act when the parties expressed no confusion about the nature of the alleged violation.

Grafton Coal Co., Inc., 2 IBSMA 316 (Nov. 4, 1980)
87 I.D. 521

When a notice of violation is issued on the basis of an alleged violation of a regulation, but the regulation was amended prior to the inspection, the notice may be sustained only if the condition cited clearly remains a violation under the amendments and is so stated that the permittee knows or should know the nature of the violation cited and the remedial action required.

Hardy Able Coal Co., 2 IBSMA 312 (Nov. 7, 1980)
87 I.D. 557

A notice of violation is reasonably specific, in accordance with 30 U.S.C. § 1271(a)(5) (Supp. II 1978), when it is sufficient to guide the review and abatement processes without actual prejudice to the recipient as the result of any ambiguity in the notice.

Konkro Construction Co., Inc., 2 IBSMA 372 (Nov. 26, 1980)
87 I.D. 584

A notice of violation is reasonably specific and satisfies the requirements of sec. 521(a)(5) of the Act where it clearly describes the practices or circumstances alleged to be in violation of the regulations, accurately identifies the particular regulations allegedly violated by these practices or circumstances, and describes the remedial action required to abate each violation. Where, after the OSM inspector explained the violations and remedial actions to the operator, the operator indicated that he understood each of the violations alleged and remedies required, an allegation on appeal that the notice of violation which met the foregoing requirements nevertheless lacked specificity will not be upheld.

Sam Blankenship, 5 IBSMA 32 (Apr. 26, 1983) 90 I.D. 174

PERMIT APPLICATION

Generally

OSM properly refused to conduct a Federal inspection or undertake enforcement action where a mine owner continued to conduct only reclamation operations under an interim permit after 8 months following approval of a State's permanent program. SMCRA and the applicable

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

PERMIT APPLICATION--Continued

Generally--Continued

regulations do not require an operator who has ceased all mining operations prior to the approval of a state's permanent program to obtain a permanent program permit.

Where, under circumstances of this case, it is determined that reclamation operations proceeding under an interim permit do not require a permanent program permit, such operations need not comply with the public participation and substantive reclamation requirements of the permanent program.

Citizens for the Preservation of Knox County, 81 IBLA 209 (June 5, 1984)

OSM properly takes enforcement action against the owner of a surface coal mining operation who fails to submit a timely and complete application for a permanent program permit and who continues to operate under an interim permit after 8 months following approval of a state's permanent program.

Virginia Citizens for Better Reclamation, Virginia D. Hall, 82 IBLA 17 (July 10, 1984)
91 I.D. 247

PREVIOUSLY MINED LANDS

Generally

All surface water drainage from the area disturbed by surface mining and reclamation operations must comply with the effluent limitations of 30 CFR 715.17(a) even if it originates as contaminated ground water from previously mined areas.

Clayvet Coal Co., Inc., 2 IBSMA 249 (Sept. 23, 1980),
87 I.D. 416

Where a surface coal mining operation affects previously mined lands, the fact that an alleged violation could have existed before the present operation does not relieve the permittee from responsibility for the violation.

Central Oil and Gas, Inc., 2 IBSMA 308 (Oct. 23, 1980)
87 I.D. 494

An alleged violation of the effluent limitation for pH set forth in 30 CFR 715.17(a) is properly upheld on the basis of a Hach test showing an acidity reading of 4 or lower, in the absence of evidence that the Hach test was not properly administered.

Where there is no adverse physical impact from current mining on water quality resulting from previous mining there is no disturbance that requires compliance with 30 CFR 715.17(a).

Forest Coal Co., 74 IBLA 100 (June 30, 1983)

PRIME FARMLANDS

Negative Determination

When a state does not issue a negative determination on the existence of prime farmlands at the time the permit is issued and OSM alleges a violation of the

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

PRIME FARMLANDS--Continued

Negative Determination--Continued

prime farmland regulations, the permittee must demonstrate that prime farmlands do not exist on the site.

A negative determination on the existence of prime farmlands issued by a state after the permittee has been cited by OSM for violating the prime farmlands regulations may be submitted as evidence of whether or not prime farmlands exist on the site, but it is not necessarily entitled to retroactive effect.

Universal Coal Co., 3 IBSMA 200 (July 16, 1981)
88 I.D. 657

PUBLIC HEALTH AND SAFETY

Imminent Danger

30 CFR 710.11(a)(2)(ii) prohibits operations that "result in" imminent danger to the public.

"Imminent danger." A condition constitutes an imminent danger to the health or safety of the public when it creates the possibility of substantial injury that a rational person, cognizant of the danger involved, would choose to avoid.

Carbon Fuel Co., 3 IBSMA 207 (July 17, 1981)
88 I.D. 660

Where a State has acquired primacy over the regulation of surface mining operations within the State, OSM is required to conduct an immediate Federal inspection on the basis of a citizens' complaint under 30 CFR 842.11(b)(1) only if the person requesting the inspection provides adequate proof that an imminent danger exists and that the State regulatory authority has failed to take appropriate action.

Donald St. Clair et al., 77 IBLA 283 (Nov. 30, 1983)
90 I.D. 496

REVEGETATION

Generally

A violation of 30 CFR 715.20(c) is proven when it is demonstrated that the temporary cover of small grains, grasses, or legumes needed by an operator is inadequate to control erosion until a permanent cover is established, and that the operator has failed to take other measures to control erosion from the disturbed area.

Hunter Construction Co., Inc., 2 IBSMA 372 (Nov. 26, 1980)
87 I.D. 584

A violation of 30 CFR 715.20(c) is proven when it is demonstrated that an operator's initial revegetation efforts did not prevent serious erosion and that the operator failed to take such additional timely measures as were necessary to control erosion.

Sahara Coal Co., Inc., 4 IBSMA 166 (Oct. 12, 1982)
89 I.D. 505

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

ROADS

Generally

The exception clause in sec. 522(e)(4) of the Act is not intended to allow mining activity near the junction of a mine access or haul road with a public road; its purpose is merely to allow access or haul roads to join public roads by excepting them from the setback requirement.

Central Oil and Gas, Inc., 2 IBSMA 308 (Oct. 23, 1980)
87 I.D. 494

In a steep slope mining operation all highwalls must be completely backfilled after mining is concluded, even where retention of an access road has been approved as part of a postmining land use.

Tollage Creek Elkhorn Mining Co., 2 IBSMA 341 (Nov. 24, 1980)
87 I.D. 570

A road used in surface coal mining and reclamation operations is subject to regulation by OSM, in accordance with the performance standards at 30 CFR 715.17(l)(2)(iv), unless it is shown to be maintained with public funds.

Fetterolf Mining Sales, Inc., 4 IBSMA 29 (Mar. 15, 1982)

The mere nominal status of a road as a public road is not enough to bring the road within the exclusionary language of 30 CFR 710.5.

The exemption from regulation provided by the exclusionary language in the definition of "roads" in 30 CFR 710.5 is for the benefit of governmental entities.

To be exempt from regulation under the Act, in accordance with the exclusionary language of the definition of "roads" in 30 CFR 710.5, a road must be shown to be maintained with public funds.

"Roads maintained with public funds." Where an access and haul road's public status is conditioned on a coal operator's agreement to be primarily responsible for maintaining the road, it is not a road "maintained with public funds" within the meaning of this phrase in the definition of "roads" in 30 CFR 710.5.

Jewell Smokeless Coal Corp., 4 IBSMA 51 (June 18, 1982)
89 I.D. 313

A road used in surface coal mining and reclamation operations is subject to regulation by OSM, unless it is shown to be maintained with public funds.

Virginia Fuels, Inc., 4 IBSMA 185 (Nov. 30, 1982)
89 I.D. 604

Virginia Fuels, Inc., 5 IBSMA 1 (Jan. 19, 1983)
90 I.D. 1

Mud Fork Coal Corp., 5 IBSMA 44 (Apr. 28, 1983)
90 I.D. 181

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

ROADS--Continued

Generally--continued

An access and/or haul road is subject to regulation as part of a surface coal mining operation in the absence of an affirmative demonstration that the road is maintained with public funds.

Jewell Smokeless Coal Corp., 4 IBSMA 211 (Dec. 17, 1982) 89 I.D. 624

Maintenance

A partially constructed access road, if used to facilitate mining operations, is a road for purposes of the initial regulatory program and therefore subject to the maintenance requirements of 30 CFR 717.17(j)(3)(i).

Garrett Coal Corp., 2 IBSMA 9 (Jan. 22, 1980) 87 I.D. 11

"Road." A "road" that leads from a coal stockpile of an underground mining operation to a state road and over which coal trucks travel in moving between the stockpile and the state road is a road within the meaning of 30 CFR 710.5 and is subject to the maintenance requirements of 30 CFR 717.17(j)(3)(i).

The road maintenance requirement of 30 CFR 717.17(j)(3)(i) is a preventive measure and proof of the existence of the harm it is intended to prevent is not necessary to establish a violation of that requirement; proof of the road's condition and maintenance practices of the road is required.

Belva Coal Co., Inc., 3 IBSMA 81 (Apr. 17, 1981) 88 I.D. 448

SIGNS AND MARKERS

Generally

The requirement of 30 CFR 715.12(b) that mine and permit identification signs be maintained until the release of all bonds is violated if such signs are not present during an inspection and the permittee has not exercised reasonable diligence to maintain them.

Coal Energy Coal Corp., 2 IBSMA 36 (Mar. 28, 1980) 87 I.D. 214

Mine identification and blasting signs must be located as required by 30 CFR 715.12(b) and (c).

Gerald Fuels, Inc., 4 IBSMA 281 (Sept. 24, 1980) 87 I.D. 430

Where a mine identification sign is located on one side of a highway and is clearly visible from the other side from which there is access to the mine's nearby processing facility, the Board is unwilling to say that that is insufficient to comply with the requirement of 30 CFR 715.12(b).

Harman Coal Co., 5 IBSMA 290 (Sept. 17, 1981) 88 I.D. 926

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

SMALL OPERATORS

Generally

A party seeking to estop the Office of Surface Mining Reclamation and Enforcement from asserting that the party did not have a small operator exemption for a particular permit must clearly demonstrate its entitlement to the estoppel.

Daniel Bros. Coal Co., 2 IBSMA 45 (Apr. 10, 1980) 87 I.D. 138

SPOIL AND MINE WASTES

Generally

"Excess." When evidence does not support a finding that material removed from an underground mine is in excess of that which will be necessary to achieve approximate original contour, a violation of 30 CFR 717.15 cannot be upheld.

Tennessee Consolidated Coal Co., Inc., 3 IBSMA 145 (Apr. 30, 1981) 88 I.D. 508

"Excess spoil." When the evidence does not support a finding that spoil is being used to achieve the approximate original contour of the mined area, temporary relief will not be granted from an alleged violation of the requirements for the handling of excess spoil set forth in 30 CFR 715.15(a).

Kaiser Coal Corp., 3 IBSMA 357 (Sept. 29, 1981) 88 I.D. 892

Downslope

"Downslope." The downslope in a multiple seam or multiple highwall mining operation is the land surface between a valley floor and the projected outcrop of the lowest coalbed being mined along each highwall, not the area between a valley floor and the projected outcrop of the lowest coalbed under permit.

Island Creek Coal Co., 2 IBSMA 125 (July 3, 1980) 87 I.D. 304

Topiary Coal Corp., 2 IBSMA 171 (July 28, 1980) 87 I.D. 331

"Downslope." The downslope in a multiple seam mining operation is the portion of the permit area below the actual and projected outcrop of the lowest seam being mined.

Topiary Coal Corp. (On Reconsideration), 3 IBSMA 40 (Mar. 16, 1981) 88 I.D. 367

STATE PROGRAM

Generally

Except for decisions on citizens' complaints, to which a different rule applies, an OSM State Director's decision is appealable to the Board under 43 CFR 4.1281 only if the decision states the right of appeal.

Where a State has acquired primacy over the regulation of surface mining operations within the State, OSM is required to conduct an immediate Federal inspection on the basis of a citizens' complaint under 30 CFR 842.11(b)(1) only if the person requesting the inspection provides adequate proof that an imminent

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

STATE PROGRAM--Continued

Generally--Continued

lanjer exists and that the State regulatory authority has failed to take appropriate action.

Donald E. Clark et al., 77 IBLA 283 (Nov. 30, 1983)
90 I.D. 496

Where a Departmental regulation governing surface mining provides that no change to state laws or regulations shall be effective for purposes of a state program until approved by the Department as an amendment, new state laws governing surface coal mining reclamation requirements may not be implemented until such approval is given.

Shearer Coal Co., Inc. v. Office of Surface Mining Reclamation & Enforcement, 81 IBLA 374 (June 28, 1984)

STATE REGULATION

Generally

Under the circumstances of this case, sufficient evidence was presented to show that unforeseen circumstances arose during regrading, that the state regulatory authority approved a change to the permit under its established procedures, and that the change was carried out in accordance with the requirements of 30 CFR 715.14(b).

Because OSM is entitled to rely on the permit package as evidence of the conditions under which mining and reclamation have been approved, the failure of a state regulatory authority to require written documentation of approved permit changes to be placed in the permit package exposes a permittee to potential liability under the Act.

Grafton Coal Co., Inc., 2 IBSMA 316 (Nov. 4, 1980)
87 I.D. 521

The requirement of sec. 505(b) of the Act, 30 U.S.C. § 1255(b) (Supp. II 1978), that the Secretary of the Interior set forth any state law or regulation which is construed to be inconsistent with the Act does not impose the obligation on the Secretary of designating every state interpretation of state law which might be inconsistent with Federal law.

Pollajo Creek Elkhorn Mining Co., 2 IBSMA 341 (Nov. 24, 1980)
87 I.D. 570

During the initial regulatory program a critical determinant of the jurisdiction of the Office of Surface Mining Reclamation and Enforcement over a surface coal mining operation conducted on lands within a state is whether the operation is subject to state regulation within the scope of any of the initial Federal performance standards.

Blackwood Fuel Co., Inc., 2 IBSMA 359 (Nov. 24, 1980)
87 I.D. 579

Because compliance with state mining permit conditions does not excuse noncompliance with the initial Federal performance requirements, a decision by a state regulatory authority not to include a haul road within

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

STATE REGULATION--Continued

Generally--Continued

the area under state permit does not preclude application of the Federal requirements to the road.

Bayle Coal Co., 3 IBSMA 111 (Apr. 27, 1981)
88 I.D. 492

During the initial regulatory program, OSM may defer to the state for an initial determination on valid existing rights, but when that determination is properly questioned, OSM has an independent responsibility to review it to ensure that it was made in compliance with the initial program regulations.

Ronald W. Johnson, 3 IBSMA 118 (Apr. 27, 1981)
88 I.D. 495

OSM has a duty to investigate thoroughly a citizen's accusation that a state has failed to meet its obligations.

Wayne Yarnell, 3 IBSMA 188 (July 15, 1981) 88 I.D. 652

Compliance with state mining permit conditions does not excuse noncompliance with the initial Federal performance standards.

Greater Pardee, Inc., 3 IBSMA 313 (Sept. 24, 1981)
88 I.D. 846

Mountain Enterprises Coal Co., 3 IBSMA 338 (Sept. 25, 1981)
88 I.D. 861

STEEP-SLOPE MINING

Generally

The special performance standards set forth in 30 CFR 716.2 do not pertain to a mining operation subject to regulation as a mountaintop removal operation in accordance with the provisions of 30 CFR 716.3.

Jewell Smokeless Coal Corp., 4 IBSMA 51 (June 16, 1982)
89 I.D. 313

SUSPENSION OR REVOCATION OF PERMITS

Generally

Where a corporation petitions to intervene in a suspension or revocation proceeding on its own behalf and not as a representative of its members, but alleges no injury to itself, it is not entitled to intervene as a matter of right under 43 CFR 4.1110(c)(2).

Where the only interest asserted by one petitioning to intervene in a suspension or revocation proceeding is in the precedential effect of the ruling to be made, and the ultimate interest of petitioner may be asserted in another, more appropriate proceeding, denial of permission to intervene under 43 CFR 4.1110(d) is not an abuse of discretion.

Rebel Coal Co., Inc., Island Creek Coal Co., 4 IBSMA 69 (June 24, 1982)
89 I.D. 331

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977 --Continued

TEMPORARY RELIEF

Generally

43 CFR 4.1260 does not authorize temporary relief from the requirement of 43 CFR 4.1152(b) that a proposed civil penalty be paid into escrow pending a final determination on the merits of the case.

Crystal Coal Co., Inc., 2 IBSMA 249 (Sept. 23, 1980), 87 I.D. 416

Where OSM provides the maximum time allowable under 30 CFR 722.12(d) for the abatement of a violation, an Administrative Law Judge may not effectively extend this time by granting temporary relief from the abatement requirement.

Old Home Badger, Inc., 3 IBSMA 241 (Aug. 13, 1981) 88 I.D. 737

Applications

Where an application for temporary relief includes none of the elements required by 43 CFR 4.1263, a motion to dismiss the application should be granted.

Hawkeberry Coal Co., 2 IBSMA 63 (May 16, 1980) 87 I.D. 176

Because temporary relief is an extraordinary remedy that may be requested in a pending case, an application for temporary relief not preceded or accompanied by an application for review of a notice, order, or civil penalty should be dismissed.

Universal Coal Co., 3 IBSMA 218 (July 28, 1981) 88 I.D. 672

Evidence

Where an applicant for temporary relief fails to provide sufficient evidence to support the showings required by sec. 525(c) of the Act, it is error to grant such relief.

Hawkeberry Coal Co., 2 IBSMA 63 (May 16, 1980) 87 I.D. 176

A party seeking temporary relief from enforcement action by the Office of Surface Mining Reclamation and Enforcement must show a substantial likelihood that the findings and decision of the Administrative Law Judge in the matter to which the application relates will be favorable to the applicant.

Shamrock Coal Co., Inc. v. Office of Surface Mining Reclamation & Enforcement, 91 IBLA 374 (June 28, 1984)

TIPPLES AND PROCESSING PLANTS

At or Near a Minesite

"Surface coal mining operations." Where a coal processing facility is functionally and economically integrated with several neighboring surface coal mines but is 9 miles distant from the closest of those mines, that facility may be "near" a minesite within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Drummond Coal Co., 2 IBSMA 96 (June 3, 1980) 87 I.D. 196

A preparation plant which is located 1 mile from a deep mine that processes its coal through the plant and which is permitted to the same person as is the mine is both at or near the mine and operated in connection with the mine.

Virginia Iron, Coal & Coke Co., 2 IBSMA 165 (July 28, 1980) 87 I.D. 327

"Surface coal mining operations." Where a coal processing facility is found to be operated in connection with a surface coal mine and is located less than 15 miles from three active surface mining pits, that facility is "near" the minesite within the meaning of "surface coal mining operations" in 30 CFR 700.5 under the circumstances of this case.

Drummond Coal Co., 2 IBSMA 189 (Aug. 6, 1980) 87 I.D. 347

"Surface coal mining operations." A coal loading facility functionally and economically integrated with a commonly controlled coal mine located 2 miles away may be "near" a minesite within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Bethlehem Mines Corp., 2 IBSMA 215 (Aug. 29, 1980) 87 I.D. 380

"Surface Coal Mining Operation." A tipple located 200-300 feet from a minesite is a "surface coal mining operation" within the meaning of 30 CFR 700.5 when the tipple processes and stores all of the coal extracted from that mine, the mine is owned by the owners of the corporation owning the tipple, and the mine was leased in order to supply coal to the tipple.

Roberts Brothers Coal Co., Inc., 2 IBSMA 284 (Sept. 26, 1980) 87 I.D. 439

"Surface coal mining operations." When a tipple is operated in connection with two surface coal mines and is located 7 and 13 miles from those mines, that tipple is held to be "near" the minesite within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Wolverine Coal Corp., 2 IBSMA 325 (Nov. 7, 1980) 87 I.D. 554

"Surface coal mining operations." Where a coal loading facility is found to be operated in connection with several neighboring coal mines but is 11.2 miles distant from the closest of those mines, the facility may be "near" a minesite within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Falcon Coal Co., Inc., 2 IBSMA 406 (Dec. 31, 1980) 87 I.D. 669

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

TIPPLES AND PROCESSING PLANTS--Continued

At or Near a Minesite--Continued

"Surface coal mining operations." Mere evidence that a coal processing facility receives some undisclosed percentage of the coal production of two mines operated in connection with the facility, and located distances of 8 and 11 miles from the facility, is not sufficient to establish that the facility is "at or near" either of the mines, within the meaning of the definition of "surface coal mining operations" at 30 CFR 700.5.

Heitz Coal Co., 3 IBSMA 260 (Aug. 20, 1981) 88 I.D. 745

"Surface coal mining operations." Under the facts of this case a processing plant located 22 miles from the minesite that supplies coal to it is not "at or near" the minesite within the meaning of the definition of "surface coal mining operations" in 30 CFR 700.5.

Rosa Tipple Co., 3 IBSMA 322 (Sept. 24, 1981)
88 I.D. 851

"Surface coal mining operations." Under the facts of this case a processing plant located 25 miles from the minesite that supplies coal to it is not "at or near" the minesite within the meaning of the definition of "surface coal mining operations" in 30 CFR 700.5.

Dingo Coal Sales, Inc., 4 IBSMA 35 (Mar. 26, 1982)
89 I.D. 113

"Surface coal mining operations." Decisions of the Interior Board of Surface Mining and Reclamation Appeals established a two-part test for determining whether an offsite facility was conducting surface coal mining operations, as defined in the Surface Mining Control and Reclamation Act of 1977 and its implementing regulations, by requiring that the facility be operated in connection with a surface coal mine and that it be located at or near the minesite. However, court decisions and revised Departmental regulations have made it clear that in order to be conducting surface coal mining operations, an offsite facility which is involved in certain listed activities need only be operated in connection with a surface coal mine, while a facility involved only in the loading of coal for interstate commerce must be operated in connection with a surface coal mine, and that facility must be located at or near the minesite.

"At or near a minesite." A coal loading facility is "at or near a minesite" within the meaning of surface coal mining operations in 30 CFR 700.5 where it operates on the same permit area as the minesite or it is physically integrated with the minesite to the extent that any potential or actual environment damage associated with the mining operation cannot be effectively addressed by OSM without regard to the loading operation.

Ann Lorentz Coal Co., Inc. v. Office of Surface Mining Reclamation & Enforcement, 79 IBLA 34 (Feb. 9, 1984)
91 I.D. 108

"Surface coal mining operations." In order to be conducting surface coal mining operations, within the meaning of the Surface Mining Control and Reclamation Act of 1977, a coal preparation and processing plant need only be operated in connection with a surface coal mine. A coal preparation and processing plant which is operated in connection with a number of surface coal mines, therefore, conducts surface coal mining operations within the meaning of the Surface Mining Control

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

TIPPLES AND PROCESSING PLANTS--Continued

At or Near a Minesite--Continued

and Reclamation Act of 1977, 30 U.S.C. § 1291(28)(A) (1982).

Heitz Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 83 IBLA 198 (Oct. 17, 1984)

In Connection With

"Surface coal mining operations." Where a coal processing facility is owned by the same company that owns all the mines that supply coal to it, that facility may conduct activities "in connection with" a surface coal mine within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Drummond Coal Co., 2 IBSMA 96 (June 3, 1980)
87 I.D. 196

A preparation plant which is located 1 mile from a deep mine that processes its coal through the plant and which is permitted to the same person as is the mine is both at or near the mine and operated in connection with the mine.

Although a contract, lease, or sell-back arrangement may be sufficient to establish a connection between a coal mine and a processing facility, the nature of that arrangement must be proved.

Virginia Iron, Coal & Coke Co., 2 IBSMA 165 (July 28, 1980)
87 I.D. 327

"Surface coal mining operations." Where a coal processing facility is owned and operated by the same company that owns and operates the mine supplying most of the coal to the facility, that facility is operated "in connection with" a surface coal mine within the meaning of "surface coal mining opertions" in 30 CFR 700.5 under the circumstances of this case.

Drummond Coal Co., 2 IBSMA 189 (Aug. 6, 1980)
87 I.D. 347

"Surface coal mining operations." A coal loading facility controlled by the same company that owns the mine supplying coal to it may conduct activities "in connection with" a surface coal mine within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Bethlehem Mines Corp., 2 IBSMA 215 (Aug. 29, 1980)
87 I.D. 380

"Surface Coal Mining Operation." A tipple located 200-300 feet from a minesite is a "surface coal mining operation" within the meaning of 30 CFR 700.5 when the tipple processes and stores all of the coal extracted from that mine, the mine is owned by the owners of the corporation owning the tipple, and the mine was leased in order to supply coal to the tipple.

Roberts Brothers Coal Co., Inc., 2 IBSMA 284 (Sept. 26, 1980)
87 I.D. 439

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

TIPPLES AND PROCESSING PLANTS--Continued

In Connection With--Continued

"Surface coal mining operations." When a tipple is owned and operated by the same company that owns and operates the two mines supplying most of the coal processed through the tipple, that tipple is operated "in connection with" a surface coal mine within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Wolverine Coal Corp., 2 IBSMA 325 (Nov. 7, 1980)
87 I.D. 554

"Surface coal mining operations." A coal loading facility operated and controlled by the same company that owns and operates the mines supplying coal to it is being conducted "in connection with" a surface coal mine within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Falcon Coal Co., Inc., 2 IBSMA 406 (Dec. 31, 1980)
87 I.D. 669

"Surface coal mining operations." Decisions of the Interior Board of Surface Mining and Reclamation Appeals established a two-part test for determining whether an offsite facility was conducting surface coal mining operations, as defined in the Surface Mining Control and Reclamation Act of 1977 and its implementing regulations, by requiring that the facility be operated in connection with a surface coal mine and that it be located at or near the minesite. However, court decisions and revised Departmental regulations have made it clear that in order to be conducting surface coal mining operations, an offsite facility which is involved in certain listed activities need only be operated in connection with a surface coal mine, while a facility involved only in the loading of coal for interstate commerce must be operated in connection with a surface coal mine, and that facility must be located at or near the minesite.

Ann Lorentz Coal Co., Inc. v. Office of Surface Mining Reclamation & Enforcement, 79 IBLA 34 (Feb. 9, 1984)
91 I.D. 108

"Surface coal mining operations." In order to be conducting surface coal mining operations, within the meaning of the Surface Mining Control and Reclamation Act of 1977, a coal preparation and processing plant need only be operated in connection with a surface coal mine. A coal preparation and processing plant which is operated in connection with a number of surface coal mines, therefore, conducts surface coal mining operations within the meaning of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1291(28)(A) (1982).

Reitz Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 83 IBLA 198 (Oct. 17, 1984)

TOPSOIL

Generally

Because neither the Act nor the regulations make only "irreplaceable" topsoil subject to 30 CFR 715.16, all topsoil is covered by that regulation.

Drummond Coal Co., 3 IBSMA 100 (Apr. 21, 1981)
88 I.D. 474

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

TOPSOIL--Continued

Generally--Continued

"Contaminant." Where OSM shows that spoil materials have been mixed with topsoil it has made a prima facie case of a violation of 30 CFR 715.16 for failure to protect the topsoil from contaminants.

Diamond Coal Co., 3 IBSMA 292 (Sept. 17, 1981)
88 I.D. 826

Alternative Materials

A state regulatory authority may rely on data published by the Department of Agriculture Soil Conservation Service on established soil series in comparing native topsoil to proposed alternative materials under 30 CFR 715.16.

Alabama By-Products Corp., 2 IBSMA 298 (Sept. 30, 1980)
87 I.D. 446

Redistribution

"Topsoil." For purposes of the redistribution requirements of 30 CFR 715.16(b), topsoil means at least the same material as was required under 30 CFR 715.16(a) to be removed from areas to be disturbed by surface coal mining operations.

There is a violation of 30 CFR 715.16(b) when topsoil is redistributed in a way that does not protect it from erosion and no other protective measures are taken.

Drummond Coal Co., 3 IBSMA 100 (Apr. 21, 1981)
88 I.D. 474

UNDERGROUND OPERATIONS

Generally

"Underground operations." Because of the definition of "underground operations" in 30 CFR 717.11(a)(1), the ground water monitoring requirements of sec. 717.17(h)(1) and (h)(2) of 30 CFR do not apply to an inactive mine where the only underground activity is the mechanical removal of accumulated water.

Consolidation Coal Co., 3 IBSMA 228 (July 31, 1981)
88 I.D. 685

VARIANCES AND EXEMPTIONS

Generally

Evidence concerning an alternative method of silt control does not show compliance with the sedimentation pond requirement of 30 CFR 715.17(a); such evidence may be presented to the regulatory authority which may grant exemptions to that requirement.

Black Fox Mining & Development Corp., 2 IBSMA 110 (June 6, 1980)
87 I.D. 207

The regulatory authority must specifically authorize the disturbing of an area by surface coal mining operations within 100 feet of an intermittent or perennial stream, and that requirement necessitates a variance

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

VARIANCES AND EXEMPTIONS--Continued

Generally--Continued

procedure involving specific review and evaluation of proposals.

G. B. Wright, Inc., 2 IBSMA 180 (July 29, 1980)
87 I.D. 333

When a permittee does not have approval from the regulatory authority for an exemption from the requirements of the Act at the time of an OSM inspection, the inspector may properly require remedial action of a reclamation nature in a notice of violation.

Hardy Able Coal Co., 2 IBSMA 270 (Sept. 24, 1980)
87 I.D. 434

When a permittee alleges that a violation of the effluent limitations of 30 CFR 715.17(a) occurred because of unusual precipitation conditions, under 30 CFR 715.17(a)(1) it bears the burden of demonstrating entitlement to an exemption from those limitations.

Hardy Able Coal Co., 2 IBSMA 332 (Nov. 7, 1980)
87 I.D. 557

Under the provisions of 30 CFR 715.17, the effluent limitations are not applicable to any discharge or overflow caused by precipitation or snowmelt in accordance with the regulations of the U.S. Environmental Protection Agency in 40 CFR Part 434.

Entitlement to an exemption from the application of effluent limitations to discharges from a sedimentation pond resulting from a precipitation event is conditioned on a demonstration that the sedimentation pond was constructed and has been maintained to contain or treat the volume of water which would run off into the pond during a 10-year 24-hour or greater precipitation event.

The U.S. Environmental Protection Agency's provisions, at 40 CFR 122.63(g) and (h), for a credit for pollutants in discharges attributable to intake waters, if applicable under 30 CFR 715.17, require that the credit be authorized in a permit for a surface coal mining and reclamation operation on the basis of a demonstration that the intake water is drawn from the same body of water into which discharges are made.

Island Creek Coal Co., 3 IBSMA 383 (Dec. 23, 1981)
88 I.D. 1122

A regulatory authority can grant an exemption from the requirement in 30 CFR 715.17(a) that all surface drainage from the disturbed area must be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area only upon a showing that the disturbed drainage area within the total disturbed area is small and that sedimentation ponds are not necessary to meet the prescribed effluent limitations and to maintain water quality in downstream receiving waters.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

VARIANCES AND EXEMPTIONS--Continued

Generally--Continued

Entitlement to an exemption from regulation must be asserted and proven by the one claiming the exemption.

Jewell Smokeless Coal Corp., 4 IBSMA 51 (June 18, 1982)
89 I.D. 313

The burden of proving facts and circumstances to support an exemption from regulation by OSM rests with the party claiming the exemption.

Avanti Mining Co., Inc., 4 IBSMA 101 (July 16, 1982)
89 I.D. 378

An applicant for review claiming that the effluent limitations set forth in 30 CFR 715.17(a) are not applicable to discharges from its sedimentation pond bears the burden of proving the facts upon which the claim of inapplicability is based.

Jeffco Sales & Mining Co., Inc., 4 IBSMA 140 (Sept. 21, 1982)
89 I.D. 467

One claiming an exemption from regulation under the Act bears the burden of affirmatively demonstrating entitlement to the exemption.

Jewell Smokeless Coal Corp., 4 IBSMA 211 (Dec. 17, 1982)
89 I.D. 624

In an application for review proceeding a person contesting the jurisdiction of the Office of Surface Mining must plead and prove the basis for its claim as an affirmative defense.

Harry Smith Construction Co. v. Office of Surface Mining Reclamation & Enforcement, 78 IBLA 27 (Dec. 13, 1983)

2-Acre

The area of an access and haul road used by more than one coal mine operator is properly attributed, at least in part, to each operator in calculating the extent of the surface area affected by that operator for the purpose of determining whether the operator qualifies for the 2-acre exemption of sec. 528(2) of the Act and 30 CFR 700.11(b).

Rhonda Coal Co., Inc., 4 IBSMA 124 (Sept. 21, 1982)
89 I.D. 460

Virginia Fuels, Inc., 4 IBSMA 185 (Nov. 30, 1982)
89 I.D. 604

A coal mine operator cannot avoid coverage under the Act by simply contracting to mine two less-than 2-acre sites for different owners, where the sites are adjacent, the operator treats them as related, and where, taken together, they encompass more than 2 acres.

The purpose of the 2-acre exemption was to avoid the heavy burden on both the miner and the regulatory authority that would result from regulating small operations that cause very little environmental damage. The

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

VARIANCES AND EXEMPTIONS--Continued

2-Acre--Continued

burden of proving entitlement to such an exemption is upon the person claiming it.

Mullins and Bolling Contractors, 4 IBSMA 156 (Sept. 21, 1982) 89 I.D. 475

The area of an access and haul road used by a coal mine operator is properly included, at least in part, in the surface area affected by the operation for the purpose of determining whether the operation qualifies for the 2-acre exemption of sec. 528(2) of the Act and 30 CFR 700.11(b).

Gobul Bartley, 4 IBSMA 219 (Dec. 17, 1982) 89 I.D. 628

The area of an access and haul road used by more than one coal mine operator is properly attributed, at least in part, to each operator in calculating the extent of the surface area affected by each operator for the purpose of determining whether the operator qualifies for the 2-acre exemption of sec. 528(2) of the Surface Mining Control and Reclamation Act of 1977 and 30 CFR 700.11(b). Where only one operator is using the haul road at the time a notice of violation is issued, the entire road may be properly attributed to that operator.

Virginia Fuels, Inc., 5 IBSMA 1 (Jan. 19, 1983) 90 I.D. 1

The 2-acre exemption applies to "operations," not to "operators"; thus, where a coal mining and reclamation operation affects more than 2 acres, an operator who contracts with the permittee is properly charged with violations on the portion of the operation affected by his activities, even if his activities affect less than 2 acres.

Sam Blankenship, 5 IBSMA 32 (Apr. 26, 1983) 90 I.D. 174

The area of an access and haul road used for more than one coal mine is properly attributed, at least in part, to each mine in calculating the extent of the surface area affected by each mine for the purpose of determining whether it qualifies for the 2-acre exemption of sec. 528(2) of the Act and 30 CFR 700.11(b). Where only one operator is using the haul road at the time a notice of violation is issued, the entire length of the road that is used for access and hauling may be properly attributed to that operator's mining activities.

Mud Fork Coal Corp., 5 IBSMA 44 (Apr. 28, 1983) 90 I.D. 181

The area of an access and haul road used for more than one coal mine is properly attributed to each mine in calculating the extent of the surface area affected by each mine for the purpose of determining whether the mine qualifies for the 2-acre exemption of sec. 528(2) of the Act and 30 CFR 700.11(b).

Kimberly Sue Coal Co., Inc., 74 IBLA 170 (July 13, 1983)

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

VARIANCES AND EXEMPTIONS--Continued

2-Acre--Continued

One claiming an exemption from regulation under the Act bears the burden of affirmatively demonstrating entitlement to that exemption.

Titan Coal Corp. v. Office of Surface Mining Reclamation and Enforcement, 78 IBLA 205 (Jan. 5, 1984)

One claiming an exemption from regulation under the Surface Mining Control and Reclamation Act of 1977 bears the burden of affirmatively demonstrating entitlement to the exemption.

A coal mine which disturbs less than 2 acres of surface land is exempt from the application of the Surface Mining Control and Reclamation Act of 1977. However, an operation which is less then 2 acres in size can be under the purview of the Act if it is one of a number of operations which are collectively disturbing in excess of 2 acres and which can logically be considered to be one mine. The party claiming that an operation is, in fact, one of a number of sites which make up a single mine disturbing in excess of 2 acres carries the burden of establishing that fact.

S & M Coal Co. & Jewell Smokeless Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 79 IBLA 350 (Mar. 22, 1984) 91 I.D. 159

WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS

Generally

When a permittee alleges that a violation of the effluent limitations of 30 CFR 715.17(a) occurred because of unusual precipitation conditions, under 30 CFR 715.17(a)(1) it bears the burden of demonstrating entitlement to an exemption from those limitations.

Hardly Able Coal Co., 2 IBSMA 332 (Nov. 7, 1980) 87 I.D. 557

Under the provisions of 30 CFR 715.17, the effluent limitations are not applicable to any discharge or overflow caused by precipitation or snowmelt in accordance with the regulations of the U.S. Environmental Protection Agency in 40 CFR Part 434.

Entitlement to an exemption from the application of effluent limitations to discharges from a sedimentation pond resulting from a precipitation event is conditioned on a demonstration that the sedimentation pond was constructed and has been maintained to contain or treat the volume of water which would run off into the pond during a 10-year 24-hour or greater precipitation event.

The U.S. Environmental Protection Agency's provisions, at 40 CFR 122.63(g) and (h), for a credit for pollutants in discharges attributable to intake waters, if applicable under 30 CFR 715.17, require that the credit be authorized in a permit for a surface coal mining and reclamation operation on the basis of a demonstration that the intake water is drawn from the same body of water into which discharges are made.

Under 30 CFR 715.17, the effluent limitations are to be applied at the point of discharge from a sedimentation pond or the last pond in a series of sedimentation ponds, absent express prior approval to the contrary by the regulatory authority.

Island Creek Coal Co., 3 IBSMA 383 (Dec. 23, 1981) 88 I.D. 1122

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS--Continue

Generally--Continued

An alleged violation of the effluent limitation for iron set forth in 30 CFR 715.17(a) is properly upheld on the basis of a Hach test showing total iron in discharges from a sedimentation pond to be in excess of 10 milligrams per liter, in the absence of evidence that the Hach test was not properly administered.

D & D Mining Co., 4 IBSMA 113 (Aug. 24, 1982)
89 I.D. 409

In a proceeding to review an alleged violation of the effluent limitations for iron and pH expressed in 30 CFR 715.17(a), OSM met its burden of establishing a prima facie case by its evidence that tests of water samples taken at the point of discharge of drainage from the sedimentation pond which received surface drainage from the areas disturbed by the surface coal mining and reclamation operations showed iron and pH levels outside the applicable limits.

Jeffco Sales & Mining Co., Inc., 4 IBSMA 140 (Sept. 21, 1982)
89 I.D. 467

Acid and Toxic Materials

An operator of an underground coal mine must undertake practices to control and minimize water pollution which include, but are not limited to, preventing water contact with acid- or toxic-forming materials and minimizing water contact time with waste materials.

Consolidation Coal Co., 4 IBSMA 227 (Dec. 17, 1982)
89 I.D. 632

Discharges from Disturbed Areas

All surface water drainage from the area disturbed by surface mining and reclamation operations must comply with the effluent limitations of 30 CFR 715.17(a) even if it originates as contaminated ground water from previously mined areas.

Cravat Coal Co., Inc., 2 IBSMA 249 (Sept. 23, 1980),
87 I.D. 416

A violation of 30 CFR 715.17(a) for failure to pass surface drainage through a sedimentation pond may be established for a surface coal mining operation that is not required by a state to have a permit by showing that there is surface drainage, that it does not pass through a sedimentation pond, and that it leaves the disturbed area.

Black Fox Mining & Development Corp., 2 IBSMA 277 (Sept. 24, 1980)
87 I.D. 437

Effluent limitations are applicable under 30 CFR 715.17 to discharges of drainage from areas disturbed by surface coal mining and reclamation operations, and not only to discharges of drainage from an "active mine area," as defined in the U.S. Environmental Protection Agency's regulations for effluent limitations under the coal mining point source category, set forth at 40 CFR Part 434.

Island Creek Coal Co., 3 IBSMA 383 (Dec. 23, 1981)
88 I.D. 1122

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS--Continue

Discharges from Disturbed Areas--Continued

The general rule is that all discharges from a sedimentation pond which receives surface drainage from areas disturbed by ongoing surface coal mining and reclamation operations must meet the effluent limitations expressed in 30 CFR 715.17(a), even when part of the drainage received by a particular sedimentation pond emanates from areas not disturbed by current operations.

An applicant for review claiming that the effluent limitations set forth in 30 CFR 715.17(a) are not applicable to discharges from its sedimentation pond bears the burden of proving the facts upon which the claim of inapplicability is based.

Jeffco Sales & Mining Co., Inc., 4 IBSMA 140 (Sept. 21, 1982)
89 I.D. 467

An alleged violation of the effluent limitations prescribed in 30 CFR 717.17(a) cannot be upheld where the evidence shows that the drainage identified in the notice of violation neither originated in an area disturbed by the surface coal mining and reclamation operations nor became commingled with drainage from that disturbed area.

The effluent limitations prescribed in 30 CFR 717.17(a) apply to all discharges that include drainage from areas disturbed by surface coal mining and reclamation operations.

Consolidation Coal Co., 4 IBSMA 227 (Dec. 17, 1982)
89 I.D. 632

An alleged violation of the effluent limitation for pH set forth in 30 CFR 715.17(a) is properly upheld on the basis of a Hach test showing an acidity reading of 4 or lower, in the absence of evidence that the Hach test was not properly administered.

Where there is no adverse physical impact from current mining on water quality resulting from previous mining there is no disturbance that requires compliance with 30 CFR 715.17(a).

Dorsey Coal Co., 74 IBLA 100 (June 30, 1983)

Disturbed Areas

"Disturbed area." The term "disturbed area," for the purposes of the provisions of 30 CFR 717.17(a) for hydrologic system protection, may refer to an area affected by the construction and use of a tool shed.

Avanti Mining Co., Inc., 4 IBSMA 101 (July 16, 1982)
89 I.D. 378

Sedimentation Ponds

The sedimentation pond requirement of 30 CFR 715.17(a) is a preventive measure and proof of the occurrence of the harm it is intended to prevent is not necessary to establish a violation of that requirement.

Black Fox Mining & Development Corp., 2 IBSMA 110 (June 6, 1980)
87 I.D. 207

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS--Continue

Sedimentation Ponds--Continued

The sedimentation pond requirement of 30 CFR 715.17(a) and 717.17(a) is a preventive measure and proof of the harm it is intended to prevent is not necessary to establish a violation of that requirement.

Kaiser Steel Corp., 2 IBSMA 158 (July 25, 1980) 87 I.D. 324

A violation of 30 CFR 715.17(a) for failure to pass surface drainage through a sedimentation pond may be established for a surface coal mining operation that is not required by a state to have a permit by showing that there is surface drainage, that it does not pass through a sedimentation pond, and that it leaves the disturbed area.

Black Fox Mining & Development Corp., 2 IBSMA 277 (Sept. 24, 1980) 87 I.D. 437

A regulatory authority can grant an exception from the requirement in 30 CFR 715.17(a) that all surface drainage from the disturbed area must be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area only upon a showing that the disturbed drainage area within the total disturbed area is small and that sedimentation ponds are not necessary to meet the prescribed effluent limitations and to maintain water quality in downstream receiving waters.

Apex Co., Inc., 4 IBSMA 19 (Mar. 2, 1982) 89 I.D. 87

The requirement of 30 CFR 717.17(a)(1) that all surface drainage from the disturbed area be passed through a sedimentation pond before it leaves the permit area is a preventative measure; a showing of the occurrence of the harm it is intended to prevent is not necessary to establish a violation of the regulation.

In a civil penalty proceeding to review an alleged violation of the requirement of 30 CFR 717.17(a)(1) that drainage be passed through a sedimentation pond, OSM bears the ultimate burden of persuasion as to three basic elements of proof: (1) The existence of surface drainage which came into contact with disturbed area; (2) that this drainage did not pass through a sedimentation pond; and (3) that this drainage flowed off the permit area.

Under 30 CFR 717.17(a) the regulatory authority may grant exemptions from the requirement that drainage from disturbed area be passed through a sedimentation pond, but only on the basis of a permittee's showings (1) that the disturbed drainage area within the total disturbed area is small and (2) that a sedimentation pond is not necessary to meet effluent limitations and to maintain water quality in downstream receiving waters.

Avanti Mining Co., Inc., 4 IBSMA 101 (July 16, 1982) 89 I.D. 378

The sedimentation pond requirement of 30 CFR 717.17(a) is a preventive measure; thus, proof of the occurrence of the harm it is intended to prevent is not necessary to establish a violation of the requirement.

The elements of proof of a violation of the sedimentation pond requirement are: (1) the existence of surface drainage from areas disturbed in the course of

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS--Continue

Sedimentation Ponds--Continued

mining and reclamation operations; (2) that such drainage was not passed through a sedimentation pond; and (3) that the drainage left the permit area.

Consolidation Coal Co., 4 IBSMA 227 (Dec. 17, 1982) 89 I.D. 632

WORDS AND PHRASES

"Appropriate contour." "Appropriate contour," as used in 30 CFR 715.14(e), is not synonomous with "approximate original contour."

Wayne Harrell, 3 IBSMA 180 (July 15, 1981) 88 I.D. 652

"At or near a minesite." A coal loading facility is "at or near a minesite" within the meaning of surface coal mining operations in 30 CFR 700.5 where it operates on the same permit area as the minesite or it is physically integrated with the minesite to the extent that any potential or actual environment damage associated with the mining operation cannot be effectively addressed by OSM without regard to the loading operation.

Ann Lorentz Coal Co., Inc. v. Office of Surface Mining Reclamation & Enforcement, 79 IBLA 34 (Feb. 9, 1984) 91 I.D. 108

"Cemetery." The term cemetery as it is used in sec. 522(e)(5) of the Act, 30 U.S.C. § 1272(e)(5) (Supp. II 1978), may include a private burial ground.

Marietta Coal Co., 2 IBSMA 382 (Nov. 26, 1980) 87 I.D. 589

"Contaminant." Where OSM shows that spoil materials have been mixed with topsoil it has made a prima facie case of a violation of 30 CFR 715.16 for failure to protect the topsoil from contaminants.

Diamond Coal Co., 3 IBSMA 292 (Sept. 17, 1981) 88 I.D. 826

"Disturbed area." The term "disturbed area," for the purposes of the provisions of 30 CFR 717.17(a) for hydrologic system protection, may refer to an area affected by the construction and use of a tool shed.

Avanti Mining Co., Inc., 4 IBSMA 101 (July 16, 1982) 89 I.D. 378

"Downslope." The downslope in a multiple seam or multiple highwall mining operation is the land surface between a valley floor and the projected outcrop of the lowest coalbed being mined along each highwall, not the area between a valley floor and the projected outcrop of the lowest coalbed under permit.

Island Creek Coal Co., 2 IBSMA 125 (July 3, 1980) 87 I.D. 304

Toptiki Coal Corp., 2 IBSMA 173 (July 28, 1980) 87 I.D. 331

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

WORDS AND PHRASES--Continued

"Downslope." The downslope in a multiple seam mining operation is the portion of the permit area below the actual and projected outcrop of the lowest seam being mined.

Tonkiki Coal Corp. (On Reconsideration), 3 IBSMA 40 (Mar. 16, 1981)
88 I.D. 367

"Dredging." Dredging to recover coal from a lake or river is a surface coal mining operation as defined in the Surface Mining Control and Reclamation Act of 1977. A coal lease application to dredge a river and lake in a national forest is properly rejected where it does not meet the criteria set out in sec. 522(e) of that Act and 43 CFR 3461.1(a)(2)(i).

Bruptwood, Inc., 76 IBLA 73 (Sept. 21, 1983)
90 I.D. 421

"Excess." When evidence does not support a finding that material removed from an underground mine is in excess of that which will be necessary to achieve approximate original contour, a violation of 30 CFR 717.15 cannot be upheld.

Tennessee Consolidated Coal Co., Inc., 3 IBSMA 145 (Apr. 30, 1981)
88 I.D. 508

"Excess spoil." When the evidence does not support a finding that spoil is being used to achieve the approximate original contour of the mined area, temporary relief will not be granted from an alleged violation of the requirements for the handling of excess spoil set forth in 30 CFR 715.15(a).

King Quarries, Inc., 3 IBSMA 357 (Sept. 29, 1981)
88 I.D. 892

"Extraction of coal as an incidental part." For the purposes of 30 U.S.C. § 1278(3) (Supp. II 1978) and 30 CFR 700.11(d), which exclude the "extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction" from the coverage of Federal performance standards otherwise applicable to surface coal mining operations, the phrase "extraction of coal as an incidental part" means, in accordance with 30 CFR 707.5, the extraction of coal which is necessary, from an engineering standpoint, to enable the construction to be accomplished and does not mean the extraction of coal for the purpose of financing the construction.

Concord Coal Corp., 3 IBSMA 92 (Apr. 17, 1981)
88 I.D. 456

"Highwall." Where a rock face is shown to be the result of a slope failure and is not an open cut through overburden made to expose coal in a mining operation, the face is not properly considered as "highwall," as this term is defined in 30 CFR 710.5, for the purposes of the requirement in 30 CFR 715.14 that all highwalls created in the course of a mining operation must be completely eliminated during reclamation of the minesite.

River Processing, Inc. v. Office of Surface Mining Reclamation & Enforcement, 76 IBLA 129 (Sept. 26, 1983)
90 I.D. 425

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

WORDS AND PHRASES--Continued

"Imminent danger." A condition constitutes an imminent danger to the health or safety of the public when it creates the possibility of substantial injury that a rational person, cognizant of the danger involved, would choose to avoid.

Carbon Fuel Co., 3 IBSMA 207 (July 17, 1981)
88 I.D. 660

"Permit area." During the initial regulatory program, when a facility otherwise included within the meaning of "surface coal mining operations" is not specifically covered by a permit, the "permit area" is at least coextensive with the disturbed area.

Bethlehem Mines Corp., 2 IBSMA 215 (Aug. 29, 1980)
87 I.D. 380

Black Fox Mining & Development Corp., 2 IBSMA 277 (Sept. 24, 1980)
87 I.D. 437

"Permittee." For purposes of the initial regulatory program, one who conducts a surface coal mining operation is a "permittee," whether or not required to hold a permit under state law, and is responsible for compliance with performance standards applicable to the operation.

Jewell Smokeless Coal Corp., 4 IBSMA 211 (Dec. 17, 1982)
89 I.D. 624

"Road." A "road" that leads from a coal stockpile of an underground mining operation to a state road and over which coal trucks travel in moving between the stockpile and the state road is a road within the meaning of 30 CFR 710.5 and is subject to the maintenance requirements of 30 CFR 717.17(j)(3)(i).

Belva Coal Co., Inc., 3 IBSMA 83 (Apr. 17, 1981)
88 I.D. 448

"Roads maintained with public funds." Under an agreement with the West Virginia Department of Highways whereby the right-of-way for a secondary road has been reopened and maintained by a coal company for its use and that of the general public, the resulting road is not one "maintained with public funds" that is excluded from the definition of "roads" in 30 CFR 710.5 and, thus, the road is subject to the construction standards in 30 CFR 715.17(1)(2).

Bayle Coal Co., 3 IBSMA 111 (Apr. 27, 1981)
88 I.D. 492

"Roads maintained with public funds." Where an access and haul road's public status is conditioned on a coal operator's agreement to be primarily responsible for maintaining the road, it is not a road "maintained with public funds" within the meaning of this phrase in the definition of "roads" in 30 CFR 710.5.

Jewell Smokeless Coal Corp., 4 IBSMA 51 (June 18, 1982)
89 I.D. 313

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

WORDS AND PHRASES--Continued

"Surface coal mining operations." Where a coal processing facility is owned by the same company that owns all the mines that supply coal to it, that facility may conduct activities "in connection with" a surface coal mine within the meaning of "surface coal mining operations" in 30 CFR 700.5.

"Surface coal mining operations." Where a coal processing facility is functionally and economically integrated with several neighboring surface coal mines but is 9 miles distant from the closest of those mines, that facility may be "near" a minesite within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Drummond Coal Co., 2 IBSMA 96 (June 3, 1980)
87 I.D. 196

"Surface coal mining operations." Where a coal processing facility is owned and operated by the same company that owns and operates the mine supplying most of the coal to the facility, that facility is operated "in connection with" a surface coal mine within the meaning of "surface coal mining opertions" in 30 CFR 700.5 under the circumstances of this case.

"Surface coal mining operations." Where a coal processing facility is found to be operated in connection with a surface coal mine and is located less than 15 miles from three active surface mining pits, that facility is "near" the minesite within the meaning of "surface coal mining operations" in 30 CFR 700.5 under the circumstances of this case.

Drummond Coal Co., 2 IBSMA 189 (Aug. 6, 1980)
87 I.D. 347

"Surface coal mining operations." A coal loading facility controlled by the same company that owns the mine supplying coal to it may conduct activities "in connection with" a surface coal mine within the meaning of "surface coal mining operations" in 30 CFR 700.5.

"Surface coal mining operations." A coal loading facility functionally and economically integrated with a commonly controlled coal mine located 2 miles away may be "near" a minesite within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Bethlehem Mines Corp., 2 IBSMA 215 (Aug. 29, 1980)
87 I.D. 380

"Surface coal mining operation." A tipple located 200-300 feet from a minesite is a "surface coal mining operation" within the meaning of 30 CFR 700.5 when the tipple processes and stores all of the coal extracted from that mine, the mine is owned by the owners of the corporation owning the tipple, and the mine was leased in order to supply coal to the tipple.

Roberts Brothers Coal Co., Inc., 2 IBSMA 284 (Sept. 26, 1980)
87 I.D. 439

"Surface coal mining operations." When a tipple is owned and operated by the same company that owns and operates the two mines supplying most of the coal processed through the tipple, that tipple is operated "in connection with" a surface coal mine within the meaning of "surface coal mining operations" in 30 CFR 700.5.

"Surface coal mining operations." When a tipple is operated in connection with two surface coal mines and is located 7 and 13 miles from those mines, that tipple is held to be "near" the minesite within the

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

WORDS AND PHRASES--Continued

meaning of "surface coal mining operations" in 30 CFR 700.5.

Wolverine Coal Corp., 2 IBSMA 325 (Nov. 7, 1980)
87 I.D. 554

"Surface coal mining operations." A coal loading facility operated and controlled by the same company that owns and operates the mines supplying coal to it is being conducted "in connection with" a surface coal mine within the meaning of "surface coal mining operations" in 30 CFR 700.5.

"Surface coal mining operations." Where a coal loading facility is found to be operated in connection with several neighboring coal mines but is 11.2 miles distant from the closest of those mines, the facility may be "near" a minesite within the meaning of "surface coal mining operations" in 30 CFR 700.5.

Falcon Coal Co., Inc., 2 IBSMA 406 (Dec. 31, 1980)
87 I.D. 669

"Surface coal mining operations." Extraction of coal from a coal refuse pile is an activity which falls within the definition of "surface coal mining operations," as contained in revised Part 700, and OSM has authority to regulate such an operation during the initial regulatory program.

Farmington Coal Co., 3 IBSMA 182 (June 29, 1981)
88 I.D. 616

"Surface coal mining operations." Mere evidence that a coal processing facility receives some undisclosed percentage of the coal production of two mines operated in connection with the facility, and located distances of 8 and 11 miles from the facility, is not sufficient to establish that the facility is "at or near" either of the mines, within the meaning of the definition of "surface coal mining operations" at 30 CFR 700.5.

Reitz Coal Co., 3 IBSMA 260 (Aug. 20, 1981) 88 I.D. 745

"Surface coal mining operations." Under the facts of this case a processing plant located 22 miles from the minesite that supplies coal to it is not "at or near" the minesite within the meaning of the definition of "surface coal mining operations" in 30 CFR 700.5.

Ross Tipple Co., 3 IBSMA 322 (Sept. 24, 1981)
88 I.D. 851

"Surface coal mining operations." Under the facts of this case a processing plant located 25 miles from the minesite that supplies coal to it is not "at or near" the minesite within the meaning of the definition of "surface coal mining operations" in 30 CFR 700.5.

Pinco Coal Sales, Inc., 4 IBSMA 35 (Mar. 26, 1982)
89 I.D. 113

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

WORDS AND PHRASES--Continued

"Surface coal mining operations." Decisions of the Interior Board of Surface Mining and Reclamation Appeals established a two-part test for determining whether an offsite facility was conducting surface coal mining operations, as defined in the Surface Mining Control and Reclamation Act of 1977 and its implementing regulations, by requiring that the facility be operated in connection with a surface coal mine and that it be located at or near the minesite. However, court decisions and revised Departmental regulations have made it clear that in order to be conducting surface coal mining operations, an offsite facility which is involved in certain listed activities need only be operated in connection with a surface coal mine, while a facility involved only in the loading of coal for interstate commerce must be operated in connection with a surface coal mine, and that facility must be located at or near the minesite.

Ann Lorentz Coal Co., Inc. v. Office of Surface Mining Reclamation & Enforcement, 79 IBLA 30 (Feb. 9, 1984)
91 I.D. 108

"Surface coal mining operations." In order to be conducting surface coal mining operations, within the meaning of the Surface Mining Control and Reclamation Act of 1977, a coal preparation and processing plant need only be operated in connection with a surface coal mine. A coal preparation and processing plant which is operated in connection with a number of surface coal mines, therefore, conducts surface coal mining operations within the meaning of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1291(28)(A) (1982).

Reitz Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 83 IBLA 198 (Oct. 17, 1984)

"Topsoil." For purposes of the redistribution requirements of 30 CFR 715.16(b), topsoil means at least the same material as was required under 30 CFR 715.16(a) to be removed from areas to be disturbed by surface coal mining operations.

Drummond Coal Co., 3 IBSMA 100 (Apr. 21, 1981)
88 I.D. 474

"Underground operations." Because of the definition of "underground operations" in 30 CFR 717.11(a)(1), the ground water monitoring requirements of sec. 717.17(h)(1) and (h)(2) of 30 CFR do not apply to an inactive mine where the only underground activity is the mechanical removal of accumulated water.

Consolidation Coal Co., 3 IBSMA 228 (July 31, 1981)
88 I.D. 685

"Valid existing rights." To demonstrate "valid existing rights," and thereby avoid a restriction on surface coal mining under sec. 522(e) of the Act and 30 CFR Part 761, the claimant must show that it held property rights on Aug. 3, 1977, that were created by a legally binding conveyance, lease, deed, contract or other document which authorizes the claimant to produce coal by a surface coal mining operation.

"Valid existing rights." Relevant state law is a proper aid in the interpretation of the terms of the document relied upon to establish "valid existing rights" under sec. 522(e) of the Act and 30 CFR Part 761.

"Valid existing rights." When the document relied upon to establish "valid existing rights" to surface

SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977
--Continued

WORDS AND PHRASES--Continued

mine coal is a deed which conveys both the mineral and overlying surface estates, authorization to surface mine will be presumed, for the purposes of sec. 522(e) of the Act and 30 CFR 761.5, in the absence of language to the contrary in the conveyance.

"Valid existing rights." A local government's zoning ordinance which contains restrictions on surface coal mining will not be considered to preclude "valid existing rights," under sec. 522(e) of the Act and 30 CFR 761.5, where it is shown that the restrictions of the local ordinance have been preempted by state law.

Ronald W. Johnson, 5 IBSMA 19 (Feb. 4, 1983)
90 I.D. 54

SURFACE RESOURCES ACT
(See also Hearings, Mining Claims--if included in this Index.)

GENERALLY

Sec. 3 of the Surface Resources Act of July 23, 1955, 69 Stat. 367, 368, 30 U.S.C. § 611 (1976), declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a claim for such material to be sustained as validated by a discovery, the prudent man-marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and reasonably continuously thereafter.

United States v. Albert Martinez et al., 49 IBLA 360 (Aug. 29, 1980)
87 I.D. 386

The Surface Resources Act of July 23, 1955, declared that common varieties of sand and gravel are not valuable mineral deposits under the mining laws. In order for a mining claim for such material located prior to the date of the Act to be sustained, the prudent man-marketability test of discovery of a valuable mineral deposit must have been met at the date of the Act, and maintained reasonably continuously thereafter.

United States v. Estella M. Kincanon et al., 54 IBLA 95 (Apr. 15, 1981)

APPLICABILITY

"Public lands." Under 43 CFR 3602.1 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976).

Texaco, Inc., 59 IBLA 155 (Oct. 26, 1981)

SURFACE RESOURCES ACT--Continued

HEARINGS

When the Bureau of Land Management has appraised the damages for a mineral trespass under 43 CFR Part 9230, an appraisal will be sustained in the absence of an offer of specific substantial evidence that it is incorrect.

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

VERIFIED STATEMENT

A verified statement filed under sec. 5 of the Surface Resources Act of 1955, 30 U.S.C. § 613 (1976), is properly rejected when the mining claim in connection with which it is filed has been declared abandoned and void for failure to comply with the recordation provisions of sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Paul B. Scott and Betty F. Scott, 53 IBLA 75 (Mar. 2, 1981)

Acceptance by the Bureau of Land Management of mining claimant's verified statement under sec. 5 of the Act of July 23, 1955, 30 U.S.C. § 613 (1976), confirms only those rights to surface resources that the claimants held on July 23, 1955, as defined or limited by other existing law.

Joseph A. Barnes et al., 78 IBLA 46 (Dec. 13, 1983)
90 I.D. 550

SURPLUS PROPERTY
(See also Federal Property & Administrative Services Act--if included in this Index.)

Oil and gas lease offers embracing lands withdrawn specifically from oil and gas leasing and by Public Land Order No. 674, of Oct. 7, 1950, reserved for an agency of the Department of Defense, are properly rejected. Lands declared surplus are not subject to leasing by this Department.

Edward C. Shepardson, 47 IBLA 223 (May 13, 1980)

Where oil and gas deposits in lands acquired by the United States and devoted to use for military purposes become "surplus property" under the Federal Property and Administrative Services Act, such deposits may be leased only under the provisions of that Act, and are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

Edward C. Shepardson, 53 IBLA 79 (Mar. 2, 1981)

Gerald A. Waters, 78 IBLA 387 (Jan. 31, 1984)

SURVEYS OF PUBLIC LANDS
(See also Boundaries, Public Lands--if included in this Index.)

GENERALLY

Where the lessees of a competitive oil and gas lease suggest that a revised description of the leased land, based on an approved resurvey of the township, shifts their leasehold 2,292.18 feet farther west of the southeast section corner than under the original survey, but the new status plat reflects instead that the southeast section corner has simply been relocated 2,292.18 feet farther to the east, the Bureau of Land Management's revised description will be affirmed

SURVEYS OF PUBLIC LANDS--Continued

GENERALLY--Continued

because no change has been made in the land actually covered by the lease.

Max A. Krey et al., 65 IBLA 192 (June 29, 1982)

Locations of corners established by official Government surveys are conclusive, and the corner of a Government subdivision is where the United States survey established it.

Mr. & Mrs. John Koopmans, 70 IBLA 75 (Jan. 11, 1983)

In determining whether original survey corners were properly reestablished by an official dependent resurvey of public lands, the fact that the measured distance and bearing between a quarter corner and the adjacent section corners as determined by the resurvey differs somewhat from the measurement and bearing given in the original survey is not sufficient alone to disprove the reestablishment of the quarter corner, as discrepancies between measurements and bearings in old and more recent surveys are not uncommon.

Robert J. Wickenden, 73 IBLA 394 (June 15, 1983)

The first step of an independent resurvey is to reestablish the outboundaries of the area to be resurveyed, following the methods of a dependent resurvey. The second step is the segregation of lands embraced in valid claims based on the former approved plat.

Where a protest challenges the declaration of a survey that a corner is lost and the reestablishment of that corner by proportionate measurement, and the record shows that the Bureau of Land Management gave due consideration to evidence tendered to establish the original position of the corner, BLM may properly deny the protest and that decision will be upheld on appeal where appellant fails to establish error in the decision.

Arthur Millard, Mary Jane Millard, 77 IBLA 66 (Nov. 7, 1983)

The dependent resurvey is designed to restore the original conditions of the official survey according to the record. It is based, first, upon identified corners and other acceptable points of control, and second, upon the restoration of lost corners by proportionate measurement in harmony with the record of the original survey. Corners established by the original survey should be located, if possible, by considering all the relevant evidence and not simply one or two factors. The rules for the restoration of lost corners should not be applied until all available original and collateral evidence has been developed.

Elmer A. Swan et ux., 77 IBLA 99 (Nov. 14, 1983)

Jean Eli, 78 IBLA 374 (Jan. 30, 1984)

A dependent survey is designed to accomplish a restoration of what purports to be the original conditions according to the record, based, first, upon identified existing corners of original survey and other recognized and acceptable points of control, and second, upon the restoration of missing corners by proportionate measurement in harmony with the record of

SURVEYS OF PUBLIC LANDS--Continued

GENERALLY--Continued

the original survey. Titles, areas, and descriptions should remain unchanged in a typical dependent resurvey.

Prior to passing title from the United States, the Government has the right to establish or reestablish boundaries on its own land. However, once patent has been issued, the rights of the patentee are fixed and the Government has no power to interfere with such rights by a corrective survey. Therefore, the results of a dependent resurvey conducted by the Cadastral Survey will not alter or effect any boundaries between private tracts of lands. In disputes between private owners, the location of corners reestablished by a dependent survey conducted subsequent to patent does not make the new survey conclusive against the prior purchaser so as to prevent his assertion of the title he has acquired as against the one claiming under the new survey.

Alice L. Alleson, Frances Alleson, 77 IBLA 106 (Nov. 14, 1983)

In determining whether the original survey corners along a township line were properly reestablished by an official dependent resurvey of public lands, the fact that the measured distance and bearing between the recovered township corners as determined by the resurvey differs somewhat from the measurement and bearing given in the original survey is not sufficient alone to disprove the reestablishment of the intervening corners, as discrepancies between measurements and bearings in old and more recent surveys are not uncommon.

State of Oregon, Office of State Forester, 78 IBLA 13 (Dec. 12, 1983)

An island within the public domain in a navigable stream and actually in existence at the time of the admission to the Union of the state within which it is situated remains the property of the United States.

David A. Provinse, 78 IBLA 85 (Dec. 16, 1983)

A survey of public lands creates and does not merely identify the boundaries of sections of land. A patentee of public land takes according to the actual survey on the ground, even though the official survey plat may not show the tract as it is located on the ground, or the patent description may be in error as to the course or distance or the quantity of land stated to be conveyed.

Elmer L. Love, 80 IBLA 101 (Apr. 3, 1984)

Where the State of Oregon has selected indemnity lands pursuant to the Act of Feb. 28, 1891, ch. 384, 26 Stat. 796, for school sections within an unsurveyed township in the Siskiyou National Forest and thereafter a reprotraction or survey is run revealing new fractional townships within the area originally protracted, the State is entitled to indemnity lands for those new townships in accordance with the compact it entered with the United States by Act of Feb. 14, 1859.

A state selecting indemnity lands pursuant to the Act of Feb. 28, 1891, ch. 384, 26 Stat. 796, for unsurveyed school sections within a national forest shall be entitled to select indemnity lands to the extent of two sections for each of said townships in lieu of secs. 16 and 36 therein. Where a protraction on which the state relies to make its indemnity selections reveals that a fractional township is present, the state's entitlement

SURVEYS OF PUBLIC LANDS--Continued

GENERALLY--Continued

to indemnity lands is calculated according to the pro rata rule set forth at 43 U.S.C. § 852 (1976).

Where a survey on which the state relies to make its indemnity selections pursuant to the Act of Feb. 28, 1891, reveals a fractional township with a school section in place, the state's entitlement should be in an amount equal to the acreage shown by the surveyed school section or in an amount determined by the pro rata rule at the election of the state.

Until a survey of public lands has been run and approved, the designated sections of a township are undefined and the lands are unidentified.

State of Oregon et al., II, 80 IBLA 354 (May 10, 1984) 91 I.D. 212

Generally, the meander line of a river is not to be treated as a boundary and when the United States conveys a tract of land by patent referring to an official plat which shows the tract to be riparian to a river, the patent conveys all the rights to the water line of that river, if navigable, or to the center of the stream if nonnavigable, except where there is fraud, gross error shown in the survey, or an intention to limit a grant or conveyance to the actual meander lines as disclosed in the facts or circumstances.

Donald W. Hoar, 81 IBLA 74 (May 23, 1984)

The extent of an applicant's color-of-title claim is necessarily limited to the land actually described in the conveyance from which the color-of-title originates, regardless of whether or not this description accurately describes all land occupied by the applicant.

Benton C. Cavin, 83 IBLA 107 (Oct. 5, 1984)

Costs of a survey must be paid by a person authorized by a private law to purchase public lands.

Jerry L. Crow, 84 IBLA 119 (Dec. 10, 1984)

AUTHORITY TO MAKE

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States, and he has the authority to extend or correct the surveys of public lands as may be necessary, including the surveying of lands omitted from earlier surveys, and making resurveys to reestablish corners and lines of earlier official surveys.

Mr. & Mrs. John Koopmans, 70 IBLA 75 (Jan. 11, 1983)

Elmer A. Swan et ux., 77 IBLA 99 (Nov. 14, 1983)

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States. He also has the authority to extend or correct the surveys of public lands as may be necessary.

Jean Eli, 78 IBLA 374 (Jan. 30, 1984)

SURVEYS OF PUBLIC LANDS--Continued

DEPENDENT RESURVEYS

Where, at a hearing, a protestant does not meet his burden of establishing by clear and convincing evidence that a dependent resurvey is not an accurate retracement and reestablishment of the lines of the original survey, the decision dismissing his protest against the survey will be affirmed.

Bethel C. Vernon, 47 IBLA 315 (May 19, 1980)

Restoration of a lost corner by means of proportionate measurement in accordance with the record of the original survey is the proper procedure in a dependent resurvey where there is a lack of conclusive evidence as to the location of the original survey corner.

Surveys of the United States, after acceptance, are presumed to be correct and will not be disturbed except upon clear proof that they are fraudulent or grossly erroneous. An appellant challenging a Government resurvey has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

Paul M. Scherbel, 58 IBLA 52 (Sept. 21, 1981)

The purpose of a dependent resurvey is to retrace and reestablish lines of the original survey in their true and original positions according to the best available evidence of the positions of the original corners.

Locations of corners established by official Government surveys are conclusive, and the corner of a Government subdivision is where the United States survey established it.

Where the reestablishment of a section corner in a resurvey is supported by substantial evidence, a protest asserting improprieties in the survey is properly dismissed and does not necessarily warrant a further investigation of the corner.

Mr. & Mrs. John Koopmans, 70 IBLA 75 (Jan. 11, 1983)

In determining whether original survey corners were properly reestablished by an official dependent resurvey of public lands, the fact that the measured distance and bearing between a quarter corner and the adjacent section corners as determined by the resurvey differs somewhat from the measurement and bearing given in the original survey is not sufficient alone to disprove the reestablishment of the quarter corner, as discrepancies between measurements and bearings in old and more recent surveys are not uncommon.

Surveys of the United States, after acceptance, are presumed to be correct and will not be disturbed except upon clear proof that they are fraudulent or grossly erroneous. An appellant challenging a Government resurvey has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

Where reestablishment of a quarter section corner on a second survey is supported by substantial evidence, a protest not accompanied by acceptable conflicting evidence but principally by hearsay, does not warrant a further survey or investigation of the corner.

Where a protestant does not meet his burden of establishing by clear and convincing evidence that a dependent resurvey is not an accurate retracement and reestablishment of the lines of the original survey, the decision dismissing his protest against the survey will be affirmed.

Robert J. Pickendon, 73 IBLA 394 (June 15, 1983)

The dependent resurvey is designed to restore the original conditions of the official survey according to the record. It is based, first, upon identified corners and other acceptable points of control, and second, upon the restoration of lost corners by proportionate measurement in harmony with the record of the original survey. Corners established by the original survey should be located, if possible, by considering all the relevant evidence and not simply one or two factors. The rules for the restoration of lost corners should not be applied until all available original and collateral evidence has been developed.

Where there exist factual questions about the location of a subdivisional corner in a dependent resurvey, the Board of Land Appeals may order a hearing pursuant to 43 CFR 4.415 to resolve these questions.

Elmer A. Svan et ux., 77 IBLA 99 (Nov. 14, 1983)

A dependent survey is designed to accomplish a restoration of what purports to be the original conditions according to the record, based, first, upon identified existing corners of original survey and other recognized and acceptable points of control, and second, upon the restoration of missing corners by proportionate measurement in harmony with the record of the original survey. Titles, areas, and descriptions should remain unchanged in a typical dependent resurvey.

Prior to passing title from the United States, the Government has the right to establish or reestablish boundaries on its own land. However, once patent has been issued, the rights of the patentee are fixed and the Government has no power to interfere with such rights by a corrective survey. Therefore, the results of a dependent resurvey conducted by the Cadastral Survey will not alter or effect any boundaries between private tracts of lands. In disputes between private owners, the location of corners reestablished by a dependent survey conducted subsequent to patent does not make the new survey conclusive against the prior purchaser so as to prevent his assertion of the title he has acquired as against the one claiming under the new survey.

Alice L. Alleson, Frances Alleson, 77 IBLA 106 (Nov. 14, 1983)

The purpose of a dependent resurvey is to retrace and reestablish lines of the original survey in their true and original positions according to the best available evidence of the positions of the original corners.

In an appeal from a protest timely filed pursuant to 43 CFR 4.450-2 protesting the acceptance of a dependent resurvey the appellant has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

Where a protestant does not meet his burden of establishing by clear and convincing evidence that a dependent resurvey is not an accurate retracement and reestablishment of the lines of the original survey, the decision dismissing his protest against the survey will be affirmed.

Crow Indian Agency, 78 IBLA 7 (Dec. 12, 1983)

SURVEYS OF PUBLIC LANDS--Continued

DEPENDENT RESURVEYS--Continued

In determining whether the original survey corners along a township line were properly reestablished by an official dependent resurvey of public lands, the fact that the measured distance and bearing between the recovered township corners as determined by the resurvey differs somewhat from the measurement and bearing given in the original survey is not sufficient alone to disprove the reestablishment of the intervening corners, as discrepancies between measurements and bearings in old and more recent surveys are not uncommon.

Surveys of the United States, after acceptance, are presumed to be correct and after a long lapse of time from the acceptance, will not be disturbed except upon clearest proof of an evident mistake or fraudulent conduct on the part of those charged with the execution of such survey.

Where reestablishment of intervening section corners along a township line in a resurvey is supported by substantial evidence, a protest not accompanied by acceptable conflicting evidence but principally by a differing opinion, does not warrant a further survey or investigation of the location of the questioned corners.

Where a protestant does not meet his burden of establishing by clear and convincing evidence that a dependent resurvey is not an accurate retracement and reestablishment of the lines of the original survey, the decision dismissing the protest will be affirmed.

State of Oregon, Office of State Forester, 78 IBLA 13 (Dec. 12, 1983)

Where a protestant does not meet his burden of establishing by clear and convincing evidence that a dependent resurvey is not an accurate retracement and reestablishment of the lines of the original survey, the decision dismissing his protest against the survey will be affirmed.

Burton E. Edwards, 78 IBLA 62 (Dec. 13, 1983)

The dependent resurvey is designed to restore the original conditions of the official survey according to the record. It is based, first, upon identified corners and other acceptable points of control, and second, upon the restoration of lost corners by proportionate measurement in harmony with the record of the original survey. Corners established by the original survey should be located, if possible, by considering all the relevant evidence and not simply one or two factors. The rules for the restoration of lost corners should not be applied until all available original and collateral evidence has been developed.

In an appeal from a timely protest to the acceptance of a dependent resurvey, the protestant has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey. Failure to meet that burden will result in the affirmation of the decision dismissing the protest.

Jean Eli, 78 IBLA 374 (Jan. 30, 1984)

An appellant challenging a Government resurvey has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

Robert W. Caldwell, 79 IBLA 141 (Feb. 22, 1984)

SURVEYS OF PUBLIC LANDS--Continued

INDEPENDENT RESURVEYS

The first step of an independent resurvey is to reestablish the outboundaries of the area to be resurveyed, following the methods of a dependent resurvey. The second step is the segregation of lands embraced in valid claims based on the former approved plat.

Arthur Millard, Mary Jane Millard, 77 IBLA 66 (Nov. 7, 1983)

SWAMPLANDS

(See also State Selections--if included in this Index.)

The burden of proof as to the character of land applied for under the Swamp Land Acts falls upon the applicant.

Where an 1855 Federal survey and plat suggests that certain lands may have been swamp and overflowed and appellants present substantial additional documentation revealing a long term consistent characterization of the land as swamp and overflowed, this Board will make a finding of fact that the lands were swamp and overflowed within the meaning of the Swamp Land Acts.

State of California, Stockdale Development Corp., 51 IBLA 3 (Oct. 28, 1980)

TAR SANDS

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may" issue a lease for any given tract. Therefore, BLM can properly reject a first-drawn simultaneous application where before issuance of the lease the parcel won in the drawing is included in a special tar sand area, and thereby leasable only through competitive bidding, pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.

Daniel A. Engelhardt (On Reconsideration), 62 IBLA 93 (Feb. 26, 1982) 89 I.D. 82

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through

TAR SANDS--Continued

competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981.
James R. Chudnow, 63 IBLA 369 (Apr. 30, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation. A noncompetitive lease improvidently issued after enactment of the amendment and in violation of its requirements is properly canceled upon discovery of the error.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter. Federal officers and employees cannot bind the Government to create any rights not authorized by law.

Larry E. Clark, 66 IBLA 23 (July 23, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

An applicant for a noncompetitive Federal oil and gas lease has no rights in the land or its minerals until the lease is lawfully issued to him. The Secretary of the Interior has discretionary power to lease or refrain from leasing those Federal lands which are otherwise available on a noncompetitive basis. Where the Assistant Secretary directs that leases be issued in response to certain pending noncompetitive offers, but the status of the subject lands is subsequently altered by new legislation which requires that they be leased only by competitive bidding, the discretionary authority to lease such land noncompetitively is vitiated, and the Bureau of Land Management is legally disabled to implement the directive thereafter.

Justhwia Petroleum Co., 67 IBLA 38 (Sept. 8, 1982)

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-98, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and a noncompetitive oil and gas lease offer for a parcel within a designated tar sand area must be rejected after enactment of the amendment, notwithstanding the fact that the offer was filed prior to the passage of the legislation.

Dorothy Lapuler, 70 IBLA 324 (Jan. 31, 1983)

TAR SANDS--Continued

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's simultaneous oil and gas lease application, being noncompetitive, must be rejected for a parcel within a special tar sand area.

An applicant for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to him. BLM must reject a simultaneous, noncompetitive application where, before issuance of the lease, the parcel won in the drawing is included in a special tar sand area leaseable only through competitive bidding pursuant to the Combined Hydrocarbon Leasing Act of 1981.

P. C. Hinkler, 71 IBLA 328 (Mar. 23, 1983)

Where a decision on appeal is based on a factual issue not raised at the hearing, where no opportunity for argument on appeal was provided and where the fact on which the decision was based were incorrect due to a faulty hearing transcript, the decision will be set aside.

The validity of mining claims located for deposits of tar sand must be established under the general principles of the mining laws, including those related to abandonment and performance of annual assessment work. Congress provided no special recognition of tar sand as a valuable mineral deposit. If tar sand mining claims are found to be placer locations for lode deposits, the owner may apply for conversion to a combined hydrocarbon lease under 30 U.S.C. § 226(k) if the claims are otherwise valid.

Oren Development Co. v. Leo Calder (On Reconsideration), A-26604 (Apr. 25, 1983) 90 I.D. 223

The Combined Hydrocarbon Leasing Act of 1981, P.L. 97-78, 95 Stat. 1070, amended the Mineral Leasing Act of 1920, sec. 17(b), 30 U.S.C. § 226(b) (1976), to require competitive bidding in the leasing of lands within special tar sand areas, and appellant's noncompetitive over-the-counter oil and gas lease offer for a parcel within a special tar sand area must be rejected.

An offeror for a Federal oil and gas lease has no rights in the land or its minerals until the lease is issued to it. The Secretary of the Interior is not required to, but "may," issue a lease for any given tract. Therefore, BLM can properly reject a noncompetitive lease offer where the lands are included in a special tar sand area, which is leasable only through competitive bidding pursuant to the Mineral Leasing Act of 1920, as amended by the Combined Hydrocarbon Leasing Act of 1981. The fact that appellant filed its offer before the enactment of the Combined Hydrocarbon Leasing Act and BLM delayed in acting on the offer until after the effective date of the Combined Hydrocarbon Leasing Act does not entitle appellant to a lease.

CAP Co., 73 IBLA 203 (May 27, 1983)

An asphalt prospecting permit application which was pending at the time of the passage of the Combined Hydrocarbon Leasing Act of 1981, 95 Stat. 1070 (1981), must be rejected because that Act amended the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (Supp. V 1981), to include a definition for "oil" that encompasses asphalt. One seeking to extract hydrocarbons from asphalt after Nov. 16, 1981, in an area other than a "special tar sand area" must file a noncompetitive oil and gas lease offer. The holder of an oil and gas lease issued on or after Nov. 16, 1981, may develop all nongaseous hydrocarbon substances other than those substances leasable

TAR SANDS--Continued

as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons).

Although oil and gas leases issued prior to the enactment of the Combined Hydrocarbon Leasing Act of 1981, 95 Stat. 1070 (1981), and located completely within special tar sand areas may be converted to combined hydrocarbon leases, that Act did not affect oil and gas leases issued prior to the Act which are located outside such areas. The Department has no authority to convey any rights to tar sand on oil and gas leases issued prior to Nov. 16, 1981. A lessee seeking to develop the tar sand on such a lease must relinquish its lease and seek a new oil and gas lease.

Cooper Petroleum, Inc., 73 IBLA 295 (June 7, 1983)

BLM has no authority under the Mineral Leasing Act as amended by the Combined Hydrocarbon Leasing Act of 1981, 30 U.S.C. § 226(b) (1982), to issue a noncompetitive oil and gas lease for land within a designated tar sand area. A noncompetitive lease improvidently issued after the enactment of the amendment in violation of its requirements is properly canceled upon discovery of the error.

Dorothy Langley, 81 IBLA 349 (June 25, 1984)

TAYLOR GRAZING ACT
(See also Grazing Leases, Grazing Permits & Licenses--if included in this Index.)

GENERALLY

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. Protection and management of Federal range lands is a continuing responsibility and may not be divested through agreement with a private party. An allotment management plan is not such a permanently binding contract that the grazing user's refusal to agree to changes precludes BLM from modifying or vacating the plan upon a finding, rationally based, that the plan is inconsistent with BLM objectives and good range management.

Bert N. Smith, Paul Smith v. Bureau of Land Management, 48 IBLA 385 (July 11, 1980)

Neither FLPMA nor the Taylor Grazing Act authorizes appropriation of water or provide an independent statutory basis for claims for water uses inconsistent in any way with the substantive requirements of state law.

Supplement to Solicitor Opinion No. M-36914, on Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (Supp.) (Jan. 16, 1981)
88 I.D. 253

"Public land laws." Under 43 CFR 2091.2-3 (1979), a state exchange application segregated the selected public lands from appropriation under the public land laws, including the mining laws. The term "public land laws" is ordinarily used to refer to statutes governing the alienation of public land, and generally is distinguished from both "mining laws," referring to statutes governing the mining of hard minerals on public lands, and "mineral leasing laws," a term used to designate that group of statutes governing the leasing of public lands for oil, gas, and other selected minerals. Udall v. Tallman, 380 U.S. 1, 19 (1965).

Dale E. Armstrong, 53 IBLA 153 (Mar. 12, 1981)

TAYLOR GRAZING ACT--Continued

GENERALLY--Continued

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

A reservation of "all minerals" in a patent of public lands pursuant to sec. 8 of the Taylor Grazing Act of June 28, 1934, as amended, 43 U.S.C.A. § 315g (repealed 1976), reserves to the United States geothermal resources underlying the patented lands. The reserved geothermal resources are subject to leasing only under the Geothermal Steam Act, 30 U.S.C. §§ 1001-1025 (1976).

Renewable Energy, Inc., 67 IBLA 304 (Sept. 30, 1982)
89 I.D. 496

A decision by BLM reducing authorized livestock grazing use pursuant to 43 CFR 4110.3-2(b) in order to facilitate achieving multiple-use management objectives, viz., allocating available forage to a competing antelope herd in the interest of promoting hunting and future transplanting, will not be disturbed absent substantial evidence showing that the decision is improper.

Charles Blackburn et al., 80 IBLA 42 (Mar. 28, 1984)

TIMBER SALES AND DISPOSALS

Where a programmatic environmental impact statement (EIS) has been completed and this has been supplemented by a site-specific environmental analysis concerning the impacts, mitigating measures, and alternatives for a specified timber sale, the law does not require preparation of an individual EIS for the timber sale in the absence of a material change in circumstances or departure from policy covered in the overall EIS.

A decision by BLM to proceed with a proposed timber sale which was made after consideration of all relevant factors and which is supported by the record will not be set aside in the absence of a showing that the decision is clearly in error.

Preserve Our Scenic Environment, 47 IBLA 276 (May 15, 1980)

A decision by a BLM district office to proceed with a proposed timber sale which was made after consideration of all relevant factors and which is supported by the record will not be set aside in the absence of a showing that the decision is clearly in error.

Ernest J. Goertzen, 51 IBLA 196 (Dec. 5, 1980)

TIMBER SALES AND DISPOSALS--Continued

Under a lump sum contract for a designated lot of timber in a described area, the contract price does not vary with the quantity or quality of timber actually located therein. The phrase "more or less" in these contracts will be given its plain and literal meaning.

Where a contract for the sale of timber contains a disclaimer of warranty by the vendor as to the quantity of timber sold, the parties are deemed to have contracted on the assumption that there was doubt as to the quantity, and the risk with respect to such factor must be considered to have been assumed by the purchaser as one of the elements of the bargain. Thus, the fact that the quantity of timber available for harvesting turned out to be less than was expected at the time of contracting is not a basis for a claim to a refund.

In legal effect, a vendor's estimate of quantity or quality of a specific lot of timber is sui generis because it cannot be determined with certainty except by harvesting and, even then, there is room for disagreement as to whether all merchantable timber was harvested by the vendee.

Where warranty as to quality and quantity is specifically disclaimed by the Government in a timber cruise sale contract, only good faith is required of the Government in naming an estimated amount.

Gregory Lumber Co., Inc., 54 IBLA 309 (Apr. 30, 1981)

Guidelines issued under BLM Manual sec. 1791 relating to preparation of an environmental analysis record with regard to a proposed timber sale are not the type of material required by 5 U.S.C. § 552(a)(1)(D) to be published in the Federal Register and as such are not binding on BLM.

A decision by a BLM district office to proceed with a proposed timber sale which was made after consideration of all relevant factors and which is supported by the record will not be set aside in the absence of a showing that the decision is clearly in error.

Lane County Audubon Society, 55 IBLA 171 (June 11, 1981)

With respect to the management of timber resources subject to the Act of Aug. 28, 1937, which relates to Oregon and California Railroad and Reconveyed Coos Bay Grant Lands, any conflict or inconsistency between that Act and the Federal Land Policy and Management Act of 1976 must be resolved in accordance with the former. However, where no relevant conflict is shown, FLPMA's definition of "sustained yield" will apply to both statutes.

A BLM decision to proceed with a proposed timber sale, when reached after consideration of all relevant factors and supported by the record, will not be disturbed absent a showing that the decision is clearly erroneous.

A.C.O.T.S., 61 IBLA 166 (Jan. 25, 1982)

A BLM decision to proceed with a proposed timber sale, when reached after consideration of all relevant factors and supported by the record, will not be disturbed absent a showing that the decision is clearly erroneous.

Diana Coogle et al., 61 IBLA 393 (Feb. 19, 1982)

A.C.O.T.S., 61 IBLA 396 (Feb. 22, 1982)

A.C.O.T.S., 62 IBLA 43 (Feb. 24, 1982)

Alan Winter et al., 62 IBLA 299 (Mar. 18, 1982)

TIMBER SALES AND DISPOSALS--Continued

Where a contract for the sale of timber contains a disclaimer of warranty by the vendor as to the quantity of timber sold, the parties are deemed to have contracted on the assumption that there was doubt as to the quantity, and the risk with respect to such factor must be considered to have been assumed by the purchaser as one of the elements of the bargain.

Where warranty as to quality and quantity is specifically disclaimed by the Government in a timber cruise sale contract, only good faith is required of the Government in naming an estimated amount.

Robert H. Barker, 62 IBLA 331 (Mar. 23, 1982)

BLM may properly deny a request for an extension of time for a timber sale contract where the purchaser asserts that the delay in cutting and removal was due to market fluctuations. However, where the Secretary has waived the regulations dealing with the term of timber sale contracts and extensions of time, thereby permitting uncompleted contracts to remain in effect past their expiration dates, an affected purchaser will be afforded a grace period on his right to cut and remove timber.

Hobin Lumber Co., 66 IBLA 88 (July 29, 1982)

Where an appeal of a Bureau of Land Management action regarding the triggering of a small business set-aside timber sale program raises only class size issues, the appeal must be dismissed because the Small Business Administration, not the Department of the Interior, determines class size.

Public Timber Purchasers Group, 66 IBLA 244 (Aug. 17, 1982)

"Sustained yield." As used in sec. 1 of the Act of Aug. 28, 1937, 43 U.S.C. § 1181a (1976), the term "sustained yield" means that the level of timber harvesting established should be such that, considering present levels of silviculture techniques, a constant amount of timber will be annually available on an indefinite basis.

A party challenging a decision to harvest timber on the grounds that the lands involved will not regenerate within the time contemplated by the applicable rules bears the burden of establishing both the factual predicates and the ultimate conclusion.

A party who challenges a decision to sell timber on the ground that timber harvesting will adversely affect water quality, plant and animal life, recreational values, or the economic stability of surrounding communities must show not only that some adverse effect will result because of timber harvesting, but that these effects are of sufficient magnitude so as to render the decision to harvest contrary to the applicable laws and regulations.

In re Lick Gulch Timber Sale, 72 IBLA 261 (Apr. 28, 1983) 90 I.D. 189

A BLM decision to proceed with a proposed timber sale, when reached after consideration of all relevant factors and supported by the record, will not be disturbed absent a showing that the decision is clearly erroneous.

A party challenging a decision to harvest timber on the grounds that allowable cut has been exceeded and

TIMBER SALES AND DISPOSALS--Continued

that pertinent environmental considerations were disregarded bears the burden of establishing both the factual predicates and the ultimate conclusions.

In re Otter Slide Timber Sale, 75 IBLA 380 (Aug. 31, 1983)

A BLM decision to proceed with a proposed timber sale, when reached after consideration of all relevant factors and supported by the record, will not be disturbed in the absence of a showing that the decision is clearly in error.

An appellant who levels specific criticisms of a BLM decision to proceed with a timber sale in an attempt to overturn the sale as being poorly planned and ill-conceived cannot prevail where the record shows that BLM complied with applicable law and procedures in offering the tract for sale and where many of the concerns and criticisms amount to mere expressions of disagreement with BLM's conclusions. An appellant's judgment cannot be substituted for that of BLM on the basis of arguable differences of opinion.

Robert E. Salisbury, 79 IBLA 370 (Mar. 26, 1984)

A decision by BLM denying a protest to a proposed timber sale will be affirmed where the appellant does not present sufficient evidence that the sale area was misclassified as high-intensity land.

Where BLM removes concentrated unplantable zones from the area of a proposed timber sale, that area is not misclassified as high-intensity land even though small unplantable zones are interspersed throughout it.

In re Chatman-Kuehler Timber Sale, 80 IBLA 237 (Apr. 30, 1984)

A decision by BLM denying a protest to a proposed timber sale will be affirmed where the appellant does not present sufficient evidence that the sale area was misclassified as high-intensity land.

BLM may deviate from provisions contained in an environmental impact statement with respect to regeneration cutting in a planned timber sale where the deviation is not so significant as to require preparation of a supplemental environmental impact statement.

BLM may properly proceed with a proposed timber sale where the environmental assessment of the sale considered all relevant factors, including the impact of road construction on soil erosion, wildlife and recreational resources.

In re Bald Point Timber Sale, 80 IBLA 304 (May 4, 1984)

In reviewing a denial by the BLM of a protest of a timber sale on lands managed pursuant to the Act of Aug. 28, 1937 (O & C Act), 43 U.S.C. § 1181a (1982), on the issue of violation of the principle of "sustained yield," the Board will defer to BLM's judgment in the absence of a clear showing of failure to consider critical factors or that the timber sale is not supported by the administrative record.

In determining regeneration for purposes of high-intensity timber management land, the term "stocked" referring to the number of suitable trees per acre is properly distinguished from "established" referring to a stand of suitable growing trees which have survived at least one growing season.

In re Thompson Creek Timber Sale, 81 IBLA 242 (June 7, 1984)

TIMBER SALES AND DISPOSALS--Continued

A BLM decision to proceed with a proposed timber sale, when reached after consideration of all relevant factors and supported by the record, will not be disturbed absent a showing that the decision is clearly erroneous.

A party challenging a decision to harvest timber on the grounds that clearcutting is an inappropriate method to be employed and that pertinent environmental considerations were disregarded bears the burden of establishing both the factual predicates and the ultimate conclusions.

Curtin Mitchell & STAND, 82 IBLA 275 (Aug. 31, 1984)

A party who challenges a decision to sell timber on the ground that timber harvesting will adversely affect water quality, plant and animal life, property values, or the economic stability of surrounding communities must establish the decision to proceed with the timber sale is erroneous.

In re Crooked Cedar Timber Sale, 83 IBLA 329 (Nov. 5, 1984)

TITLE

GENERALLY

While it is a general rule that adverse possession does not run against a state, this rule does not apply as against the United States. Where the United States has maintained open and notorious possession of certain parcels of land for over 80 years, the United States has acquired title to those parcels through adverse possession even though the record title holder was a state.

State of Oregon et al., I, 78 IBLA 255 (Jan. 10, 1984)
91 I.D. 14

TORTS
(See also Appeals, Claims Against the United States, Irrigation Claims--if included in this Index.)

SCOPE OF EMPLOYMENT

Under the doctrine of respondeat superior a corporation is liable for the wrongful acts or omissions of its officers, agents, or employees acting within the scope of their authority or in the course of their employment.

The master/servant relationship and the liability of the master for the acts of the servant are determined by the law of the state in which the act took place. In Idaho, a principal or master can be held liable for exemplary or punitive damages based on the wrongful acts of its agent only when the agent's acts were authorized, requested, commanded, performed or recklessly tolerated by the board of directors or by a high managerial agent acting in behalf of the corporation within the scope of his office or employment, or when the acts have subsequently been ratified with full knowledge of the facts.

Houghland Farms, Inc. v. Bureau of Land Management, 77 IBLA 245 (Nov. 30, 1983)

TOWNSITES

The townsite laws were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790, and the initiation of an occupancy claim pursuant to any of the repealed laws after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right which would survive FLPMA.

Royal Harris, 45 IBLA 87 (Jan. 17, 1980)

Dennis L. Lattery, 45 IBLA 219 (Jan. 31, 1980)

Darrell P. Riggs, Karen Sue Riggs, 46 IBLA 132 (Mar. 19, 1980)

Dorothea M. Taylor, Robert Taylor, 46 IBLA 198 (Mar. 24, 1980)

Thomas Taggart, 46 IBLA 350 (Apr. 8, 1980)

George W. Murphy, 48 IBLA 123 (May 30, 1980)

The Alaska townsite laws, 43 U.S.C. §§ 732-736 (1970), were repealed by the Federal Land Policy and Management Act of 1976, sec. 703(a), 90 Stat. 2789. The initiation of an occupancy claim, pursuant to the townsite laws, after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right.

Marko and Yarrow Lewis, 46 IBLA 257 (Mar. 27, 1980)

The townsite laws were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790. A claim under the townsite laws will be rejected where appellants have submitted no proof that they occupied the land prior to the effective date of FLPMA, Oct. 21, 1976, thus giving them a valid exisitng right which would have survived FLPMA.

Peter Karl Hoskok, Bailey A.C. Hoskok, 48 IBLA 377 (July 11, 1980)

Where lands have been identified as being within a townsite by inclusion in an approved U.S. survey of the exterior boundaries of the townsite; where the townsite trustee duly receives title to these lands by patent and opens the area to settlement under the townsite laws; and where individuals, acting in reliance on explicit statements by the trustee that it is legal to do so, timely initiate settlement under governing Departmental regulations, a decision by the trustee to cancel the settlers' claims in order to reduce the size of the townsite to conform with the statutory limit will be vacated, and he will be directed instead to correct the patent by eliminating lands other than those occupied by the settlers.

A Native village corporation has no interest in lands included in a townsite prior to the enactment of the Alaska Native Claims Settlement Act, as the lands were segregated prior to this date so that ANCSA did not withdraw the lands for selection by the corporation. Accordingly, the rights of settlers and of the municipality which derive from an entitlement created prior to the Alaska Native Claims Settlement Act, are superior to the corporation's rights.

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is

no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated.

The townsite laws were repealed by sec. 703 of the Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2790, and the initiation of an occupancy claim pursuant to any of the repealed laws after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right which would survive FLPMA.

Stephen Kenron et al., 51 IBLA 368 (Dec. 30, 1980)

Where the descriptive language accompanying a United States survey of the exterior of an Alaskan townsite notes expressly that the "townsite" of Ouzinkie is comprised of three tracts ("A, B, and C") and mentions elsewhere a fourth tract ("D") as being part of the "village" of Ouzinkie, Tract "D" is not properly regarded as being within the "townsite" under the regulations, and approval of the survey does not segregate it as part of the townsite.

Where a tract of land (Tract "D") was included in a patent to a townsite trustee of four tracts (Tracts "A, B, C, and D"), but the trustee had not applied for or entered Tract "D," and where the inclusion and patenting of Tract "D" resulted in the transfer of acreage in excess of the maximum allowed by statute to be included in the townsite, the patent was erroneous insofar as it included Tract "D" and should be corrected by eliminating that tract.

Stephen Kenron et al. (On Reconsideration), 65 IBLA 44 (June 23, 1982)

The Alaska townsite laws, 43 U.S.C. §§ 732-736 (1970), were repealed by the Federal Land Policy and Management Act of 1976, sec. 703(a), 90 Stat. 2789. The initiation of an occupancy claim, pursuant to the townsite laws, after the effective date of FLPMA, Oct. 21, 1976, does not constitute a valid existing right. No right was established where the only "improvement" prior to repeal consisted of clearing an area for site preparation in 1969, which clearing had thereafter revegetated with brush, and there was no other occupancy, use, or possession of the land until 1980.

Roland P. & Jackie H. Moody (Appellants), Aleknagik Village, Alaska (Respondent), 67 IBLA 121 (Sept. 16, 1982)

TRESPASS

GENERALLY

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970), contemplates that the Department of the Interior retains continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 3602.1 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

TRESPASS--Continued

GENERALLY--Continued

In determining whether grazing trespasses are "willful," intent sufficient to establish willfulness may be shown by proof of facts which objectively show that the circumstances do not comport with the notion that the trespasser acted in good faith or innocent mistake, or that his or her conduct was so lacking in reasonableness or responsibility that it became reckless or negligent.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 (Feb. 19, 1981) 88 I.D. 275

Where BLM assesses trespass damages based on the reasonable value, extent, and duration of an unauthorized use of the public lands, this assessment will not be disturbed unless the trespasser submits convincing evidence that it is incorrect; however, upon review where it is determined that damages were not properly calculated, the case may be remanded for recalculation of the trespass charges.

Pensco Valley Telephone Cooperative, Inc., 55 IBLA 360 (June 26, 1981)

The Board of Land Appeals will not dismiss or set aside a decision by the Bureau of Land Management holding an appellant liable for an innocent mineral trespass solely because a notice of trespass cited a criminal statute.

Sec. 9 of the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976), contemplates that the Department of the Interior retains continuing jurisdiction and administration of mineral deposits reserved by that Act.

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976).

Texaco, Inc., 59 IBLA 155 (Oct. 26, 1981)

A notice to cease trespass and an order to remove improvements from public lands may properly issue where appellant has been occupying public lands without authorization or claim or color of title.

A notice to cease trespass and order to remove improvements may be set aside to allow consideration of a special use permit with appropriate restrictions where appellant concedes lack of right to the land and it is not clear that a temporary use authorization would interefere with any immediate need of the land for public purposes.

Juliet Marsh Brown, 64 IBLA 379 (June 17, 1982)

Where the Bureau of Land Management has assessed treble damages for a trespass occurring in connection with a contract for sale of sand and gravel and the purchaser offers to produce evidence to show that severance of material not included in the contract of sale was not grossly negligent, contrary to the finding by BLM, a hearing is ordered to afford the purchaser an opportunity to prove facts as claimed.

Sunrise Construction Co., 73 IBLA 185 (May 26, 1983)

TRESPASS--Continued

GENERALLY--Continued

The removal of sand and gravel for commercial purposes from land patented under the Stock-Raising Homestead Act, as amended, 43 U.S.C. § 291 (1970), constitutes a trespass since such sand and gravel has been reserved under the Act.

Brown-Tankersley (Trust), 76 IBLA 48 (Sept. 19, 1983)

One who settles on withdrawn land in Alaska acquires no rights to or title interest in the land which is superior to a conveyance of the land to a Native village corporation pursuant to sec. 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1611 (1976), and the appeal against the conveyance must be dismissed.

L. Joe McVey, 77 IBLA 374 (Dec. 7, 1983)

When appellant does not have a rightful claim to the lands it is occupying, the United States is entitled to a court order directing appellant to remove itself and its possessions from the land and directing that if it does not do so by a specified date, the remaining structures would be deemed abandoned and property of the United States.

Constitution Petroleum Co., Inc., 78 IBLA 3 (Dec. 12, 1983)

R.S. 2477 does not provide for the construction of the grant according to the law of the state in which the land subject to the grant is situated; rather, its construction is a question of Federal law. By the time of the R.S. 2477 Idaho grant, Congress had already determined that telephone cables were not within the scope of an R.S. 2477 highway right-of-way. Thus, a telephone cable buried along an R.S. 2477 highway with a right-of-way from the State of Idaho but without the requisite BLM right-of-way is in trespass.

Mountain Bell, 83 IBLA 67 (Sept. 26, 1984)

MEASURE OF DAMAGES

When the Bureau of Land Management has appraised the damages for a mineral trespass under 43 CFR Part 9230, an appraisal will be sustained in the absence of an offer of specific substantial evidence that it is incorrect.

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

Bureau of Land Management properly rejects an application for the sale of public land pursuant to the Unintentional Trespass Act, 43 U.S.C. §§ 1431-1435 (1976), where the applicant refuses to pay related damages for unauthorized use of the land. Where BLM assesses trespass damages based on the reasonable value, extent, and duration of an unauthorized use of the public lands, this assessment will not be disturbed unless the trespasser submits convincing evidence that it is incorrect.

Reed Z. Agee, 55 IBLA 157 (June 9, 1981)

TRESPASS--Continued

MEASURE OF DAMAGES--Continued

Where BLM assesses trespass damages based on the reasonable value, extent, and duration of an unauthorized use of the public lands, this assessment will not be disturbed unless the trespasser submits convincing evidence that it is incorrect; however, upon review where it is determined that damages were not properly calculated, the case may be remanded for recalculation of the trespass charges.

Pecanco Valley Telephone Cooperative, Inc., 55 IBLA 360 (June 26, 1981)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970
(See also Appeals--if included in this Index.)

GENERALLY

Where the Park Service determines at a hearing on the basis of the evidence and testimony presented that the claimant is entitled to the reimbursement sought for actual reasonable moving and related expenses under § 202(a)(1) of the Act, with respect to certain personal property, and agrees to pay such amount to the claimant, a withdrawal of the claimant's appeal as to such expenses will be accepted and the decision appealed from will be modified to that extent.

A claim for reimbursement of costs of maintaining and protecting real property prior to the Government's acquisition of it is properly denied on the basis that the Act does not provide for payment of such costs.

A loss of business claim is properly denied where the business had been discontinued prior to the Government's initiation of negotiations to purchase the property.

A claim for the allowance of interest on funds received for real property acquired by the United States is properly denied on the basis that the Act does not provide for such interest payments.

Uniform Relocation Assistance Appeal of Mr. William B. Allison, Executor of the Estate of Amie B. Allison (Deceased), 4 OHA 117 (Feb. 13, 1981)

Where appellants are required to move from public lands along the Lower Colorado River as a result of termination and nonrenewal of permits previously issued to them for residential use of the lands, they are not displaced persons within the meaning of the Act and they are not eligible to receive relocation assistance benefits under the Act.

Uniform Relocation Assistance Appeals of Mr. & Mrs. Adron J. Chastain et al., 4 OHA 166 (June 8, 1981)

A claim for the allowance of interest on funds received for relocation assistance benefits is properly denied on the basis that the Act does not provide for such interest payment.

Uniform Relocation Assistance Appeal of Mr. Richard M. Meeks, 4 OHA 196 (Oct. 13, 1981)

ADMINISTRATIVE REVIEW AND APPEALS

The price for which real property is acquired and the right, if any, of the grantor of such property to salvage of real property improvements on the land are matters determinable by agreement between the owners

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

ADMINISTRATIVE REVIEW AND APPEALS--Continued

of the property and the acquiring agency, or by condemnation proceedings, and they are not reviewable upon appeal to this Office.

Uniform Relocation Assistance Appeal of Mr. and Mrs. James E. Donahue, 5 OHA 1 (June 18, 1982)

Payments for acquired property and relocation assistance benefits are separate and distinct entitlements, and assertions by claimants as to promises or misrepresentations concerning allowable benefits made by Bureau of Reclamation personnel in negotiations and acquisition of the real property by the United States, are not a basis for entitlement to benefits or administrative relief by this Department.

Uniform Relocation Assistance Appeal of Boyd F. & Raymond T. Henry (Messrs.), 5 OHA 325 (May 16, 1984)

UNIFORM REAL PROPERTY ACQUISITION POLICY

Generally

Payments and benefits provided by Title II of the Act are made administratively in accordance with regulations and procedures established under provisions of the Act and are transactions separate and apart from land purchase contracts involving negotiations and agreement between the parties; accordingly, the amounts payable for relocation assistance benefits and for property acquisitions are not affected one by the other.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Duval Evans, 4 OHA 107 (Jan. 23, 1981)

The question of attorneys' fees is addressed in sec. 304 of the Act and limits the litigation expenses of attorneys' fees to condemnation proceedings in the Federal District Court, and then only when the court determines a condemnation was unauthorized, the government abandons a condemnation or a property owner brings an action in the nature of inverse condemnation and obtains an award of compensation. The attorney fees and costs claimed herein do not qualify for reimbursement under the Act.

Uniform Relocation Assistance Appeal of Mr. & Mrs. Robert Velcanoff, 5 OHA 180A (Sept. 28, 1983)

Expenses Incidental to Transfer of Title to the United States

Where funds for real property taxes have been withheld from the condemnation award and placed in escrow pending further hearing and order of the Court, a determination by the Land Acquisition Officer on eligibility of the condemnees for reimbursement of real property taxes allocable to the period of the calendar year remaining after vesting of title to the lands in the United States will be vacated and the case will be remanded for a new determination after final judgment in the matter by the Court.

Uniform Relocation Assistance Appeal of George Johnson, Jessie Johnson Fisher, Reinhold B. Johnson and Howard W. Johnson, 4 OHA 153 (Apr. 13, 1981)

UNIFORM REAL PROPERTY ACQUISITION POLICY--Continued

Expenses Incidental to Transfer of Title to the United States--Continued

Expenses incidental to transfer of title to the United States, reimbursable under § 303(1) of the Act and implementing regulations, do not include costs for legal services involved in the preparation and obtainment of documents for recordation.

Uniform Relocation Assistance Appeal of Mr. and Mrs. James Cardillo, 4 OHA 177 (July 14, 1981)

Expenses incidental to transfer of title to the United States, reimbursable under § 303 of the Act, and implementing regulations, do not include increased interest costs on loan affecting mortgaged property not conveyed to the United States, costs for legal services involved in preparation and obtainment of documents for recordation, and miscellaneous personal expense items such as travel time and salary loss in trips to property to meet with appraisers, lender and attorneys, mileage, telephone calls, postage, etc.

Uniform Relocation Assistance Appeal of Mr. and Mrs. John A. Brois, 4 OHA 208 (Nov. 12, 1981)

Expenses incidental to transfer of title to the United States, reimbursable under § 303 of the Act and implementing regulations, do not include costs incurred by the grantors of the acquired property for title investigation work to satisfy objections to the title and hasten issuance of title insurance to the United States.

Uniform Relocation Assistance Appeal of Mr. and Mrs. John R. Larsen & Mr. and Mrs. Louis F. Larsen, 4 OHA 272 (Apr. 16, 1982)

Expenses incidental to transfer of title to the United States, reimbursable under § 303(1) of the Act and implementing regulations, do not include appraisal fees, attorney's fees and miscellaneous personal expense items such as telephone costs, stationery, postage, etc.

Uniform Relocation Assistance Appeal of Mr. Kenneth J. Kubat, Executor of the Estate of William Kubat (Deceased), 5 OHA 58 (Nov. 9, 1982)

Where certain expenses arising out of the transfer of land to the United States are not provided for as part of the relocation assistance authorized by the Act, they must be provided for as part of the negotiations for the acquisition of the property, or else they must be borne by the seller.

Uniform Relocation Assistance Appeal of Philip M. & Cynthia K. Hosay, 5 OHA 175 (Sept. 15, 1983)

Expenses incidental to transfer of title to the United States, reimbursable under sec. 303 of the Act and implementing regulations, do not include additional real estate taxes incurred by the grantor of the acquired property because of the disqualification of that land from a special use assessment.

Uniform Relocation Assistance Appeal of Juanita M. O'Rourke, 5 OHA 300 (Apr. 16, 1984)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM REAL PROPERTY ACQUISITION POLICY--Continued

Expenses Incidental to Transfer of Title to the United States--Continued

Expenses incidental to transfer of title to the United States, reimbursable under 42 U.S.C. § 4653 (1982), and implementing regulations, do not include increased interest costs on loans affecting mortgaged property not conveyed to the United States, costs for travel and various title company charges involved in preparing and obtaining documents.

Uniform Relocation Assistance Appeal of Hugo W. Schoellkopf III (Mr. & Mrs.), 5 OHA 342 (July 31, 1984)

UNIFORM RELOCATION ASSISTANCE

Generally

Qualification as a "displaced person," in accordance with 42 U.S.C. § 4601(6) (1976) and 41 CFR 114-50.201(f), may be established by a showing that the claimant moved personal property from real property acquired from the claimant by the United States, as a result of such acquisition.

Uniform Relocation Assistance Appeal of James Karl Lothmann, 4 OHA 86 (Oct. 31, 1980)

A request for relocation assistance benefits, filed approximately 5 years after displacement from the Government-acquired property, is properly denied as untimely under Departmental regulation § 114-50.107-1.

Uniform Relocation Assistance Appeal of BJC/Knowles Architects Associates, 4 OHA 189 (Aug. 6, 1981)

Where the claimant leased and began occupancy of the subject property after its acquisition by the Government had been completed, and subsequently claimant moved from the property when the validity of its lease was questioned, the claimant did not move as a result of the acquisition of the property by the Government, and accordingly is not eligible for benefits under Title II of the Act and Departmental regulations.

Uniform Relocation Assistance Appeal of Safford Marine, Inc., 4 OHA 211 (Nov. 24, 1981)

Where the claim for additional moving and related costs was filed after the time limitation prescribed by Departmental regulations implementing the Relocation Act, and the record as a whole does not justify an extension of time for filing an additional claim, the claim is properly denied.

Uniform Relocation Assistance Appeal of E. Ray Sinclair, 4 OHA 216 (Jan. 4, 1982)

Where judgment required the claimant to remove certain fixtures to the real property, to which claimant had retained removal rights, and claimant failed to remove such property within the required time, such removal rights are properly treated as abandoned and the property remains in the United States.

Uniform Relocation Assistance Appeal of D. Stasato & Co., Inc., 4 OHA 221 (Jan. 5, 1982)

UNIFORM RELOCATION ASSISTANCE--Continued

Generally--Continued

Where claimant began occupancy of the acquired property after the acquisition by the Government had been completed, his subsequent move from the property is not as a result of the acquisition by the Government; hence claimant is not a displaced person, and is not eligible for benefits under the Act and Departmental regulations.

Uniform Relocation Assistance Appeal of Mike B. Gagliano and B. Roche-Andresen, 4 OHA 252 (Mar. 31, 1982)

Where a Federal payment for the acquisition of a pipeline easement is used to retire an existing mortgage on a residential property, and the owner of the property later decides to place a new mortgage on it, incurring a higher rate of interest, the owner is not entitled to reimbursement under the Act for the difference in interest rates because no actual displacement was involved.

Uniform Relocation Assistance Appeal of H. M. & Leola Cochran, 5 OHA 221 (Nov. 3, 1983)

Only displaced persons under the Act are entitled to moving expenses and tenants by sufferance are not displaced persons.

Uniform Relocation Assistance Appeal of Don Fraser, Kenneth Thola, James Brown, & Patrick Baxter, 5 OHA 245 (Jan. 27, 1984)

A claim for reimbursement of expenses incurred for extension of an electric powerline across the portion of a tract of real property not acquired by the United States, to a site on that property to which the claimants relocated a hunting cabin formerly on the Government-acquired portion of the property, is properly disallowed on the basis that the Act and the implementing regulations do not provide for such payment.

To the extent any information given by Bureau personnel may have suggested to claimants that relocation assistance benefits would be allowable for expenses incurred in extending an electric powerline across the portion of real property not acquired by the United States, to a site on that property to which the claimants relocated a hunting cabin formerly on the Government-acquired portion of the property, such advice was erroneous and cannot serve as a basis for creating any rights in the claimants which are not authorized by law.

Uniform Relocation Assistance Appeal of Boyd F. & Maxwell T. Henry (Messrs.), 5 OHA 325 (May 18, 1984)

Moving and Related Expenses

Generally

Where the record evidence shows persons displaced from lands acquired for the Big Cypress National Preserve were allowed a moving expense payment in an amount determined to be the amount of reasonable expenses which would have been incurred in a move from the acquired site to a replacement site approximately 50 miles beyond the boundary of the Preserve, the determination will be affirmed as in conformity with

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Generally--Continued

provisions of § 202(a)(1) of the Act and the Department's implementing regulations.

Uniform Relocation Assistance Appeal of Mr. Gomer Jones, 3 OHA 173 (Jan. 31, 1980)

Expenses for wiring and installation of water softener facilities in the replacement dwelling are not reimbursable where they are shown to represent costs for adding facilities to the replacement dwelling rather than costs for reestablishment and reconnection of such facilities for personal property owned by the claimants and moved from the acquired dwelling to the replacement dwelling.

Withdrawal, at the hearing, of a claim for damage in moving of a printing press from the acquired dwelling to the replacement dwelling will be accepted since such expenses are not reimbursable. The Department's regulations provide for reimbursement of expenses incurred for insurance premiums covering damage of personal property while in transit.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Harold W. Steffey, 3 OHA 179 (Mar. 13, 1980)

Where the record evidence shows the claimants have established their entitlement to reimbursement for actual reasonable moving and related expenses in an amount greater than that authorized by the Park Service in the decision appealed from, the decision will be modified to increase the allowance for such expenses, as appropriate.

Reimbursement is not allowable for costs of storage of certain tools and farm equipment where no evidence is submitted to show that such costs were paid.

Estimated losses for damage to an arc welder and a fanning mill in the process of moving will not be allowed where the arc welder was dropped during the process of loading it on a pickup and the claimants have not established that the damage to the fanning mill has impaired its usefulness.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Jesse W. Barringer, 4 OHA 1 (Apr. 23, 1980)

Where the record indicates reimbursement has been allowed for actual reasonable moving and related expenses under § 202(a) of the Act, an additional payment cannot be authorized in the absence of evidence establishing entitlement thereto.

Uniform Relocation Assistance Appeal of Mr. William B. Allison, Executor of the Estate of Amie B. Allison (Deceased), 4 OHA 117 (Feb. 13, 1981)

Where the claimants have failed to establish entitlement to reimbursement for actual reasonable moving and related expenses in an amount greater than that authorized by the Park Service in the decision appealed from, the decision will be affirmed.

Uniform Relocation Assistance Appeal of Mr. Lawson Little, 4 OHA 156 (Apr. 17, 1981)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Generally--Continued

Where the record on appeal establishes the claimant's entitlement to payment in an amount larger than that determined by the Park Service to be authorized under § 202 of the Act in lieu of actual reasonable expenses that would have been required to relocate an outdoor advertising sign structure from Government-acquired real property, the determination of the Park Service will be modified and the larger amount of benefits claimed will be allowed.

Uniform Relocation Assistance Appeal of Mr. Richard M. Meeks, 4 OHA 173 (July 13, 1981)

Reimbursement will be allowed to the displaced homeowner for the estimated reasonable cost of fuel oil left in the acquired dwelling where the record shows such oil was purchased by the homeowner one week before she moved from the acquired property and she was assured by Park Service personnel at that time that the cost would be reimbursable because the Park Service would use the oil in its intended use of the acquired dwelling.

Uniform Relocation Assistance Appeal of Mrs. Josephine Erickson, 4 OHA 184 (July 30, 1981)

Reimbursement is not allowable for costs of moving structures or other improvements in which the displaced person reserved ownership rights.

Where claim includes request for payment of moving expense that is not adequately substantiated by supporting data, the acquiring agency requests additional supporting data, and such additional data are not supplied within a reasonable time, the claim for such expenses is properly denied.

Uniform Relocation Assistance Appeal of D. Stamato & Co., Inc., 4 OHA 221 (Jan. 5, 1982)

Where the record on appeal establishes that claimant failed to remove signboards from property acquired by the Park Service after several notices, and Park Service thereafter properly removed signs as abandoned property, payment of benefits in an amount equal to the actual reasonable expense required to relocate such signs was proper under sec. 202 of the Act and implementing Departmental regulations.

Uniform Relocation Assistance Appeal of Bick Outdoor Advertising Co., 4 OHA 234 (Feb. 5, 1982)

Where claimant has not established his claim with sufficient evidence, and where decision of the Bureau official below is supported by the record, the decision will be affirmed.

Uniform Relocation Assistance Appeal of Mike R. Gogliano and R. Roche-Andresen, 4 OHA 252 (Mar. 31, 1982)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Generally--Continued

Where the record evidence shows the claimant has not established his entitlement to payment for reasonable moving and related expenses in an amount greater than that authorized by the Fish and Wildlife Service in the decision appealed from, the decision will be affirmed.

Uniform Relocation Assistance Appeal of Richard R. Catto, 4 OHA 278 (June 1, 1982)

Where the cost of moving a low-value, high-bulk item of personal property would not be disproportionate to its value, the agency shall make payment to the displaced person for the actual direct losses of that property as a result of discontinuing a business operation, but the payment shall not exceed the reasonable expenses that would have been required to relocate the property, in accordance with 41 CFR 114-50.601(b).

Uniform Relocation Assistance Appeal of Mr. and Mrs. Forrest L. Harpon, 5 OHA 9 (Aug. 11, 1982)

Costs of a survey of boundary lines of a replacement business property are not reimbursable as moving and related expenses under § 202 of the Act.

Expenses for temporary storage of some law books will be reimbursed to the extent such are shown by the record on appeal to be reasonable and necessary expenses in connection with the relocation of a law office.

Expenses claimed for loss of some secretarial services during the period of the move of a law office are nonallowable on the basis that the Act and the Department's implementing regulations do not provide for such payment.

Where the contract for moving a law office failed to specify requirements for reshelving of books and closed files in the library at the replacement site and the displacee was obliged to organize and reshelve the books and closed files himself, he may be reimbursed for reasonable additional moving costs.

Claimed losses of income resulting from errors and omissions in the telephone directory are not compensable as moving and related expenses under the Act and the implementing regulations.

Reimbursement claimed for the cost of a used window air-conditioner and for expenses incurred for cleaning, painting and installing it in the replacement property, are costs for an improvement to the replacement property and as such they are not allowable under regulations of the Department implementing the Act.

Expenses for purchase and installation of new carpeting in the replacement property, for replacing sidewalk and steps in front of that property, and for off-street parking while parking area was under construction on the replacement property, are expenses for and in connection with improvements to the relocation property and are not reimbursable under the Act and the implementing regulations as moving and related costs.

Trash hauling costs are not reimbursable for hauling items out of the relocation site to make the site ready for occupancy; nor are additional costs

allowable for hauling items out of the Government-acquired site where the contract with the movers already provided for such trash removal services.

Uniform Relocation Assistance Appeal of Mr. Nelson Howarth, 5 OHA 40 (Oct. 22, 1982)

Reimbursable moving expenses under § 202(a)(1) of the Act and implementing regulations of the Department do not include costs of preparing an application for moving expenses.

Uniform Relocation Assistance Appeal of Gregory P. Kurtz (President), Kurtz Brothers, Inc., 5 OHA 84 (Jan. 20, 1983)

Where a business operation on acquired lands is discontinued rather than relocated the displacees may be reimbursed for actual direct losses of tangible personal property in an amount not to exceed the amount of the reasonable expenses required to relocate such property.

Reimbursement is allowable under the Act and the Department's regulations for reasonable expenses in searching for a replacement business but not for more than $500 in the absence of circumstances warranting a larger payment.

Uniform Relocation Assistance Appeal of Donald E. Knox & Kenneth A. Knox, 5 OHA 87 (Feb. 9, 1983)

Payment may be made in accordance with 41 CFR 114-50.601(b) for a license to remove rock and boulders from land not acquired by the United States where the license was part of a business located on other real property that is acquired.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Forrest L. Harrod, 5 OHA 96 (Feb. 25, 1983)

Where the record evidence shows the claimants have not established their entitlement to payment for reasonable moving and related expenses in an amount greater than that authorized by the Park Service in the decision appealed from, the decision will be affirmed.

Uniform Relocation Assistance Appeal of Mr. Virgil S. Hollis, 5 OHA 104 (Mar. 15, 1983)

The Department may properly require claims forms to be executed as a condition of providing relocation assistance.

Relocation assistance does not include payments for unspecified personal damages resulting from a Federal real property acquisition.

Uniform Relocation Assistance Appeal of Roy Sager, 5 OHA 143 (Aug. 19, 1983)

A tenant in occupancy of acquired property at the time of its purchase by the United States is eligible for payment of allowable moving costs and related expenses under sec. 202(a) of the Act and implementing regulations of the Department.

Payment is allowable under sec. 202(a)(2) of the Act and the Department's implementing regulations for the reasonable in-place value of tenant-owned improvements on lands acquired by the United States, computed with reference to the remaining useful life of the property and without regard to the length of the term of the lease, where the cost of moving the property is shown to be prohibitive and there is no present market for its sale.

Expenses incurred for additions and improvements to the replacement business property rather than as costs for reestablishment and reconnection of facilities are not reimbursable as actual reasonable expenses incurred in relocating personal property under sec. 202(a)(1) of the Act and the Department's regulations.

Costs of advertising for new students and for an open house reception at the replacement school site are not reimbursable moving expenses under sec. 202(a)(1) of the Act and the Department's regulations.

Reimbursable moving and related expenses under sec. 202(a)(1) of the Act and the Department's regulations include costs for telephone calls to coordinate certain aspects of the move and costs for obtaining copies of a document to meet requirements for operating the displaced business at its replacement location.

Where the claimant has not submitted evidence to establish its entitlement to searching expense benefits in an amount greater than that authorized by the Park Service in the decision appealed from, the Park Service determination will be affirmed.

Uniform Relocation Assistance Appeal of the Maguib School of Sculpture, Inc., 5 OHA 148 (Sept. 13, 1983)

Where the record on appeal establishes the claimant's entitlement to payment in an amount larger than than determined by the Park Service to be authorized under sec. 202 of the Act in lieu of actual reasonable expenses that would have been required to relocate an outdoor advertising sign structure from Government-acquired property, the determination of the Park Service will be modified and the larger amount of benefits claimed will be allowed.

Uniform Relocation Assistance Appeal of Whiteco Metrocom, 5 OHA 166 (Sept. 14, 1983)

General allegations of misrepresentation on the part of the Government's agents, without proof, are insufficient to justify reopening the issue of severance damages where the land in question has already been acquired by the Government.

A quitclaim deed is for the precise purpose of releasing or conveying any title, interest, or claim the grantor has in the premises, and a grantor cannot later nullify its effects by claiming that he did not realize its implications at the time he signed it.

Uniform Relocation Assistance Appeal of Donald P. Heffner, 5 OHA 168 (Sept. 15, 1983)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Generally--Continued

Reasonable self-moving costs are generally limited by the regulations to the costs that would be incurred in a comparable commercial move. There is no authority to pay any greater amount in the absence of special justification.

Theft losses are payable only if incurred in the actual process of moving and only if insurance to cover such losses is not available.

Uniform Relocation Assistance Appeal of Eastern Pennsylvania Lutheran Camp Corp., 5 OHA 201 (Oct. 4, 1983)

Where the costs of a self-move appear reasonable in relation to either commercial moving costs or commercial equipment rental, they may be allowed.

The inability of a displaced business to make use of old stationery may constitute an actual moving expense under 42 U.S.C. § 4622(a)(1) and, therefore, may be compensable to the extent that the loss is deemed reasonable.

Uniform Relocation Assistance Appeal of Lang-Miller, 5 OHA 205 (Oct. 4, 1983)

Where the Government does not show that a person's business was unlawful at the time it was conducted, the person may claim relocation benefits for personal property generated by that business.

Rock severed from the ground it is a part of becomes personal property for which a claim may be allowed.

Uniform Relocation Assistance Appeal of Mr. & Mrs. Forrest L. Harmon, 5 OHA 232 (Jan. 12, 1984)

Only displaced persons under the Act are entitled to benefits. Only one whose property has been acquired or received a written order to vacate is a displaced person.

Uniform Relocation Assistance Appeal of Katherine A. Fiske et al., 5 OHA 263 (Feb. 8, 1984)

A tenant who moves before being ordered to do so is not a displaced person under the Act and only displaced persons are entitled to relocation benefits.

Uniform Relocation Assistance Appeal of Theodore L. & Leona I. Jans, 5 OHA 293 (Mar. 21, 1984)

Where an advertising sign was moved from the acquired land by the claimant in a self-move, the claimant is entitled to payment for the actual reasonable moving costs but not more than the estimated costs of moving the sign by a commercial mover.

Uniform Relocation Assistance Appeal of Cliff Park, Inc., 5 OHA 296 (Apr. 10, 1984)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Moving Expense Allowance

Generally

Where a claimant has not established that he is entitled to more than the sum he applied for and received as moving expense and dislocation allowances under § 202 of the Act, in lieu of actual reasonable moving and related expenses, no change is warranted in the determination made.

Uniform Relocation Assistance Appeal of Mr. Ray E. Davis, 4 OHA 20 (June 23, 1980)

Where the record shows the residence on the acquired lands was a part-time residence and not the permanent or customary and usual abode of the claimants, the claimants are not qualified to receive a moving expense allowance and a dislocation allowance under sec. 202(b) of the Act in lieu of actual reasonable moving and related expenses authorized by sec. 202(a) of the Act.

Uniform Relocation Assistance Appeals of Marvin E. Hepner & Ruth Hepner, 5 OHA 270 (Feb. 29, 1984)

Payments in Lieu of Moving and Related Expenses

Generally

Eligibility for payments in lieu of moving and related expenses, pursuant to 41 CFR Subpart 114-50.7, depends on the nature of the claimant's status as a displaced person, and when the status is not shown to be related to displacement from a farm operation or business the claimant is not eligible for payments pursuant to 41 CFR 114-50.702 through 114-50.703.2.

Uniform Relocation Assistance Appeal of James Karl Lothmann, 4 OHA 86 (Oct. 31, 1980)

Payment may not be made in accordance with 41 CFR 114-50.703 absent acquisition of real property or written order to vacate such real property.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Forrest L. Harmon, 5 OHA 96 (Feb. 25, 1983)

Fixed Payment(s)

Taking of Business Operation

A claim for a fixed payment under sec. 202(c) of the Act for displacement from a business on acquired lands, in lieu of actual reasonable moving and related expenses under sec. 202(a) of the Act, was properly determined on the basis of average annual net earnings of the business as shown in the claimants' Federal income tax returns for the applicable period.

Uniform Relocation Assistance Appeal of Mr. and Mrs. James H. Rose, 3 OHA 191 (Mar. 24, 1980)

Uniform Relocation Assistance Appeal of Mr. and Mrs. Alfred Mason, 4 OHA 36 (Aug. 6, 1980)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Moving and Related Expenses--Continued

Payments in Lieu of Moving and Related Expenses --Continued

Fixed Payment[a]--Continued

Taking of Business Operation--Continued

Where the claimants fail to establish entitlement to more than the minimum fixed payment allowed by the Park Service pursuant to § 202(c) of the Act for displacement from a business, in lieu of actual reasonable moving and related expenses under § 202(a) of the Act, the Park Service determination will be affirmed.

Uniform Relocation Assistance Appeal of Mr. and Mrs. W. H. Wilson, 4 OHA 192 (Aug. 20, 1981)

A claim for a fixed payment under § 202(c) of the Act for displacement from a business, in lieu of actual reasonable moving and related expenses under § 202(a) of the Act, is properly disallowed where the claimant fails to establish that the business cannot be relocated without a substantial loss of its existing patronage.

Uniform Relocation Assistance Appeal of John P. Friel, Esq., 4 OHA 244 (Mar. 8, 1982)

A fixed payment in lieu of actual reasonable moving and related expenses is properly allowed for the minimum sum of $2,500, specified in the Act, where the record shows the business was operated at a loss for the 2 taxable years immediately preceding the year in which the United States acquired the property, all else being regular.

Uniform Relocation Assistance Appeal of George E. Keath (President), Ochopee L P Gas Co., Inc., 5 OHA 93 (Feb. 14, 1983)

An essential purpose of the fixed payment in lieu of actual moving and related expenses is to compensate a business for the loss of its existing patronage at the acquired site. Where no such patronage is satisfactorily established, denial of the fixed payment is proper.

Uniform Relocation Assistance Appeal of Lapp-Miller, 5 OHA 205 (Oct. 4, 1983)

Uniform Relocation Assistance Appeal of Donald H. Travis, 5 OHA 212 (Oct. 21, 1983)

A claim for a fixed payment under sec. 202(c) of the Act for displacement from a business, in lieu of actual reasonable moving and related expenses under sec. 202(a) of the Act, is properly disallowed where the claimants fail to establish that the business cannot be relocated without a substantial loss of its existing patronage.

Uniform Relocation Assistance Appeals of Marvin E. Hepner & Ruth Hepner, 5 OHA 270 (Feb. 29, 1894)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Payments in Lieu of Moving and Related Expenses

Where a claimant elects to receive a moving expense allowance and a dislocation allowance under § 202(b) of the Act, in lieu of payments authorized by § 202(a) of the Act, an additional claim under § 202(a) of the Act for reimbursement of certain actual moving and related expenses is properly disallowed.

Uniform Relocation Assistance Appeal of Mr. Donald J. Daleske, 4 OHA 101 (Jan. 8, 1981)

Replacement Housing Payment for Homeowners

Generally

The comparability study undertaken by the agency to determine replacement housing differential payment was based on incorrect data regarding lot size of the agency acquired dwelling. The study, which placed importance on lot comparisons, therefore failed to include replacement dwellings most representative of the dwelling acquired.

The comparability study undertaken by the agency to determine replacement housing differential payment failed to include waterfront properties even though the agency acquired property possessed waterfront and similar properties could be found within a 50-mile radius of the acquired property.

The "comparable replacement dwelling" relied upon by the agency in computing a replacement housing differential payment to the claimants resulted in an unjust and inequitable award. Because the "comparable replacement dwelling" used by the agency is much smaller in lot size than the acquired dwelling and lacks waterfront characteristics, it cannot be considered "functionally equivalent and substantially the same as the acquired dwelling" as that term is used in the Department's regulations.

Uniform Relocation Assistance Appeal of Mr. and Mrs. F. Lawrence Harmon, 3 OHA 168 (Jan. 30, 1980)

Where the record shows that the replacement housing differential payment authorized by the Park Service represents an amount which, when added to the acquisition cost of the dwelling acquired, meets the reasonable cost of a comparable replacement dwelling which is decent, safe and sanitary, adequate to accommodate the displaced persons, reasonably accessible to public services and places of employment, available on the private market, and otherwise in compliance with regulatory standards of the Department, the Park Service determination will be affirmed.

A claim under sec. 203(a)(1)(B) of the Act for reimbursement of costs for a loan origination fee incurred by the claimants in purchasing their replacement dwelling is properly disallowed where the record shows the acquired dwelling was not encumbered by a mortgage.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Harold W. Steffen, 3 OHA 179 (Mar. 13, 1980)

For the purpose of a determination of what constitutes a "comparable replacement dwelling," made pursuant to sec. 203(a)(1)(A) of the Act and 41 CFR 114-50.201(d), it is not necessary that the replacement dwelling be identical to the one taken. If the lot, neighborhood, and dwelling utilized as the standard for

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Replacement Housing Payment for Homeowners--Continued

Generally--Continued

comparison are substantially comparable, the comparability requirement has been met.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Gilbert Scheidt, 4 OHA 15 (June 11, 1980)

Where the record shows replacement housing supplement payment benefits allowed under § 203 of the Act represent an amount which, when added to the acquisition cost of the dwelling acquired, equals the cost of a comparable replacement dwelling, including expenses incurred by the displaced person for closing costs incident to the purchase of the replacement dwelling, the allowance will be affirmed.

Uniform Relocation Assistance Appeal of Mr. Ray K. Davis, 4 OHA 20 (June 23, 1980)

Where the record evidence shows that the dwelling on the acquired lands was a seasonal or part-time residence and not the permanent or customary and usual abode of the claimants, the claimants are ineligible to receive replacement housing payment benefits under § 203 of the Act and the Department's implementing regulations.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Raymond C. Walsh, 4 OHA 39 (Aug. 12, 1980)

Where the record shows the Park Service allowed less than the proper amount for replacement housing differential costs under § 203 of the Act, as a result of utilizing in its computation of such benefits only 95% rather than 100% of the list price of the dwelling found by the Park Service, after a housing survey and analysis, to be the most comparable replacement dwelling available at the time of the claimants' displacement from the acquired dwelling, the Park Service determination will be modified to increase the allowable housing differential costs as indicated to be proper.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Duval Evans, 4 OHA 107 (Jan. 23, 1981)

Where the record shows the claimant has received the allowable payment for replacement housing differential costs and incidental expenses under § 203 of the Act, an additional claim for reimbursement of expenses for repairs to the replacement dwelling, incurred 16 months after the claimant moved from the acquired property, is properly denied.

Uniform Relocation Assistance Appeal of Mrs. Jean Holecek, 4 OHA 123 (Feb. 20, 1981)

For purposes of a replacement housing payment, the term "dwelling" includes both improvements and a homesite.

Uniform Relocation Assistance Appeal of Robert O. and Joanne M. Lang, 4 OHA 131 (Mar. 12, 1981)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Replacement Housing Payment for Homeowners--Continued

Generally--Continued

Where the record shows that the replacement housing differential payment authorized by the Park Service represents an amount which, when added to the acquisition cost of the dwelling acquired, meets the reasonable cost of a comparable replacement dwelling which is decent, safe and sanitary, adequate to accommodate the displaced persons, reasonably accessible to public services and places of employment, available on the private market, and otherwise in compliance with regulatory standards of the Department, the Park Service determination will be affirmed.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Franklin D. Speed, 4 OHA 143 (Apr. 9, 1981)

Uniform Relocation Assistance Appeal of Mr. and Mrs. Marvin Sherman, 4 OHA 199 (Oct. 22, 1981)

Displaced homeowners who purchased a replacement dwelling after expiration of the one-year period provided in § 203(a)(2) of the Act, are properly held to be ineligible for homeowners' replacement housing payment benefits.

The amounts payable for property acquisitions and for relocation assistance benefits are separate and distinct entitlements, and there is no authority in the Act for increasing the amount paid for the acquired property to make up for the displaced persons' ineligibility for homeowners' replacement housing payment benefits.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Jesse W. Angle, 4 OHA 160 (Apr. 29, 1981)

Where the record shows the claimant has received the allowable payment for replacement housing differential costs and incidental expenses under § 203 of the Act, an additional claim for reimbursement of expenses for certain repairs and improvements to the replacement dwelling cannot be authorized.

Uniform Relocation Assistance Appeal of Mrs. Josephine Erickson, 4 OHA 184 (July 30, 1981)

Where the record shows the Park Service allowed less than the proper amount for replacement housing differential costs under § 203 of the Act, as a result of utilizing in its computation of such benefits an adjusted price rather than the list price of the dwelling found by the Park Service to be the most comparable replacement dwelling available at the time of the claimants' displacement from the acquired dwelling, the Park Service determination will be modified to increase the allowable housing differential costs as indicated to be proper.

Uniform Relocation Assistance Appeal of Mr. and Mrs. James D. Cahill, 4 OHA 229 (Jan. 29, 1982)

Where the record shows the claimants have received the allowable payment for replacement housing differential costs and incidental expenses under § 203 of the Act and the Department's implementing regulations, the determination appealed from will be affirmed.

Uniform Relocation Assistance Appeal of Mr. and Mrs. Dan J. Biro, 4 OHA 240 (Feb. 16, 1982)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Replacement Housing Payment for Homeowners--Continued

Generally--Continued

A determination disallowing a claim for replacement housing differential costs under sec. 203(a)(1)(A) of the Act will be affirmed where the evidence shows a comparable replacement dwelling which was decent, safe and sanitary, adequate to accommodate the displaced persons, reasonably accessible to public services and places of employment, available on the private market, and otherwise in compliance with regulatory standards of the Department, could have been purchased at the time of the claimants' displacement for less than the purchase price of the Government-acquired dwelling.

Uniform Relocation Assistance Appeal of Mr. and Mrs. James E. Donahue, 5 OHA 1 (June 18, 1982)

Where substantial evidence of record supports a conclusion that a displaced person claiming homeowner's replacement housing payment benefits under § 203 of the Act is entitled instead to replacement housing benefits under § 204 of the Act, as a displaced tenant, the case will be remanded for a determination of the benefits allowable to the claimant under § 204 of the Act.

Uniform Relocation Assistance Appeal of Mrs. Mildred E. Knox, 5 OHA 60 (Dec. 6, 1982)

Additional replacement housing supplement benefits will be allowed, within the statutory limitation, where the evidence of record establishes the additional cost of purchasing a comparable replacement dwelling in excess of the cost estimated by the Government.

Uniform Relocation Assistance Appeal of Mr. & Mrs. Robert Valcanoff, 5 OHA 180A (Sept. 28, 1983)

Where the Government takes a 3-year option on a piece of residential property in 1969 and the homeowner relocates the same year and subsequently leases the property prior to the Government's actual acquisition of it in 1972, the tenant and not the homeowner is entitled to whatever replacement housing benefits may be allowable.

Uniform Relocation Assistance Appeal of Henry J. Meyer & Doris A. Meyer, 5 OHA 224 (Nov. 7, 1983)

Where a Federal agency has determined that the former owner of an acquired property was not a full-time resident of the property previous to its acquisition, the burden of proof is on the owner to refute that determination.

Where the occupancy of a dwelling previous to its Federal acquisition is in dispute, substantial weight must be given to utility records and to their interpretation by a competent, impartial source, such as the local power company, that clearly support a contention by the claimant of full-time occupancy of the property during the period in question.

Uniform Relocation Assistance Appeal of Miriam Kinnel, 5 OHA 251 (Feb. 8, 1984)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Replacement Housing Payment for Homeowners--Continued

Generally--Continued

Where the record shows the dwelling on the acquired lands was a part-time residence and not the permanent or customary and usual abode of the claimants, the claimants are ineligible to receive replacement housing payment benefits under sec. 203 of the Act.

Uniform Relocation Assistance Appeals of Marvin E. Hepner & Ruth Hepner, 5 OHA 270 (Feb. 29, 1984)

Waiver of Benefits

Persons who elected to retain a right of use and occupancy of a cabin acquired by the United States are deemed to have waived any replacement housing payment benefits under § 203 of the Act.

Uniform Relocation Assistance Appeal of Mr. Joseph J. Jirik, 4 OHA 11 (May 12, 1980)

A claim for replacement housing benefits is properly disallowed where the claimant sold the property to the Government, reserving a right of use and occupancy of the dwelling thereon for a term of years, and before the expiration of the reserved term of use and occupancy and the claimant's move from the property, the Congress eliminated replacement housing supplement benefits as to this class of claimants.

Uniform Relocation Assistance Appeal of Mr. Paul E. Barney, 5 OHA 53 (Nov. 9, 1982)

Replacement Housing Payment for Tenants and Certain Others

Persons who elected to retain a right of use and occupancy of a cabin acquired by the United States are deemed to have waived any replacement housing payment benefits under § 204 of the Act.

Uniform Relocation Assistance Appeal of Mr. Joseph J. Jirik, 4 OHA 11 (May 12, 1980)

Where claimants subleased or rented space in a house leased by another under an agreement prohibiting subleases or subletting in a location where local zoning regulations proscribed subletting to roomers, and where claimants were not related to their lessor, claimants are not entitled to rental benefits under the Act and Departmental regulations.

Uniform Relocation Assistance Appeal of Kevin Rickard & Robert Winston, 4 OHA 30 (July 2, 1980)

A determination of ineligibility for a rental replacement housing payment under § 204 of the Act will be affirmed where the evidence shows more than one year elapsed from the time the claimant moved from his rental unit on the Government-acquired property to the time he commenced occupancy of his replacement rental unit.

Uniform Relocation Assistance Appeal of Mr. William K. Friedman, 4 OHA 33 (July 30, 1980)

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--Continued

UNIFORM RELOCATION ASSISTANCE--Continued

Replacement Housing Payment for Tenants and Certain Others--Continued

Where the evidence of record shows the average monthly reasonable cost for renting comparable replacement housing, computed under the schedule method, is $41 more than the average monthly rent paid for the residence from which the claimant moved, a rental replacement housing differential payment of $1,968, representing the additional rental costs for a period of 4 years, is proper under § 204(1) of the Act and the Department's regulations.

Uniform Relocation Assistance Appeal of Mr. Donald J. Raleske, 4 OHA 101 (Jan. 8, 1981)

Replacement housing payment benefits under § 204(2) of the Act and the Department's regulations are properly denied where the record shows the claimants purchased their replacement dwelling more than 8 years prior to their displacement from the Government-acquired property.

Uniform Relocation Assistance Appeal of William G. Pitman (Mr. & Mrs.), 5 OHA 333 (June 7, 1984)

WAIVER

In Lower v. Watt, 684 F.2d 957 (D.C. Cir. 1982), and Cayer v. Watt, 720 F.2d 626 (10th Cir. 1983), the amendment and disclaimer of Fred L. Engle, d.b.a. Resource Service Co. was held to be effective to waive the exclusive agency provision that formed part of the company's contract with its clients. The waiver being effective, neither the company nor Engle possessed an interest in a client's offer at the time of a drawing of simultaneously filed oil and gas lease offers so as to invalidate the offer.

Michigan Wisconsin Pipeline Co. (On Reconsideration), Geosearch, Inc., John A. Kochergen, 80 IBLA 317 (May 7, 1984)

WATER AND WATER RIGHTS

GENERALLY

When considering applications for rights-of-way privileges, the Department of the Interior has no power to determine questions of control and appropriation of water rights as between private parties, as such questions are exclusively matters of state law.

East Canyon Irrigation Co., 47 IBLA 155 (May 6, 1980)

Georgene E. Bieck, William L. Bieck, 76 IBLA 45 (Sept. 19, 1983)

The Executive Order of Apr. 17, 1926, reserved the minimum amount of water necessary in springs and waterholes to provide water for the purposes of human and animal consumption. The entire flow of these water sources was not necessarily reserved.

Purposes of Executive Order of April 17, 1926, Establishing Public Water Reserve No. 107, M-36914 (Supp. II), (Feb. 16, 1983) 90 I.D. 81

Desert Survivors, 80 IBLA 111 (Apr. 3, 1984)

WATER AND WATER RIGHTS--Continued

FEDERAL APPROPRIATION

Neither FLPMA nor the Taylor Grazing Act authorizes appropriation of water or provide an independent statutory basis for claims for water uses inconsistent in any way with the substantive requirements of state law.

The United States should comply with the substantive and procedural provisions of state law when acquiring and appropriating water except (1) where Congress or the Executive has reserved land or water for particular Federal purposes; (2) where Congress has clearly mandated that unappropriated water on the public lands is reasonably required for a Federal program or purpose and that water cannot be acquired in a manner conforming to all substantive requirements of state law; (3) the United States is entitled to a priority date as of its historic date of first use where water has been used historically for consumptive beneficial uses recognized by state law but without having conformed to procedural requirements prescribed by state law.

Supplement to Solicitor Opinion No. M-36914, on Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (Supp.) (Jan. 16, 1981) 88 I.D. 253

The National Park Service, Fish and Wildlife Service, Bureau of Land Management and Bureau of Reclamation must follow state substantive and procedural law when appropriating water except in the limited instances where water is necessary to accomplish the original purpose(s) of a Federal reservation or protect the navigation servitude.

Nonreserved Water Rights - United States Compliance With State Law, M-36914 (Supp. I) (Sept. 11, 1981) 88 I.D. 1055

STATE LAWS

When considering applications for rights-of-way privileges, the Department of the Interior has no power to determine questions of control and appropriation of water rights as between private parties, as such questions are exclusively matters of state law.

East Canyon Irrigation Co., 47 IBLA 155 (May 6, 1980)

Georgene E. Bieck, William L. Bieck, 76 IBLA 45 (Sept. 19, 1983)

The United States should comply with the substantive and procedural provisions of state law when acquiring and appropriating water except (1) where Congress or the Executive has reserved land or water for particular Federal purposes; (2) where Congress has clearly mandated that unappropriated water on the public lands is reasonably required for a Federal program or purpose and that water cannot be acquired in a manner conforming to all substantive requirements of state law; (3) the United States is entitled to a priority date as of its historic date of first use where water has been used historically for consumptive beneficial uses recognized by state law but without having conformed to procedural requirements prescribed by state law.

Supplement to Solicitor Opinion No. M-36914, on Federal Water Rights of the National Park Service, Fish and Wildlife Service, Bureau of Reclamation and the Bureau of Land Management, M-36914 (Supp.) (Jan. 16, 1981) 88 I.D. 253

WATER AND WATER RIGHTS--Continued

STATE LAWS--Continued

The National Park Service, Fish and Wildlife Service, Bureau of Land Management and Bureau of Reclamation must follow state substantive and procedural law when appropriating water except in the limited instances where water is necessary to accomplish the original purpose(s) of a Federal reservation or protect the navigation servitude.

Nonreserved Water Rights - United States Compliance With State Law, M-36914 (Supp. I) (Sept. 11, 1981)
88 I.D. 1055

The right to use water from reserved springs and waterholes for any purpose other than the purposes of human and animal consumption must be obtained pursuant to applicable state law.

Purposes of Executive Order of April 17, 1926, Establishing Public Water Reserve No. 107, M-36914 (Supp. II), (Feb. 16, 1983) 90 I.D. 81

Desert Survivors, 80 IBLA 111 (Apr. 3, 1984)

WATER POLLUTION CONTROL
(See also Environmental Quality, Hearings--if included in this Index.)

FEDERAL WATER POLLUTION CONTROL ACT

The exemption under sec. 404(r) for an otherwise Federal project is available for projects receiving contributory financing from state or local entities, provided that the other conditions for the exemption are met and the project remains in Federal control.

Federal Water Pollution Control Act - Sec. 404 Compliance for Projects Funded in Part by State and Local Entities, M-36915 (Supp. I), (June 2, 1983) 90 I.D. 255

WILD AND SCENIC RIVERS ACT

Sec. 9 of the Wild and Scenic Rivers Act withdraws from appropriation under the mining laws the minerals in Federal lands which constitute the bed or bank, or are situated within one-quarter mile of the bank, of any river listed as a potential addition to the Wild and Scenic Rivers System or actually designated as a wild river under the system. Land constituting the bed and banks and within one-quarter mile of the banks of the North Fork of the American River from Cedars to the Auburn Reservoir has been withdrawn from mineral location and entry since Jan. 3, 1975.

Clarence E. Fitzgerald, 55 IBLA 31 (May 28, 1981)

The use of the wild section of a river designated as a wild and scenic river pursuant to the Wild and Scenic Rivers Act of 1968 (Act), 16 U.S.C. § 1271 (1976), for recreational powerboat use is not such an existing right or privilege affecting Federal land so as to be protected by sec. 12(b) of the Act, 16 U.S.C § 1283(b) (1976). 43 CFR 8351.2-1(a) authorized BLM to issue orders restricting recreational use of powerboats on a wild and scenic river.

Walter S. Haas, Jr., 55 IBLA 283 (June 25, 1981)

WILD AND SCENIC RIVERS ACT--Continued

BLM's decision to approve a transfer of a permit for authorized use on the Rogue River, designated as a wild and scenic river pursuant to the Wild and Scenic Rivers Act of 1968, 16 U.S.C. § 1271 (1976), from one commercial outfitter to another is proper where it maintains the 50/50 allocation of river use between commercial outfitters and private boaters.

Wilderness Public Rights Fund, National Organization for River Sports, 63 IBLA 91 (Mar. 31, 1982)

The Bureau of Land Management may properly charge fees for special recreation permits authorizing commercial rafting on the Rogue River, a designated wild and scenic river, under sec. 4(c) of the Land and Water Conservation Fund Act, 16 U.S.C. § 460l-6a(c), and Departmental regulations at 43 CFR Part 8372.

Departmental regulations at 43 CFR Subpart 8372 require that, when the Bureau of Land Management issues special recreation permits authorizing use of special areas such as a designated wild and scenic river, fees must be charged for noncommercial as well as commercial users engaging in the same activity, except to the extent that a user is exempted from paying fees by 43 CFR 8372.4(d).

Rogue River Outfitters Ass'n, Dave Helfrich River Outfitters, Inc., 63 IBLA 373 (Apr. 30, 1982)

WILD FREE-ROAMING HORSES AND BURROS ACT

The Bureau of Land Management may not properly cancel cooperative agreements under the Act of Dec. 15, 1971, as amended, 16 U.S.C. § 1331 (Supp. II 1978), for wild free-roaming horses where there is no evidence that the horses under the agreements were inhumanely treated, only allegations that the assignee inhumanely treated another horse that was in his custody by virtue of a power of attorney under a separate cooperative agreement.

Patrick E. Hammond, 60 IBLA 205 (Nov. 27, 1981)

A decision cancelling a cooperative agreement for private maintenance of wild free-roaming horses will be affirmed on appeal where the record indicates the horses were commercially exploited as rodeo bucking stock in violation of the cooperative agreement and the relevant regulations.

Cecil McCandless et al., 64 IBLA 76 (May 10, 1982)

A cooperative agreement for the private maintenance of livestock under the protection of the Wild Free-Roaming Horses and Burros Act may be summarily canceled by the Bureau of Land Management upon good and sufficient evidence that the terms of the agreement have been violated by depriving the animals of adequate food, water, and health care and/or by subjecting them to inhumane treatment. The deteriorating condition of the animals themselves, and credible reports by third parties of substandard care, constitutes such good and sufficient evidence, and the decision to cancel will be affirmed in the absence of a showing that pursuasive countervailing evidence exists.

Dennis Turnipseed, 66 IBLA 63 (July 29, 1982)

WILD FREE-ROAMING HORSES AND BURROS ACT--Continued

BLM may properly take immediate possession of wild free-roaming horses, in accordance with 43 CFR 4740.4-3(e), where there is sufficient evidence in terms of the physical condition of the animals and the credible reports of third parties that the animals are being inhumanely treated, i.e., that they lack necessary food and shelter, have failed to receive medical treatment, and are subject to substandard animal husbandry practices.

Kathryn E. Spring, 82 IBLA 26 (July 5, 1984)

WILDERNESS ACT

Sec. 603(a) of the Federal Land Policy and Management Act directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

Sierra Club, 53 IBLA 159 (Mar. 12, 1981)

Sierra Club, 54 IBLA 31 (Apr. 6, 1981)

Sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), mandates review by the Secretary only of those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a), 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in sec. 2(c) of the Wilderness Act, 43 U.S.C. § 1131(c) (1976).

Even if a 720-acre nonisland area of public land were considered as exhibiting the wilderness characteristics of size, i.e., of sufficient size as to make practicable its preservation and use in an unimpaired condition, sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), would not require review by the Secretary because such a parcel contains less than 5,000 acres.

Where the Bureau of Land Management's final initial inventory decision states that certain public land is eliminated from wilderness review in that it obviously lacks wilderness characteristics because it is too small to make practicable its preservation and use in an unimpaired condition, that decision will be affirmed in the absence of sufficient reasons to change the result.

Save the Glades Committee, 54 IBLA 215 (Apr. 23, 1981)

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Richard J. Leaumont, 54 IBLA 242 (Apr. 27, 1981)
88 I.D. 490

Oregon Wilderness Coalition, 71 IBLA 67 (Feb. 22, 1983)

WILDERNESS ACT--Continued

While the Board of Land Appeals will give "considerable deference" to Bureau of Land Management designations of Wilderness Study Areas if thorough investigation underlies the Bureau's decision, where an appellant can specifically and convincingly show that there is sufficient reason to change the Bureau's decision, the Board must resolve the issue in favor of appellant. Such is the case where appellant has convinced the Board that the designated Wilderness Study Area is not "wilderness," as that term is described in 16 U.S.C. § 1131(c) (1976), by submitting detailed maps and photographs showing the adverse impact of appellant's open-pit mining operation on the area.

Union Oil Co., 56 IBLA 206 (July 22, 1981)

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Union Oil Co. (On Reconsideration), 58 IBLA 166 (Sept. 28, 1981)

Sec. 603(a) of the Federal Land Policy and Management Act of 1976 directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness. BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Where the record evidences BLM's first-hand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to great deference.

National Outdoor Coalition, 59 IBLA 291 (Oct. 30, 1981)

Sec. 603(a) of the Federal Land Policy and Management Act directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively

WILDERNESS ACT--Continued

regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Bureau of Land Management's practice of designating an area containing roads or other intrusions as a nonwilderness corridor (cherrystem), thereby excluding such area from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful or prohibited practice in fulfilling the inventory phase of the wilderness review program.

C & K Petroleum Co., 59 IBLA 301 (Nov. 3, 1981)

An appellant or intervenor requesting this Board to reverse a Bureau of Land Management decision regarding the inclusion or exclusion of a unit of land as a wilderness study area must show the decision to be based on a clear and specific error of law or fact, otherwise the Board will affirm.

Norrell G. Hastings, 60 IBLA 54 (Nov. 17, 1981)

The Bureau of Land Management may designate an area as a wilderness study area, in accordance with sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), even though it is traversed by a temporary road constructed pursuant to a right-of-way permit granted after the effective date of the Act where BLM has taken actions to ensure that such a grant would not result in permanent impairment of the area for suitability for preservation as wilderness.

California Ass'n of Four-Wheel Drive Clubs, Inc., National Outdoor Coalition, 60 IBLA 240 (Dec. 4, 1981)

Sec. 603(a) of the Federal Land Policy and Management Act of 1976 directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendations as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

Under Organic Act Directive No. 78-61, Change 3, July 12, 1979, the effects of the imprints of man which occur outside an inventory unit are generally factors to be considered during the study phase of the wilderness review program. Imprints of man outside the unit may be considered during the inventory stage only in situations where the imprint is adjacent to the unit and its impact is so extremely imposing that it cannot be ignored, and if not considered reasonable application of inventory guidelines would be lost.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Jacqueline L. McGarva, Cal-Nova Willow Creek Range Improvement Ass'n, 60 IBLA 278 (Dec. 17, 1981)

WILDERNESS ACT--Continued

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

The nonimpairment mandate of sec. 603(c), 43 U.S.C. § 1782(c) (1976), is therefore not applicable to those areas of less than 5,000 acres. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Tri-County Cattlemen's Ass'n, Idaho Cattlemen's Ass'n, 60 IBLA 305 (Dec. 18, 1981)

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Conoco, Inc., et al., 61 IBLA 23 (Dec. 29, 1981)

Where a BLM state office issues a decision adding additional acreage to a wilderness study area in response to a protest which points out that BLM failed to obtain an exception from the Director, BLM, in accordance with Organic Act Directive 78-61, Change 3, July 12, 1979, permitting it to exclude such land because of a failure to satisfy the outstanding opportunity criterion, and the record supports a finding that the unit as a whole satisfies that criterion, the decision to add the acreage will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

San Juan County Comm'n, 61 IBLA 99 (Jan. 4, 1982)

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments

WILDERNESS ACT--Continued

which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

City of Colorado Springs, 61 IBLA 124 (Jan. 15, 1982)

Koch Industries, Inc., 62 IBLA 45 (Feb. 24, 1982)

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of five thousand acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes review of an area for wilderness characteristics prior to an inventory of all public lands.

Where part of a unit designated as a wilderness study area appears not to possess outstanding opportunities for solitude or a primitive and unconfined type of recreation, BLM may consider this factor during its study phase and make any appropriate boundary adjustments. However, the lack of an outstanding opportunity for solitude or a primitive and unconfined type of recreation will not disqualify part of a unit from consideration during the study phase where other parts of the unit have been identified during the inventory phase as meeting the outstanding opportunity criterion.

Petroleum, Inc., 61 IBLA 139 (Jan. 18, 1982)

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

The argument that a wilderness study area would be better utilized for a flood control project is premature during the inventory phase of the wilderness review process. During the study phase, BLM will determine the suitability or nonsuitability of each wilderness study area for wilderness preservation. This determination, made through BLM's land use planning system, will consider all values, resources, and uses of the public lands.

Ruskin Lines et al., 61 IBLA 193 (Jan. 26, 1982)

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding

WILDERNESS ACT--Continued

opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Animal Protection Institute of America, 61 IBLA 222 (Jan. 28, 1982)

A decision of the State Director designating an inventory unit as a wilderness study area will not be disturbed on appeal where the appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. More than mere disagreement with BLM's conclusion is required to reverse its decisions or place a factual matter at issue.

L. J. Cornelius, 61 IBLA 279 (Feb. 2, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Don Coops et al., 61 IBLA 300 (Feb. 3, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

The requirement in sec. 2(c) of the Wilderness Act of 1964, 16 U.S.C. § 1131(c) (1976), that a wilderness possess, inter alia, outstanding opportunities for solitude or a primitive and unconfined type of recreation is properly construed to require outstanding opportunities for either solitude or a primitive and unconfined type of recreation; both need not be present in an inventory unit to allow the unit to enter the study phase of the wilderness review process.

Churchill County Board of Commissioners, 61 IBLA 370 (Feb. 17, 1982)

WILDERNESS ACT--Continued

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Frank Vaughn, 61 IBLA 387 (Feb. 18, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Walter E. Bossit, 62 IBLA 99 (Mar. 1, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

State of Nevada et al., 62 IBLA 153 (Mar. 5, 1982)

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusion on that criterion.

Sierra Club, Utah Chapter, 62 IBLA 263 (Mar. 15, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Walter Oil Co., 62 IBLA 274 (Mar. 15, 1982)

WILDERNESS ACT--Continued

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusion on that criterion.

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Committee for Idaho's High Desert, 62 IBLA 319 (Mar. 22, 1982)

Organic Act Directive 78-61, Change 3 (July 12, 1979, at p. 3), specifies that as a general rule the boundary of a wilderness inventory unit is to be determined based on an evaluation of the imprints of man within the unit.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Organic Act Directive 78-61, Change 2 (June 28, 1979, at p. 5), specifies that BLM must evaluate the cumulative effect of minor imprints of man on an inventory unit. When multiple imprints of man are considered to be substantially noticeable and the decision has been made to eliminate a group of these imprints, natural portions of the unit, which are located between the individual imprints of man, must not be automatically excluded.

Sierra Club et al., 62 IBLA 367 (Mar. 24, 1982)

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Idaho Cattlemen's Ass'n, Bennett Hills Grazing Ass'n, 63 IBLA 30 (Mar. 26, 1982)

WILDERNESS ACT--Continued

When the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Cation Steens Corp., The Victoria Co., 63 IBLA 85 (Mar. 31, 1982)

Sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), mandates review by the Secretary only of those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a), 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in sec. 2(c) of the Wilderness Act, 43 U.S.C. § 1131(c) (1976).

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

John W. Black et al., 63 IBLA 165 (Apr. 6, 1982)

"Public lands." Reclamation withdrawn lands on which there are no authorized or constructed reclamation projects are administered by the Bureau of Land Management under a memorandum of agreement between the Bureau of Reclamation and Bureau of Land Management (Mar. 1972). In the absence of contrary language in an order withdrawing lands for reclamation purposes, reclamation withdrawn lands which do not have authorized or constructed projects on them are "public lands" within the meaning of secs. 103(e) and 603(a) of the Federal Land Policy and Management Act of 1976.

During the study phase of the wilderness review process, BLM will consider all values, resources, and uses of the lands within a wilderness study area.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

George Azar, 63 IBLA 172 (Apr. 8, 1982)

In order to enter the study phase of the wilderness review process, an inventory unit need not be free of all intrusions or imprints of man. Sec. 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires only that an area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may

WILDERNESS ACT--Continued

include size, natural screening, and the ability of the user to find a secluded spot.

Marvin Cooey et al., 63 IBLA 208 (Apr. 12, 1982)

Don S. Orlando et al., 64 IBLA 7 (May 4, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Inyo County Board of Supervisors, 63 IBLA 321 (Apr. 27, 1982)

Inventory units of the public lands under 5,000 acres in area are properly excluded from the intensive inventory phase of BLM's wilderness review process, because such lands clearly and obviously do not meet the criteria for designation as a wilderness study area.

California Wilderness Coalition et al., 63 IBLA 330 (Apr. 28, 1982)

Where the entire mineral estate underlying all or a portion of several wilderness inventory units, with the attendant rights of entry, access, occupation, exploration, development, and improvement of the surface, is owned in fee simple by a private corporation, the mineral estate is a "vested right" as distinguished in public law terminology from a "valid existing right" and, being protected by Constitutional guarantees, is immune from denial or extinguishment by the exercise of Secretarial discretion or regulation. It is legally beyond the authority of the Secretary to fulfill the mandates of the Federal Land Policy and Management Act of 1976 and the Wilderness Act to manage such lands for their protection and preservation as wilderness, and the inclusion of such lands in designated wilderness study areas is error.

Santa Fe Pacific Railroad Co., 64 IBLA 27 (May 6, 1982)

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of 5,000 acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes a review of the public lands for wilderness characteristics prior to a multiresource inventory of the public lands.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless"

WILDERNESS ACT--Continued

adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

An inventory unit must qualify as having wilderness characteristics without considering rehabilitation potential, i.e., rehabilitation should not be the basis for concluding that wilderness values exist in a unit. Rehabilitation potential should be considered only for those imprints of man that exist within a unit but are not so significant as to automatically disqualify the unit or portion of a unit.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

Asarco, Inc., et al., 64 IBLA 50 (May 6, 1982)

An appellant seeking reversal of a decision to include land in a wilderness Study Area must show that the decision appealed from was premised on either a clear error of law or a demonstrable error of fact.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrysteas), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

It is not proper to exclude land from a wilderness study area merely because there has been no consideration of its potential mineral value. The mineral potential of any tract is to be considered in the study phase rather than the inventory phase of the wilderness review process in order to move more carefully to determine the effect of a permanent wilderness designation on such values.

A wilderness study area designation will not be overturned on appeal on the basis of an appellant's claim that roads exist in the area, in the absence of allegations that mechanical improvements or mechanical maintenance has taken place on such routes.

P. H. Martin, 64 IBLA 307 (June 8, 1982)

WILDERNESS ACT--Continued

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference and may not be overcome by expressions of simple disagreement.

A state director's decision designating an inventory unit as a wilderness study area apparently on the strength of conclusory unsupported public opinion statements will be reversed where BLM's firsthand assessment shows that the unit in question did not possess the requisite outstanding opportunity for solitude or for a primitive and unconfined type of recreation.

Conoco, Inc., 65 IBLA 84 (June 23, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities, opportunities for solitude, or primitive and unconfined recreation, are entitled to considerable deference.

Where, during the pendency of an appeal involving the protest of the designation of land units as WSA's, the Board issues a decision in another case involving the same units in which it holds that BLM's designation of these units as WSA's is error, and thereby, achieves the result sought by the appellant whose appeal is pending, the issue is moot and the appeal is dismissed.

Arizona State Ass'n of 4-Wheel Drive Clubs, 65 IBLA 126 (June 28, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities, opportunities for solitude, or primitive and unconfined recreation, are entitled to considerable deference.

Carl W. Clark, 65 IBLA 153 (June 29, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for

WILDERNESS ACT--Continued

wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find seclusion.

Gilbert W. Daily, 65 IBLA 223 (July 9, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities is entitled to considerable deference.

The argument that a wilderness study area would be better utilized for oil and gas development is premature during the inventory phase of the wilderness review process. During the study phase, BLM will determine the suitability or nonsuitability of each wilderness study area for wilderness preservation. This determination, made through BLM's land use planning system, will consider all values, resources, and uses of the public lands.

Tom H. Ford, 66 IBLA 14 (July 23, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

The extent to which ongoing activities outside of a wilderness study area are impinging upon adjacent areas inside a wilderness study area so as to deprive

WILDERNESS ACT--Continued

them of wilderness characteristics is properly the subject of determination during the inventory process of the wilderness program; the effect of future or potential activities is properly analyzed in the study phase.

Where the record evinces BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

BLM's practice of examining the mineral potential in the study phase of the wilderness review process, rather than the inventory phase, does not violate sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c) (1976).

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal. Statements that the area is affected by outside sights and sounds and bears noticeable scars of man's intrusions will not suffice in the absence of evidence that the impact on the unit is so pervasive as to preclude a rational finding of wilderness characteristics.

City of Delta, 66 IBLA 282 (Aug. 19, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Organic Act Directive (OAD) 78-61, Change 2 at 5, provides that BLM may properly adjust the boundary of an inventory unit to exclude a substantially noticeable imprint of man.

Organic Act Directive (OAD) 78-61, Change 3 at 3, provides that BLM may in certain instances properly adjust the boundary of an inventory unit based on the outstanding opportunity criterion.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

The Wilderness Society et al., 66 IBLA 287 (Aug. 19, 1982)

WILDERNESS ACT--Continued

In determining whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation, it is not improper for BLM to compare the opportunities of the unit under consideration with those of other units; the term "outstanding" is necessarily comparative in concept.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Sierra Club et al., 66 IBLA 300 (Aug. 20, 1982)

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities is entitled to considerable deference.

A BLM decision to eliminate a portion of an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where on appeal the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit meets the naturalness criterion, and the record does not adequately support BLM's conclusion on that criterion.

National Public Lands Task Force et al., 66 IBLA 340 (Aug. 26, 1982)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

Sec. 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires, inter alia, that an area designated for wilderness preservation generally appear to have been affected primarily by the forces of nature with the imprint of man's work substantially unnoticeable. The underscored language, taken verbatim from the statute, is ample support for the proposition that a wilderness study area (WSA) need not be free of all intrusions.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Square Butte Grazing Ass'n, 67 IBLA 25 (Sept. 7, 1982)

WILDERNESS ACT--Continued

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

Ken Drover, 67 IBLA 124 (Sept. 16, 1982)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

In order to enter the study phase of the wilderness review process, an inventory unit need not be free of all intrusions or imprints of man. Sec. 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires only that an area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable.

Charles Schvenke, 67 IBLA 203 (Sept. 22, 1982)

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

During the study phase of the wilderness review process, BLM will consider all values, resources, and uses of the lands within a wilderness study area.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Charles M. Hauptman, 67 IBLA 207 (Sept. 22, 1982)

WILDERNESS ACT--Continued

"Public lands." Lands within a powersite withdrawal do not cease being "public lands" by virtue of such withdrawal and continue to remain subject to BLM's wilderness inventory process under the Federal Land Policy and Management Act of 1976, secs. 103(e) and 603(a).

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness, opportunities for solitude, or opportunities for primitive and unconfined recreation, are entitled to considerable deference.

An appellant seeking reversal of a decision to include land in a wilderness study area must show that the decision appealed from was premised on either a clear error of law or a demonstrable error of fact.

Colorado River Water Conservation District, 67 IBLA 287 (Sept. 28, 1982)

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

Mitchell Energy Corp., Texas Gas Exploration Corp., 68 IBLA 219 (Nov. 12, 1982)

A decision to establish a wilderness study area pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, is proper absent a showing of compelling reasons requiring modification or reversal. Arguments that the area is affected by outside industrial and commercial activity do not preclude further study of the area's fitness for wilderness classification in the absence of proof that the intrusions by man are so great as to prevent the possibility of wilderness classification.

Arguments which question the ultimate best use of a proposed wilderness study area for wilderness purposes are prematurely raised at the intensive inventory stage of agency review.

Public Service Co. of Colorado, Koch Industries, Inc., 68 IBLA 262 (Nov. 17, 1982)

When the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed where appellant fails to point out specific errors of law or fact in the decision below--more than mere disagreement with the conclusion of BLM is required to reverse a decision or place a factual matter at issue.

Kenneth H. Earp, Doris N. Earp, 69 IBLA 182 (Dec. 15, 1982)

WILDERNESS ACT--Continued

Where the wilderness inventory discloses an area to be affected primarily by the forces of nature with the imprint of man's work substantially unnoticeable, the presence of minor intrusions which are substantially unnoticeable will not preclude designation as a wilderness study area.

A decision to draw the boundary of a wilderness study area along the edge of an imprint of man will be affirmed in the absence of a showing that the adjacent imprint so impinges upon lands within the wilderness study area as to deprive them of wilderness characteristics.

Owyhee Cattlemen's Ass'n, Idaho Board of Land Comm'rs, Idaho Cattlemen's Ass'n, 71 IBLA 4 (Feb. 10, 1983)

The proper scope of the wilderness inventory conducted under secs. 201 and 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1711, 1782 (1976), involves a determination of whether the land inventoried is possessed of the wilderness characteristics defined by Congress so as to require designation as a wilderness study area. The question of the suitability of a tract of land within a wilderness study area for designation as wilderness, as contrasted with devotion of the land to other purposes, is properly considered during the subsequent study phase of the wilderness review process.

James Stewart Co., 71 IBLA 100 (Feb. 24, 1983)

The subjective judgment of BLM as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation is entitled to considerable deference where the record discloses BLM's firsthand knowledge of the land within the unit.

Richard J. Leaumont, 71 IBLA 112 (Feb. 28, 1983)

Although boundaries of wilderness inventory units are ordinarily located along roads or other substantially noticeable imprints of man, configuration of the unit may justify adjustment of the unit boundary on the basis of the outstanding opportunity criteria in certain circumstances. A decision subdividing a unit into three subunits on this basis will be set aside and the case remanded for further consideration where the record fails to reflect analysis of the basis for subdivision.

Evaluations made by BLM personnel in the wilderness inventory process are necessarily subjective and judgmental. The conclusions reached must be accorded considerable deference notwithstanding that the result might be one over which reasonable men could differ. An appellant seeking reversal must ordinarily show either a clear error of law or a demonstrable error of fact.

Timothy O. Kessinger, 72 IBLA 100 (Apr. 14, 1983)

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the unit's naturalness qualities and whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when

WILDERNESS ACT--Continued

challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

A BLM decision to eliminate an inventory unit from further consideration as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the unit has the requisite naturalness or outstanding opportunity for solitude or a primitive and unconfined type of recreation, and the record does not adequately support BLM's conclusions on those criteria.

Utah Wilderness Ass'n et al., 72 IBLA 125 (Apr. 18, 1983)

The provision of the Wilderness Act of 1964, 16 U.S.C. § 1133(d)(3) (1976), which allows mining claims to be located in "wilderness areas" until Dec. 31, 1983, applies only to mining activities within national forest lands designated as wilderness. It is not applicable to lands such as the Buffalo National River which are part of the national park system, not national forest lands.

M. K. Bingham et al., 73 IBLA 19 (May 9, 1983)

Tom Brown, 74 IBLA 34 (June 27, 1983)

An appellant requesting this Board to reverse a Bureau of Land Management decision including lands in a wilderness study area must show that the decision was based either on a clear error of law or a demonstrable error of fact, or the decision will be affirmed.

Jack Bros., Inc., 73 IBLA 192 (May 26, 1983)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Red Rock 4-Wheelers, 75 IBLA 140 (Aug. 17, 1983)

Wilford Cothern, 76 IBLA 23 (Sept. 8, 1983)

The lack of an outstanding opportunity for solitude or a primitive and unconfined type of recreation will not disqualify part of an inventory unit from designation as a wilderness study area and from consideration during the study phase where other parts of the unit have been identified during the inventory phase as meeting the outstanding opportunity criterion.

Davis Oil Co., 75 IBLA 163 (Aug. 18, 1983)

BLM may properly eliminate areas of the public lands of less than 5,000 acres from further consideration as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

In deciding whether to designate an inventory unit as a wilderness study area under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), BLM may not compare a unit with other units but may compare it with other areas in

WILDERNESS ACT--Continued

a particular region, on the basis of topographic, vegetative, and other features.

In deciding whether to designate an inventory unit as a wilderness study area under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), BLM may properly consider the configuration of the unit in assessing opportunities for solitude or primitive, unconfined recreation.

Sierra Club - Rocky Mountain Chapter et al., 75 IBLA 220 (Aug. 23, 1983)

The mere assertion that an area is subject to outside sights and sounds, without evidence that they are both adjacent and so extremely imposing that they cannot be ignored, will not preclude a finding by BLM that the area is natural and offers outstanding opportunities for solitude.

The desirability of managing an area for competing multiple uses, including off-road vehicle use, is properly considered during the study phase of the wilderness review process.

Idaho Trail Machine Ass'n et al., 75 IBLA 256 (Aug. 26, 1983)

Instruction Memorandum (IM) 83-237 (Jan. 7, 1983) provides that BLM's policy is to issue no leases in BLM administered Wilderness Study Areas (WSAs). A subsequent clarification to this policy provides that BLM may continue to lease portions of WSAs that are immediately adjacent to producing oil and gas fields or areas that are prospectively valuable. IM 83-237, Change 2 (Mar. 7, 1983).

Phyllis M. Odell, 75 IBLA 313 (Aug. 30, 1983)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

Edward H. Howe, Fred Huff, Gerald A. Strauss, 76 IBLA 27 (Sept. 8, 1983)

BLM does not violate the terms of sec. 603(a), Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), directing the Secretary to review those roadless areas of 5,000 acres or more of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics, where BLM undertakes a review of the public lands for wilderness characteristics prior to a multiresource inventory of the public lands.

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not

WILDERNESS ACT--Continued

an unlawful practice or contrary to any established Department policy.

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

Where the record evidences BLM's firsthand knowledge of lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

Phelps Dodge Corp., 76 IBLA 31 (Sept. 8, 1983)

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

In determining whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation, it is not improper for BLM to compare the opportunities of the unit under consideration with those of other units for the purpose of determining whether the opportunities are "outstanding"; the term "outstanding" is necessarily comparative in concept.

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or primitive and unconfined type of recreation are entitled to considerable deference.

Michael Huddleston et al., 76 IBLA 116 (Sept. 21, 1983)

The Secretary on Dec. 30, 1982, directed that no mineral leasing or permitting take place on BLM wilderness study areas. Instruction Memorandum 83-237, Change 3 (June 24, 1983), provides, however, that BLM may continue to lease portions of wilderness study areas that are "immediately adjacent to producing oil and gas fields or areas that are prospectively valuable."

Lia Lee Anderson, 76 IBLA 395 (Oct. 27, 1983)

Where there is no evidence that a route has been improved by mechanical means, it will not be considered a road even where it is subject to relatively regular and continuous use and maintenance is unnecessary.

BLM may not properly eliminate an inventory unit from further consideration as a WSA because of the adverse impact on naturalness due to unauthorized construction of post-FLPMA roads, even where BLM concludes that the roads cannot be rehabilitated to a substantially unnoticeable condition.

WILDERNESS ACT--Continued

BLM may properly eliminate an area of less than 5,000 acres from further consideration as a WSA under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

A BLM decision to eliminate an area from further consideration as a WSA will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the area has the requisite naturalness and the record does not adequately support BLM's conclusion on that criterion.

Philip Allen, Desert Wilderness Coalition, 77 IBLA 330 (Dec. 5, 1983)

BLM may properly eliminate an area of less than 5,000 acres from further consideration as a WSA under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

Nothing in Change 3 of the WIH prohibits consideration of the effect of scenic vistas on enhancing opportunities for solitude within an inventory unit, and where such vistas are "so extremely imposing" they cannot be ignored, a decision of BLM declining to designate the unit as a WSA arrived solely on the basis of ignoring these scenic vistas will be reversed.

New Mexico Natural History Institute, 78 IBLA 133 (Dec. 29, 1983)

An appellant seeking reversal of a decision denying a protest against issuance of a right-of-way across land in a wilderness study area to state-owned land must show that the decision was premised either on a clear error of law or a demonstrable error of fact. Where state land is encircled by Federal land within a wilderness study area, the state's lessee has a right of access across Federal land pursuant to 16 U.S.C. § 3210(b) (Supp. V 1981) adequate to secure the reasonable use and enjoyment of the leasehold. Because the BLM may not deny such access by requiring the lessee to use helicopters, BLM need not examine the feasibility of helicopter access in its consideration of a right-of-way application.

Utah Wilderness Ass'n, 80 IBLA 64 (Mar. 30, 1984)
91 I.D. 165

Where application is made for suspension of unitized oil and gas leases in order to preserve them from expiration pending approval of an application for permission to drill, and where the suspension is granted at the discretion of the authorized officer on condition that permission to drill may be denied upon a finding that drilling operations would result in unacceptable impacts on the wilderness characteristics of the area, an environmental impact statement on the effects of such drilling which fails to consider the alternative of refusing permission to drill is an inadequate basis for a decision to permit drilling.

Sierra Club et al. (On Judicial Remand), 80 IBLA 251 (May 2, 1984)

Organic Act Directive 78-61, Change 3, at page 3, provides that BLM may in certain instances properly adjust the boundary of an inventory unit based on the outstanding opportunity criterion.

In evaluating a unit's opportunity for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may

WILDERNESS ACT--Continued

include size, natural screening, and the ability of the user to find a secluded spot.

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal, and such judgments may not be overcome by expressions of simple disagreement.

The Wilderness Society et al., 81 IBLA 181 (June 1, 1984)

Evaluations made by BLM personnel in the wilderness inventory process are necessarily subjective and judgmental. The conclusions reached must be accorded considerable deference notwithstanding the result might be one over which reasonable men could differ. An appellant seeking reversal must ordinarily show either a clear error of law or a demonstrable error of fact.

John R. Swanson, 84 IBLA 127 (Dec. 10, 1984)

WILDLIFE REFUGES AND PROJECTS
(See also Exchanges of Land, Migratory Bird Conservation Act--if included in this Index.)

GENERALLY

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

Carol Lee Hatch, 45 IBLA 4 (Jan. 8, 1980)

John R. Anderson, 46 IBLA 123 (Feb. 29, 1980)

Ida Lee Anderson, 46 IBLA 385 (Apr. 10, 1980)

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1976).

Dean W. Howell, 45 IBLA 225 (Jan. 31, 1980)

Tucker & Snyder Exploration, Inc., 49 IBLA 176 (July 30, 1980)

John R. Anderson, 50 IBLA 38 (Sept. 9, 1980)

Lands within a proposed addition to the National Desert Wildlife Range are not subject to noncompetitive oil and gas leasing because the proposed withdrawal, if effective, would preclude oil and gas leasing, the same as the existing withdrawal.

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

Tucker & Snyder Exploration, Inc., 45 IBLA 248 (Feb. 4, 1980)

WILDLIFE REFUGES AND PROJECTS--Continued

GENERALLY--Continued

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Pursuant to the regulation, land within the Lake Ilo National Wildlife Refuge is not subject to oil and gas leasing unless the lands are subject to drainage.

David A. Provinse, 49 IBLA 134 (July 28, 1980)

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended. Lands acquired for the specific purpose of creating a sanctuary for, and the protection of, wildlife in the vicinity of the Lake Zahl National Wildlife Refuge fall within that prohibition.

Lee B. Williamson, 54 IBLA 326 (Apr. 30, 1981)

A regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted only precludes leasing lands withdrawn for the protection of all species of wildlife within a particular area.

The Secretary of the Interior may, in his discretion, reject any offer to lease Federal lands for oil and gas, upon a determination supported by facts of record that the leasing would not be in the public interest because it is incompatible with uses of the lands which are worthy of preservation. Where the land has been designated a critical habitat pursuant to sec. 7 of the Endangered Species Act of 1973, as amended, 16 U.S.C.A. § 1536 (West Supp. 1980), and where BLM determines that oil and gas development would result in an unavoidable adverse impact, rejection of a lease offer will be affirmed in the absence of countervailing compelling reasons.

Esdras K. Hartley, Isreal Energy Corp., 57 IBLA 319 (Sept. 1, 1981)

The general prohibition against oil and gas leasing in wildlife refuge lands contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976). Pursuant to the regulation, land within the Desert National Wildlife Range is not subject to noncompetitive oil and gas leasing.

Nugget Oil Corp., 61 IBLA 43 (Dec. 31, 1981)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area.

If lands sought to be leased for oil and gas are not in a wildlife refuge withdrawn pursuant to 43 CFR 3101.3-3, the Secretary may exercise his discretion about leasing such lands, and the recommendation by the Fish and Wildlife Service that the lands not be leased is not conclusive, and where the case does not dispose of the questions of withdrawal or of leasing under the Secretary's discretion, the decision is vacated and remanded for further findings.

Bernard A. Holman, 64 IBLA 13 (May 4, 1982)

WILDLIFE REFUGES AND PROJECTS--Continued

GENERALLY--Continued

Land within the Grand Canyon Game Preserve is not open to the location of mining claims, and mining claims located on land after it was included in the preserve are properly declared null and void ab initio.

Pathfinder Mines Corp., 70 IBLA 264 (Jan. 26, 1983)
90 I.D. 10

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. Where an offer is rejected on the basis of that regulation, but the case record provides no evidence of such a withdrawal, the decision to reject will be set aside and the case remanded for investigation into the nature of the creation of the refuge.

D. M. Yates, 71 IBLA 126 (Mar. 7, 1983)

D. M. Yates, 74 IBLA 23 (June 24, 1983)

The general prohibition against oil and gas leasing in wildlife refuge lands contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976). Pursuant to the regulation, land within the Columbia National Wildlife Refuge is not subject to noncompetitive oil and gas leasing.

Altex Oil Corp., 73 IBLA 73 (May 17, 1983)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. Where an offer is rejected on the basis of that regulation, but the offeror contends that such a withdrawal does not cover the lands in question and the Board is unable to establish that the subject lands are embraced in such a withdrawal, the decision to reject will be set aside and the case remanded.

D. M. Yates, 74 IBLA 8 (June 24, 1983)

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. This regulation is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Lands Leasing Act, as amended, 30 U.S.C. § 226 (1976).

D. M. Yates, 74 IBLA 159 (July 12, 1983)

ENVIRONMENTAL IMPACT STATEMENTS

The 1984 Continuing Resolution (98 Stat. 151) provides, at sec. 137, that no funds shall be used to process or grant oil and gas lease applications or offers on any Federal lands, outside Alaska, that are units of the National Wildlife Refuge System, except where there are valid existing rights or where the lands are subject to drainage, unless and until the Secretary of the Interior promulgates revisions to the existing regulations so as to explicitly authorize the leasing of such lands; holds a public hearing with respect to such revision; and prepares an environmental impact statement with respect thereto. All action upon

WILDLIFE REFUGES AND PROJECTS--Continued

ENVIRONMENTAL IMPACT STATEMENTS--Continued

affected oil and gas lease applications or offers filed before Nov. 14, 1983, is properly suspended until completion of the necessary steps.

TXO Production Corp., 79 IBLA 81 (Feb. 16, 1984)

LEASES AND PERMITS

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

Robert H. Covington et al., 55 IBLA 232 (June 22, 1981)
88 I.D. 601

Dome Petroleum Corp. et al., 57 IBLA 310 (Aug. 31, 1981)

Kenneth Navarro, 64 IBLA 357 (June 15, 1982)

An over-the-counter offer for an oil and gas lease on lands within a game range or on coordination lands may not be summarily rejected under 43 CFR 3101.3-3(a) applicable to wildlife refuge lands. Subsecs. 3101.3-3(b) and (c) require that BLM confer with representatives of the U.S. Fish and Wildlife Service at a minimum before an offer can be rejected.

D. M. Yates, 70 IBLA 240 (Jan. 25, 1983)

BLM may not summarily reject a noncompetitive oil and gas lease offer under 43 CFR 3101.3-3(a), which prohibits noncompetitive leasing within wildlife refuge lands, where the evidence on appeal establishes that the lands are coordination lands, which may be subject to leasing under 43 CFR 3101.3-3(c).

A regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted only precludes noncompetitive leasing of lands withdrawn for the protection of all species of wildlife within a particular area.

BLM properly rejects a noncompetitive oil and gas lease offer under 43 CFR 3101.3-3(a) for land within the Columbia National Wildlife Refuge, which was withdrawn for the protection of all species of wildlife.

D. M. Yates, 73 IBLA 353 (June 14, 1983)

The 1984 Continuing Resolution (98 Stat. 151) provides, at sec. 137, that no funds shall be used to process or grant oil and gas lease applications or offers on any Federal lands, outside Alaska, that are units of the National Wildlife Refuge System, except where there are valid existing rights or where the lands are subject to drainage, unless and until the Secretary of the Interior promulgates revisions to the existing regulations so as to explicitly authorize the leasing of such lands; holds a public hearing with respect to such revision; and prepares an environmental impact statement with respect thereto. All action upon affected oil and gas lease applications or offers filed

WILDLIFE REFUGES AND PROJECTS--Continued

LEASES AND PERMITS--Continued

before Nov. 14, 1983, is properly suspended until completion of the necessary steps.

TXO Production Corp., 79 IBLA 81 (Feb. 16, 1984)

Hinkelbine Overthrust Oil & Gas, Inc., 80 IBLA 4 (Mar. 27, 1984)

BLM properly rejects a noncompetitive oil and gas lease offer under 43 CFR 3101.3-3(a) (1982) for land within the Columbia National Wildlife Refuge, which was withdrawn for the protection of all species of wildlife.

D. R. Yates, 80 IBLA 140 (Apr. 6, 1984)

Land within the Columbia National Wildlife Refuge, established by Public Land Order No. 243, qualifies as "wildlife refuge land" and, thus, is subject to the prohibition on oil and gas leasing under 43 CFR 3101.5-1(b) (1983). A noncompetitive oil and gas lease for such land is properly rejected pursuant to the regulation.

D. R. Yates, 81 IBLA 160 (May 31, 1984)

BLM properly rejects a noncompetitive oil and gas lease offer under 43 CFR 3101.3-3(a) (1982) for land within the Columbia National Wildlife Refuge, which was withdrawn for the protection of all species of wildlife.

Inasmuch as coordination lands are properly deemed to be units of the National Wildlife Refuge System, oil and gas lease offers for such lands may not be granted, unless drainage is occurring, until such time as the Secretary of the Interior promulgates new regulations in conformity with sec. 137 of the 1984 Continuing Resolution, 97 Stat. 981.

D. R. Yates, 82 IBLA 389 (Sept. 13, 1984)

The Board will set aside a BLM decision rejecting a noncompetitive oil and gas lease offer pursuant to 43 CFR 3101.3-3(a)(1) (1982) to the extent it includes land in a national wildlife refuge, not subject to drainage, where there is nothing in the record to indicate that the refuge was for the protection of all species of wildlife. However, the Board will instruct BLM to withhold action on the offer where Congress has suspended all action on oil and gas lease offers for lands within wildlife refuges filed prior to Nov. 14, 1983, until the completion of certain necessary steps by the Department.

Rachels Production, Inc., 84 IBLA 47 (Nov. 27, 1984)

WITHDRAWALS AND RESERVATIONS

GENERALLY

An oil and gas lease offer for minerals reserved to the United States is properly rejected where the Secretary of the Interior in a notice published in the Federal Register has declared that such minerals will not be subject to leasing.

David A. Provance, 45 IBLA 8 (Jan. 8, 1980)

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

Oil and gas lease offers embracing lands withdrawn specifically from oil and gas leasing and by Public Land Order No. 674, of Oct. 7, 1950, reserved for an agency of the Department of Defense, are properly rejected. Lands declared surplus are not subject to leasing by this Department.

Edward C. Shepardson, 47 IBLA 223 (May 13, 1980)

Applications filed for temporary withdrawals of land for proposed development under the Carey Act, 43 U.S.C. § 641 (1976), must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources, 48 IBLA 250 (June 26, 1980)

Where an application for withdrawal, published in the Federal Register and noted on the State Office records, sets aside certain lands for geothermal resources leasing, and specifically precludes the operation of the remainder of the mineral leasing laws, it is proper to suspend an oil and gas lease offer for such segregated lands, pending action on the withdrawal application. After the withdrawal application has been cancelled without favorable action on the withdrawal request, the oil and gas offer may be considered on its merits.

Trent J. Parker, 49 IBLA 209 (Aug. 11, 1980)

The Carey Act does not give a state an absolute entitlement to select and reserve desert land acreage regardless of whether or not it has been withdrawn for other purposes. Rather, the Act does not prevent the Secretary from committing such land for any authorized use, including use as a stock driveway. Moreover, the Department has broad discretionary authority to reject Carey Act applications for lands not withdrawn from selection, subject to normal judicial restraints against arbitrary and capricious administrative actions.

Applications filed for segregation of land for proposed development under the Carey Act must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources (On Reconsideration), 49 IBLA 221 (Aug. 12, 1980)

Where an application for withdrawal, published in the Federal Register and noted on the State Office records, sets aside certain lands for airport purposes and specifically precludes the operation of the remainder of the mineral leasing laws, it is proper under the regulations to suspend an oil and gas lease offer for such segregated lands, pending action on the withdrawal application. After the withdrawal application has been cancelled without favorable action on the withdrawal request, the oil and gas offer may be considered on its merits.

Donald Epperson, 50 IBLA 267 (Sept. 30, 1980)

Where the Secretary of the Interior has specifically determined by formal publication of a memorandum that lands in a certain section of a national forest are to be withheld from leasing, he has exercised his

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

plenary discretion to refuse to issue leases, and subsequent offers for affected lands are properly rejected.

James R. Leonard et al., 50 IBLA 416 (Oct. 24, 1980)

Where an application for withdrawal proposes to withdraw certain lands from the operation of the mineral leasing and mining laws to prevent interference with the use of the land for airport purposes, the Bureau of Land Management should suspend action on oil and gas lease offers filed subsequent to the withdrawal application pending final action on the proposed withdrawal.

Trent J. Parker, 51 IBLA 178 (Dec. 2, 1980)

Lands withdrawn for reclamation purposes are not available for disposition under the public land laws, including the Indian Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), and an application thereunder for land so withdrawn is properly rejected.

James A. Pell, 51 IBLA 285 (Dec. 15, 1980)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated.

Stanley Kuniyo et al., 51 IBLA 368 (Dec. 30, 1980)

Mining claims located on lands which are withdrawn for reclamation purposes under the first form are null and void ab initio. A first-form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding the repeal of the statute authorizing the initiation of such withdrawals.

Sam McCormack, 52 IBLA 56 (Jan. 6, 1981)

Where BLM filed an application for a protective withdrawal pursuant to Exec. Order No. 10355 which would reserve the subject land from all forms of appropriation including location and entry under the mining laws and the application was duly noted on the official status plats, the lands were segregated from the date of notation to the extent that the withdrawal, if effected, would prevent such forms of appropriation. A protective withdrawal is not a temporary withdrawal under the Pickett Act, 43 U.S.C. § 141 (1970), and is not limited by the terms of 43 U.S.C. § 142 (1970) which provides that temporarily withdrawn lands shall remain open to location for metalliferous minerals.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981) 88 I.D. 31

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

A public land order withdrawing land is considered to be valid notice of its contents and becomes effective upon its publication in the Federal Register despite any alleged failure to properly note it on land office records.

Deborah Lowmaster, 52 IBLA 198 (Jan. 26, 1981)

A mining claim located on land at a time when the land is segregated from mining location by a proposed withdrawal confers no rights on the locator and is properly declared null and void ab initio.

Allen L. Brannon, Sr., 53 IBLA 251 (Mar. 19, 1981)

Where the land on which the mining claim is located is subsequently withdrawn, the validity of the claim must be determined both as of the date of the withdrawal and the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though the requirement of discovery was satisfied at a later date.

United States v. Leo E. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

A mining claim located on lands which are withdrawn for reclamation purposes under the first form is null and void ab initio. A first form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, not withstanding the repeal of the statute authorizing the initiation of such withdrawals.

William C. Feiman, Richard H. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

A claimant's occupancy of a trade and manufacturing site prior to a withdrawal does not establish a "valid existing right" excepted by the withdrawal where credit for his occupancy prior to the withdrawal cannot be given under the Act of Apr. 29, 1950, because the claimant initiated his occupancy more than 90 days prior to the filing of his notice and did not file a notice of location or purchase application prior to the withdrawal.

Stuart Grant Ramsted, 55 IBLA 223 (June 18, 1981)

It is proper to reject an application for conveyance of Government-owned lands for airport development under 49 U.S.C. § 1723 (1976), where the land has been withdrawn for military purposes, is currently used as an Army air field, and where Army officials object to the conveyance.

State of Alaska, 61 IBLA 68 (Dec. 31, 1981)

Lands which are known to be underlain by deposits of oil shale are withdrawn from desert land entry by Exec. Order No. 5327 (Apr. 15, 1930), and a desert land application for such lands is properly rejected.

Agnes Jones et al., 61 IBLA 149 (Jan. 18, 1982)

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

Land withdrawn for an air navigation site is public land within the context of 43 U.S.C. § 1613 (1976 and Supp. IV 1980), and is proper for selection by a Native village.

Land withdrawn by Executive Order for use as an air navigation site by the Alaska Road Commission was not thereby severed from the public domain and under the terms of the order remained under the jurisdiction of the Secretary of the Interior. No interest, legal or equitable, could be conveyed to the Territory of Alaska by a withdrawal for an air navigation site. Interests in the public lands of the United States can be conveyed only pursuant to an Act of Congress.

Land used for an airport site which is conveyed to a Native village must be subsequently conveyed to the State of Alaska pursuant to 43 U.S.C. § 1613(c)(4) (Supp. IV 1980).

State of Alaska, Dept. of Transportation and Public Facilities, 67 IBLA 380 (Oct. 8, 1982)

The segregative effect of an application to withdraw land filed prior to Oct. 21, 1976, continues, under sec. 204(j) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1714(j) (1976), until Oct. 21, 1991, unless the application is either approved or rejected in the interim. Publication of a notice of hearing for such an application as provided by sec. 204(h), 43 U.S.C. § 1714(h) (1976), does not alter this time period.

James W. Robinson et al., 68 IBLA 84 (Oct. 21, 1982)

Mining claims are properly declared null and void ab initio when they are located on land which, on the date of location, was included in an application for withdrawal from appropriation under the public land laws, including the mining laws and the mineral leasing laws.

Louise Woodall, 69 IBLA 108 (Nov. 30, 1982)

Where an Act of Congress authorizes the setting aside of lands for particular public purposes, and does not either expressly continue or prohibit the operation of the general mining laws, the intent of Congress in that respect must be gathered from the Act itself, or by historical interpretation of this Department of that Act and similar Acts relating to lands of the same status.

Land within the Grand Canyon Game Preserve is not open to the location of mining claims, and mining claims located on land after it was included in the preserve are properly declared null and void ab initio.

If land has been withdrawn from mining, an erroneous public land record does not open the land to entry. A mining claim located on withdrawn land is null and void even if the land records erroneously indicate that the land is open.

Pathfinder Mines Corp., 70 IBLA 264 (Jan. 26, 1983)
90 I.D. 10

Withdrawal of land subject to valid existing rights does not prevent an amended location of a mining claim from relating back to the original location; a relocation, however, will not relate back.

To establish that a location of a claim after a withdrawal is an amendment of a location made before the withdrawal, a claimant must show that the earlier

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

location included the portion of the claim subject to the withdrawal, that the persons making the amended location had an unbroken chain of title with the original locators, and that the location predating the withdrawal was properly made.

Grace P. Crocker, 73 IBLA 78 (May 17, 1983)

Land used for an airport site which is conveyed to a Native village must be subsequently conveyed to the State of Alaska pursuant to 43 U.S.C. § 1613(c)(4) (Supp. V 1981).

Chefornak, Inc., 75 IBLA 242 (Aug. 24, 1983)

Withdrawal of land subject to valid existing rights does not prevent an amended location of a mining claim from relating back to the original location; a relocation, however, will not relate back.

Rick & Linda Anderson, 76 IBLA 212 (Oct. 17, 1983)

Where public domain land is reserved for a particular use by another agency, BLM should properly consider the recommendations of the surface managing agency regarding lease issuance, but this does not relieve BLM of the need to determine independently whether a lease may issue in the public interest.

Petroquest, Inc., 76 IBLA 327 (Oct. 19, 1983)

A mining claim located on land at a time when the land is segregated from mining location by a withdrawal confers no rights on the locator and is properly declared null and void ab initio.

John L. Grassmeier, 77 IBLA 156 (Nov. 16, 1983)

Notation of a withdrawal application filed before Oct. 21, 1976, temporarily segregates the land from mineral location to the extent that the withdrawal, if effected, would do so. Under current regulations, the lands described in the withdrawal application, filed before Oct. 21, 1976, and still outstanding, remain segregated from settlement, sale, location, or entry under the public land laws to the extent specified in the Federal Register notice until Oct. 20, 1991.

Marilyn Dutton Hansen, 79 IBLA 214 (Feb. 28, 1984)

Lloyd J. Mechaa, 81 IBLA 239 (June 6, 1984)

Publication of the notice of a withdrawal application in the Federal Register segregates the lands described in the application from settlement, sale, location, or entry under the general land laws, including the mining laws, to the extent specified in the notice.

A placer claim located on land segregated and closed to mineral entry by publication of notice of an application for withdrawal of the land in the Federal Register is properly declared null and void ab initio.

John C. Neill, 80 IBLA 39 (Mar. 28, 1984)

WITHDRAWALS AND RESERVATIONS--Continued

AUTHORITY TO MAKE

A mining claim for metalliferous minerals located on land withdrawn from appropriation under the mining laws pursuant to the Pickett Act of June 25, 1910, as amended, 43 U.S.C. §§ 141, 142 (1976), which provides that as to metalliferous minerals the withdrawn land shall remain open to the operation of the mining laws, is nevertheless null and void from its inception where the land is also withdrawn pursuant to the President's nonstatutory authority to make withdrawals.

Glen H. Brooks, E. Allen Brooks, H. Cope, 45 IBLA 51 (Jan. 14, 1980)

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by the Pickett Act, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by the terms of 43 U.S.C. § 142 (1970) which provided that withdrawn lands shall remain open to location for metalliferous minerals.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981) 88 I.D. 31

Where an executive order issued subsequent to the Pickett Act of June 25, 1910, as amended, 43 U.S.C. §§ 141, 142 (1970), does not specifically close all lands withdrawn under any authority other than the Act, the said lands are open to exploration, discovery, occupation, and purchase under the mining laws of the United States so far as the same apply to metalliferous minerals.

Western Nuclear, Inc., 55 IBLA 20 (May 26, 1981)

The President of the United States had, prior to enactment of sec. 704(a) of the Federal Land Policy and Management Act of 1976, P.L. 94-579, 90 Stat. 2743, 2792, inherent authority to withdraw public lands for public purposes apart from the statutory authority vested in him by the Act of June 25, 1910, and such inherent authority is not subject to the restrictions which attend his statutory authority.

Pan Alaska Fisheries, Inc., 74 IBLA 295 (July 27, 1983)

The Secretary of the Interior has the authority to withdraw mineralized lands from mineral entry.

Anthony Juskiewicz, 79 IBLA 267 (Mar. 7, 1984)

EFFECT OF

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Conrad F. Sovik, 45 IBLA 14 (Jan. 8, 1980)

Jacqueline E. Nelson, 47 IBLA 12 (Apr. 10, 1980)

W. Sweetland, Jr. Adkin, 51 IBLA 283 (Dec. 15, 1980)

Clarence E. Fitzgerald, 55 IBLA 31 (May 28, 1981)

United States v. Dunbar Stone Co., 56 IBLA 61 (July 10, 1981)

Sherman C. Smith, Michael Mitchell, Jr., 58 IBLA 188 (Sept. 28, 1981)

Floyd E. Renion, 62 IBLA 243 (Mar. 15, 1982)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

Thomas Gillespie, 65 IBLA 10 (June 17, 1982)

John S. Fleming, 65 IBLA 357 (July 20, 1982)

Joe Barron, Sr., et al., 65 IBLA 387 (July 23, 1982)

Robert J. Bird, L. E. Hollentsak, 72 IBLA 75 (Apr. 12, 1983)

M. Joan Bryan, Michael Rabalich, 76 IBLA 192 (Oct. 6, 1983)

John F. Malone, Vicki L. Malone, 84 IBLA 5 (Nov. 26, 1984)

A mining claim for metalliferous minerals located on land withdrawn from appropriation under the mining laws pursuant to the Pickett Act of June 25, 1910, as amended, 43 U.S.C. §§ 141, 142 (1976), which provides that as to metalliferous minerals the withdrawn land shall remain open to the operation of the mining laws, is nevertheless null and void from its inception where the land is also withdrawn pursuant to the President's nonstatutory authority to make withdrawals.

Glen H. Brooks, E. Allen Brooks, H. Cope, 45 IBLA 51 (Jan. 14, 1980)

Oil and gas lease offers embracing lands withdrawn specifically from oil and gas leasing and by Public Land Order No. 674, of Oct. 7, 1950, reserved for an agency of the Department of Defense, are properly rejected. Lands declared surplus are not subject to leasing by this Department.

An oil and gas lease offer filed for land which has been previously withdrawn from mineral leasing may be properly rejected since it will not be validated by any future modification or revocation of the order of withdrawal. It is immaterial whether the lands are presently being, or have ever been, used for the purpose for which they were withdrawn.

Edward C. Sheraidan, 47 IBLA 223 (May 13, 1980)

When land is withdrawn from the operation of the mining laws subject to valid existing rights, as was the Death Valley National Monument on Sept. 28, 1976, the validity of a mining claim located prior to the withdrawal must be established as of the date of the withdrawal as well as of the date of the hearing.

United States v. Ubehebe Lead Mines Co., 49 IBLA 1 (July 15, 1980)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

Where a mining claim located on land withdrawn at the time of location is declared void ab initio, such a location, and the decision declaring such a location void, do not affect the status of any location of the same land made prior to the withdrawal; nor can such a location, made by a party with an interest in the prior location, reestablish or protect rights to the prior claim.

Jack C. Franks, 49 IBLA 162 (July 30, 1980)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

A mining claim located on land temporarily segregated from appropriation under the mining laws pursuant to 43 U.S.C. § 1714(b) (1976) is null and void ab initio.

Under 43 U.S.C. § 1714(b) (1976) a publication in the Federal Register of notification of an application for withdrawal, which publication temporarily segregates land from the operation of the mining laws, does not withdraw the land, and therefore the notice need not be signed by the Secretary or an individual in the Office of the Secretary who has been appointed by the President, by and with the advice and consent of the Senate.

Stephen M. Fox, 50 IBLA 186 (Sept. 30, 1980)
87 I.D. 462

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void ab initio.

Gregory G. Pendergrass et al., 50 IBLA 280 (Oct. 6, 1980)

Mining claims located on land at a time the land is withdrawn from appropriation under the United States mining laws properly are declared null and void ab initio.

Marvin Buck, Betty K. Buck, 51 IBLA 30 (Oct. 30, 1980)

Where land is withdrawn from the operation of the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. In addition, even though there may have been a proper discovery at the time of a withdrawal or at some other time in the past, a mining claim cannot be considered valid unless the claim is at present supported by a sufficient discovery. The loss of the discovery, either through exhaustion of the minerals, changes in economic conditions, or other circumstances, results in the loss of the location.

United States v. E. S. Wood et al., 51 IBLA 301 (Dec. 18, 1980)
87 I.D. 628

The President had nonstatutory authority to withdraw public land in addition to authority conferred upon him by the Pickett Act, 43 U.S.C. §§ 141, 142 (1970). Such nonstatutory authority was not limited by the terms of 43 U.S.C. § 142 (1970) which provided that withdrawn lands shall remain open to location for metalliferous minerals.

A mining claim located on land which was segregated and closed to mineral entry is properly declared null and void ab initio.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981)
88 I.D. 31

An application to make homestead entry on land previously classified for selection by the State of Alaska is properly rejected.

Deborah Lowenstein, 52 IBLA 198 (Jan. 26, 1981)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

In general, unless the Mineral Leasing Act or a withdrawal or reservation specifically provides otherwise, lands withdrawn or reserved for a specific purpose are available for leasing under the Mineral Leasing Act, if the issuance of a lease will not be inconsistent with or materially interfere with the purposes for which the land is withdrawn or reserved.

Chevron U.S.A., Inc., 52 IBLA 278 (Feb. 6, 1981)

Portions of mining claims located on lands on which the minerals have been withdrawn from mineral entry are properly declared null and void ab initio; however, where the case record does not support a finding that all the claims in issue are partially situated on such land, the case will be remanded for readjudication.

Hart and Jewell Rightmire, 53 IBLA 125 (Mar. 5, 1981)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands segregates the lands from all subsequent appropriation, including location under the mining laws; however, the application to select has no segregative effect when at the time the application is filed, the land is withdrawn from all forms of appropriation under the public land laws, including selections by a state.

A millsite located on land withdrawn from all forms of appropriation under the public land laws, including location and entry under the mining laws, except locations for metalliferous minerals, is null and void ab initio because it is not a location for metalliferous minerals under the mining law.

John C. and Martha W. Thomas d.b.a. Tungsten Mining Co., 53 IBLA 182 (Mar. 17, 1981)

Where the land on which the mining claim is located is subsequently withdrawn, the validity of the claim must be determined both as of the date of the withdrawal and the date of the hearing. If there was no discovery as of the date of the withdrawal, the land would not be excepted from the effect of the withdrawal and the claim could not thereafter become valid even though the requirement of discovery was satisfied at a later date.

United States v. Leo P. Jackson et al., 53 IBLA 289 (Mar. 24, 1981)

Public domain land withdrawn or reserved is presumed to be available for oil and gas leasing unless the withdrawal or reservation specifically provides otherwise.

Endres E. Hartley, 54 IBLA 38 (Apr. 9, 1981)
88 I.D. 437

Western Interstate Energy, Inc., 71 IBLA 19 (Feb. 15, 1983)

A mining claim located on lands previously withdrawn from appropriation under the mining laws is null and void ab initio. Lands included in a withdrawal remain withdrawn until there is a formal revocation or modification of the order of withdrawal. It is immaterial whether the lands are presently being used for the purpose for which they were withdrawn and

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

whether a future revocation of the withdrawal is being considered.

William C. Reiman, Richard M. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

Ronald W. Rapp, 67 IBLA 32 (Sept. 7, 1982)

Where an executive order issued subsequent to the Pickett Act of June 25, 1910, as amended, 43 U.S.C. §§ 141, 142 (1970), does not specifically close all lands withdrawn under any authority other than the Act, the said lands are open to exploration, discovery, occupation, and purchase under the mining laws of the United States so far as the same apply to metalliferous minerals.

Western Nuclear, Inc., 55 IBLA 20 (May 26, 1981)

An application for land withdrawn from appropriation under the public land laws is properly rejected and not held pending possible future availability of the land.

An application for land filed but not adjudicated prior to restoration of the land to appropriation under the public land laws under a public land order which expressly provides that all applications filed prior to restoration shall be considered as simultaneously filed as of the date of restoration may be considered as filed as of the date of restoration.

Vaughn K. Leavitt et al., 55 IBLA 59 (May 29, 1981)

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

Robert W. Covington et al., 55 IBLA 232 (June 22, 1981) 88 I.D. 601

Dome Petroleum Corp. et al., 57 IBLA 310 (Aug. 31,

Kenneth Navarro, 64 IBLA 357 (June 15, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws for an Indian reservation is null and void ab initio.

Steve Foster, Elmer Brewster, 56 IBLA 282 (July 28, 1981)

A mining claim located on land which was then segregated and closed to mineral entry is properly declared null and void.

Richard Thorpe, Anne Thorpe, 59 IBLA 176 (Oct. 26, 1981)

George W. Pennington et al., 63 IBLA 214 (Apr. 12, 1982)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

Lands which have been withdrawn from entry under some or all of the public land laws remain so withdrawn until there is a formal revocation or modification of the order of withdrawal, and it is immaterial whether the lands are presently being used for the purpose for which they were withdrawn.

William Hilton, Jr., Cordell Eldon Eugene Morgan, Byrna Judy Morgan, Jackie Lowell Morgan, 59 IBLA 162 (Oct. 27, 1981)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of a state's application to select lands, where the filing is regular on its face, segregates the lands from all subsequent appropriation, including location and entry under the mining laws and a millsite located while the land is so segregated is null and void ab initio.

John C. and Martha W. Thomas, d.b.a. Tungsten Mining Co. (On Reconsideration), 59 IBLA 364 (Nov. 9, 1981)

Mining claims partially located on land withdrawn from such entry are null and void ab initio to the extent of the encroachment, and will not be validated by the modification or revocation of the order of withdrawal to open the land thereafter to mineral entry.

Kelly R. Healy, 60 IBLA 115 (Nov. 20, 1981)

Mining claims located on land which was segregated and closed to mineral entry are properly declared null and void.

Robert R. Rudio, Verne Andrews, 61 IBLA 220 (Jan. 28, 1982)

The Act of Sept. 19, 1914 (38 Stat. 714), a statutory withdrawal of certain lands from the operation of all mineral and nonmineral laws of the United States pertaining to location, entry, or appropriation, for the reservation of such lands as a water supply reserve for the use of Salt Lake City, was not repealed by implication through enactment of the Mineral Leasing Act of Feb. 25, 1920, 30 U.S.C. § 181 (1976).

Kenneth F. Cummings, 62 IBLA 206 (Mar. 10, 1982)

The Bureau of Land Management has no authority to allow an application for desert land entry on land which has been conveyed from Federal ownership by quitclaim deed or which has been withdrawn from disposition under the public land laws. Even if the applicant had received erroneous advice concerning the status of the land, this does not entitle him to have his application allowed.

Howard E. Tingley, 62 IBLA 315 (Mar. 19, 1982)

A mining claim which is located after the land has been withdrawn from mineral entry is properly declared null and void.

James W. Gough, 65 IBLA 59 (June 23, 1982)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

BLM may properly reject a desert land entry application where the land applied for has been withdrawn by a public land order as part of the Snake River Birds of Prey National Conservation Area.

Gary E. Carter, 65 IBLA 338 (July 15, 1982)

Mining claims located on land after the land was segregated and closed to mineral entry are properly declared null and void.

J & B Mining Co., Inc., 66 IBLA 279 (Aug. 18, 1982)

J & B Mining Co., Inc., 69 IBLA 73 (Nov. 30, 1982)

BLM may properly reject a noncompetitive over-the-counter oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the land sought is either patented with no reservation of oil and gas to the United States, acquired or withdrawn from mineral leasing.

Golden Eagle Petroleum, 67 IBLA 112 (Sept. 15, 1982)

The segregative effect of an application to withdraw land filed prior to Oct. 21, 1976, continues, under sec. 204(j) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1714(j) (1976), until Oct. 21, 1991, unless the application is either approved or rejected in the interim. Publication of a notice of hearing for such an application as provided by sec. 204(h), 43 U.S.C. § 1714(h) (1976), does not alter this time period.

James C. Robinson et al., 68 IBLA 84 (Oct. 21, 1982)

A mining claim located on land after the land was segregated and closed to mineral entry, by notation of receipt of an application for withdrawal, is properly declared null and void ab initio.

Lester E. Holt, 69 IBLA 180 (Dec. 15, 1982)

Philip A. Cramer, 74 IBLA 1 (June 21, 1983)

In general, unless the Mineral Leasing Act or a withdrawal or reservation specifically provides otherwise, lands withdrawn or reserved for a specific purpose are available for leasing under the Mineral Leasing Act, if the issuance of a lease will not be inconsistent with or materially interfere with the purposes for which the land is withdrawn or reserved. Where oil and gas lease offers embrace lands withdrawn or reserved for an agency of the Department of Defense, the lands may only be leased after consultation with the Department of Defense.

Douglas E. Smith, 69 IBLA 343 (Dec. 28, 1982)

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

A mining claim located on land segregated and closed to mineral entry by notation of an application for withdrawal in the official BLM records is null and void ab initio.

J. Pat Kaufman, 71 IBLA 183 (Mar. 10, 1983)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

Land which has specifically been withdrawn from mineral leasing is not available for disposition under the Mineral Leasing Act and an offer for that land must be rejected.

Rachalk Production, Inc., 71 IBLA 374 (Mar. 29, 1983)

Paul C. Kohlman, 75 IBLA 171 (Aug. 19, 1983)

Where lands which have been withdrawn from entry and location under the general mining laws by a public land order, in determining the rights of a mining claimant who located claims subsequent to that withdrawal, it is immaterial that the land in question is covered by a prior withdrawal for a different purpose.

Joseph E. Vogler, Doris L. Vogler, Dwerl Vogler, 72 IBLA 48 (Apr. 12, 1983)

Where land is withdrawn from the operation of the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. In addition, even though there may have been a proper discovery at the time of the withdrawal or at some other time in the past, a mining claim cannot be considered valid unless the claim is at present supported by a sufficient discovery.

United States v. William Lavon Chappell et al., 72 IBLA 88 (Apr. 13, 1983)

A mining claim located on land previously withdrawn from appropriation under the mining laws pursuant to the authority of sec. 17(d)(1) of the Alaska Native Claims Settlement Act is null and void ab initio.

Allan Keiser, 72 IBLA 387 (May 5, 1983)

Where an act of Congress directs segregation of certain lands from "all forms of entry under the public land laws," the question of whether such a segregation prohibits mineral entry under the general mining laws is answered by determining congressional intent from the act itself, the legislative history of the act and, in addition, from historical interpretations of the Department concerning the act or other similar acts.

O. Glenn Oliver, 73 IBLA 56 (May 12, 1983)

John L. Grassmeier, 77 IBLA 156 (Nov. 16, 1983)

A mining claim located for a nonmetalliferous mineral when the land was withdrawn from mineral entry for nonmetalliferous minerals is properly declared null and void ab initio.

Grace P. Crocker, 73 IBLA 78 (May 17, 1983)

Land segregated pursuant to a Recreation Public Purpose Act classification was not available for the location of mining claims, and claims thereafter located are null and void ab initio.

Gloria Ann Sandvik, Judy Neff, 73 IBLA 82 (May 18, 1983)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

A mining claim located on land segregated from all forms of appropriation, including locations under the mining law, by a small tract classification order is null and void ab initio.

Ernest L. Brewington, 73 IBLA 167 (May 24, 1983)

BLM may properly reject an oil and gas lease offer filed pursuant to sec. 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), where the minerals reserved in the patent of the land have been withdrawn from disposition under the mineral leasing laws.

Tom Hotestine, 73 IBLA 268 (June 7, 1983)

Under sec. 8 of the Organic Act of May 17, 1884, 23 Stat. 24, settlement on the public lands of Alaska vested in the settler possessory rights in that land that could be asserted against every one except the Government. Such occupancy was inoperative to prevent the United States from reserving the land for its own uses. However, where it is established that the Government intended to except those in possession from the scope of a reservation, the reservation shall not be construed as cutting off those possessory rights.

Pan Alaska Fisheries, Inc., 74 IBLA 295 (July 27, 1983)

A mining claim located upon lands withdrawn from mineral entry is properly declared null and void.

Rick & Linda Anderson, 76 IBLA 212 (Oct. 17, 1983)

Withdrawals remain in force until specifically revoked or modified by competent authority. The Alaska National Interest Lands Conservation Act, P.L. 96-478 (94 Stat. 2371), does not affect the existence or validity of Public Land Order No. 5250.

Mining claims are properly declared to be void ab initio when it is shown that the master plat in the local Bureau of Land Management office shows that the lands located are within an area withdrawn from mineral entry.

Larry McMaster et al., 76 IBLA 370 (Oct. 25, 1983)

Where oil and gas leasing in Alaska was suspended by Secretarial policy at the time noncompetitive lease offers were pending and the land identified in those offers was thereafter formally withdrawn from mineral leasing for the protection of Alaskan Natives' selection rights, the Secretary of the Interior has not abused his discretion in delaying adjudication of the offers until after the status of the land is settled.

Asamera Oil, Inc., Kenneth J. Gain, 77 IBLA 181 (Nov. 18, 1983)

A placer mining claim located for gold on land previously withdrawn from appropriation under the mining laws relating to metalliferous minerals by Public Land Order No. 4522, dated Sept. 13, 1968, is null and void ab initio.

Charles H. Phillips, 78 IBLA 320 (Jan. 24, 1984)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

A mining claim located at a time the land is withdrawn from appropriation by the Act of May 29, 1928, is null and void ab initio. It is immaterial whether future revocation of the withdrawal is being considered.

Samuel P. Speerstra, 78 IBLA 343 (Jan. 24, 1984)

A mining claim located on land segregated and closed to mineral entry by notation of an application for withdrawal in the official BLM records is null and void ab initio.

Lands withdrawn for a powersite reservation, with certain exceptions, are open to entry for location and patent of mining claims with a reservation of power rights in the lands to the United States subject to the Mining Claims Rights Restoration Act. Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Lapar & Christine Burnett, 78 IBLA 349 (Jan. 25, 1984)

The subsequent revocation of a withdrawal of onshore submerged lands by necessity returns withdrawn lands to status they enjoyed before withdrawal, i.e., "public lands."

State Selections of Onshore Lands Underlying Navigable Waters in the Geographic Area of Revoked Public Land Order 82, A-36949 (Aug. 22, 1983) 91 I.D. 67

Lands segregated on the public records by a Recreational and Public Purposes lease are not available for the location of mining claims, but a claimant may establish the exterior boundaries of a lode claim on land under a Recreation and Public Purposes lease, with the permission of the lessee, for the purpose of making end lines parallel so as to obtain extralateral rights to a vein or lode discovered on lands available for location.

Where a lode mining claim is located partially on patented or withdrawn land, such a claim is not null and void ab initio to the extent of its inclusion of such lands. While the claim may not afford the claimant any rights whatever in the lands into which the claim is partially projected, the configuration of such a claim might, in the proper circumstances, invest the claimant with extralateral rights in other land beyond or adjacent to that land which is closed to mineral entry.

Santa Fe Mining, Inc., 79 IBLA 48 (Feb. 9, 1984)

Generally, unless the mineral leasing laws or a withdrawal or reservation order specifically provides otherwise, the lands withdrawn or reserved for a specific purpose are available for leasing under the mineral leasing laws, if issuance of a mineral lease would not be inconsistent with or interfere with the purpose for which the lands are withdrawn or reserved.

TXO Production Corp., 79 IBLA 81 (Feb. 16, 1984)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

Notation of a withdrawal application filed before Oct. 21, 1976, temporarily segregates the land from mineral location to the extent that the withdrawal, if effected, would do so. Under current regulations, the lands described in the withdrawal application, filed before Oct. 21, 1976, and still outstanding, remain segregated from settlement, sale, location, or entry under the public land laws to the extent specified in the Federal Register notice until Oct. 20, 1991.

A mining claim whose discovery is located on land segregated and closed to mineral entry by notation of receipt of an application for withdrawal is properly declared null and void ab initio.

Marilyn Dutton Hanson, 79 IBLA 214 (Feb. 28, 1984)

Lloyd J. Mechae, 81 IBLA 239 (June 6, 1984)

Where a lode mining claim is located partially on patented or withdrawn land, such a claim is not null and void ab initio to the extent of its inclusion of such lands. While the claim may not afford the claimant any rights whatever in the lands into which the claim is partially projected, the configuration of such a claim might, in the proper circumstances, invest the claimant with extralateral rights in other land beyond or adjacent to that land which is closed to mineral entry.

Comstock Tunnel & Drainage Co., Sutro Tunnel Co., 79 IBLA 237 (Mar. 1, 1984)

A locator may not locate a claim with a discovery on patented or withdrawn lands because such lands are not open to the operation of the mining laws. In such cases the claim is void ab initio.

A withdrawal from the operation of the general mining laws does not deprive a claimant of the right to exercise extralateral rights within the withdrawn lands if those extralateral rights are derived from ownership of valid lode mining claims located prior to the withdrawal. The ownership of ores and minerals by virtue of extralateral rights stemming from valid lode mining claims located prior to withdrawal is not divested by the withdrawal.

Anthony Juskiewicz, 79 IBLA 267 (Mar. 7, 1984)

The Act of May 23, 1908, 35 Stat. 267, as amended, 16 U.S.C. § 671 (1976), providing for the establishment of the National Bison Range, terminated the status of the land included therein as land reserved for Indian use.

Hingeline Overthrust Oil & Gas, Inc., 80 IBLA 4 (Mar. 27, 1984)

Publication of the notice of a withdrawal application in the Federal Register segregates the lands described in the application from settlement, sale, location, or entry under the general land laws, including the mining laws, to the extent specified in the notice.

A placer claim located on land segregated and closed to mineral entry by publication of notice of an application for withdrawal of the land in the Federal Register is properly declared null and void ab initio.

John C. Neill, 80 IBLA 39 (Mar. 28, 1984)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

A mining claim located upon lands withdrawn from mineral entry by a Secretarial order for the benefit of the Mission Indians is properly declared null and void ab initio.

Robert F. Dawson, Kenneth E. Dawson, 80 IBLA 99 (Apr. 3, 1984)

Mining claims located on lands that are withdrawn from location are null and void ab initio.

Howard J. Hunt, Howard M. Hunt, 80 IBLA 396 (May 14, 1984)

Mining claims located for trace minerals on land previously withdrawn from mineral entry by Exec. Order No. 5327, as to nonmetalliferous minerals, and Public Land Order No. 4522, as to metalliferous minerals, are properly declared null and void ab initio.

Mineral Life Corp., 81 IBLA 103 (May 30, 1984)

Where a lode mining claim is located partially on withdrawn lands, such a claim is not null and void ab initio to the extent of its inclusion of such lands. While the claim may not afford the claimant any rights whatever in the withdrawn lands into which the claim is partially projected, the configuration of such a claim might, in the proper circumstances, invest the claimant with extralateral rights in other land beyond or adjacent to that land which is closed to mineral entry.

Marvin F. Johnston, 81 IBLA 295 (June 12, 1984)

Where land included in a homestead entry is described among lands withdrawn subject to valid existing rights, the withdrawal attaches to the land upon cancellation of the entry.

Nick P. Demientieff, State of Alaska, 81 IBLA 303 (June 15, 1984)

"Reserved," "set apart," "withdrawn." Lands which are "reserved" and "set apart" for the protection and preservation of wildlife pursuant to the Migratory Bird Conservation Act of 1929, as amended, are "withdrawn" for the protection of all species of wildlife within the meaning of 43 CFR 3101.3-3(a)(1).

Richard F. Price, Jr., 82 IBLA 257 (Aug. 29, 1984)

Lands withdrawn for a powersite reservation are open to entry for location and patent of mining claims, with certain exceptions, subject to the conditions in the Mining Claims Rights Restoration Act, 30 U.S.C. § 621 (1982). Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Leslie M. Correia, 84 IBLA 26 (Nov. 26, 1984)

WITHDRAWALS AND RESERVATIONS--Continued

EFFECT OF--Continued

Mining claims located on land closed to entry and location under the mining laws by a withdrawal order of the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act are null and void ab initio.

John Elmore, 84 IBLA 163 (Dec. 13, 1984)

A mining claim located on land segregated and closed to mineral entry by notation of an application for withdrawal in the official BLM records is null and void ab initio.

Lamar Burnett et ux., 84 IBLA 166 (Dec. 19, 1984)

POWERSITES

Lands which are covered by a license for a power project issued by the Federal Power Commission (now the Federal Energy Regulatory Commission) are not open to mineral location. Any mining claim located on powersite lands is void ab initio unless the land has been restored to such entry in accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

Harold B. Voris, 48 IBLA 206 (June 16, 1980)

Larry D. Brookshire et al., 56 IBLA 73 (July 15, 1981)

Ronald B. McLean, 77 IBLA 380 (Dec. 7, 1983)

When a Native allotment application has been rejected because the applicant failed to complete 5 years of qualifying use and occupancy prior to the filing of an application for withdrawal for powersite purposes, the case will be remanded for readjudication under sec. 905 of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435-37 (1980), unless the described land is included as part of a project licensed under part I of the Federal Power Act of June 10, 1920 (41 Stat. 24), as amended, or is presently utilized for purposes of generating or transmitting electrical power or for any other project authorized by act of Congress. If the allotment applicant commenced the qualifying use of the land after its withdrawal or classification, the allotment shall be made subject to the right of reentry provided the United States.

William Carlo, Sr. (On Reconsideration), 53 IBLA 168 (Mar. 12, 1981)

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

John C. Farrell, 55 IBLA 42 (May 28, 1981)

Lincoln Resources, Inc., 66 IBLA 310 (Aug. 24, 1982)

Lands covered by a preliminary permit of a prospective licensee for a power project, which was issued by the Federal Energy Regulatory Commission and is in its initial term, are not open to mineral location. A mining claim located on such lands is void ab initio unless the land has been restored to such entry in

WITHDRAWALS AND RESERVATIONS--Continued

POWERSITES--Continued

accordance with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1976).

James H. Cosgrove, 61 IBLA 376 (Feb. 17, 1982)

A Native allotment application describing land within a powersite withdrawal may be approved pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435-37 (1980), subject to protests filed within 180 days of enactment of the statute, where the land is not part of a project licensed under the Federal Power Act of June 10, 1920, as amended, or presently used for purposes of generating or transmitting electrical power or for any other project authorized by Act of Congress. Where the allotment applicant's use of the land commenced after the withdrawal, the allotment shall be subject to the right or reentry provided the United States by sec. 24 of the Federal Power Act, as amended.

Marion Stevens, 64 IBLA 69 (May 10, 1982)

Although land reserved for powersite purposes by a 1910 Executive Order issued pursuant to the "Pickett Act" of June 25, 1910, remained open to the location of mining claims for metalliferous minerals, that Act was superseded by sec. 24 of the Federal Power Act of June 10, 1920, which closed such lands to all mineral location until enactment of the Mining Claim Rights Restoration Act of Aug. 11, 1955.

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a powersite is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

George L. Hawkins, Wallace G. Heath, 66 IBLA 390 (Aug. 31, 1982)

A mining claim located prior to Aug. 11, 1955, on land withdrawn for a powersite is null and void ab initio.

Mackay Bar Corp., 69 IBLA 148 (Dec. 13, 1982)

Land included in an application for powersite development under the Federal Power Act of June 10, 1920, 16 U.S.C. § 818 (1976), shall from the date of filing of the application be reserved from entry, location, or other disposal under the laws of the United States, unless otherwise directed by the Federal Power Commission or by Congress. No rights may be acquired by a settler on the public land who initiates settlement at a time when the land is not open to entry.

Shirley A. Clark, 77 IBLA 51 (Nov. 7, 1983)

Lands withdrawn for a powersite reservation, with certain exceptions, are open to entry for location and patent of mining claims with a reservation of power rights in the lands to the United States subject to the Mining Claims Rights Restoration Act. Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Lamar & Christine Burnett, 78 IBLA 349 (Jan. 25, 1984)

WITHDRAWALS AND RESERVATIONS--Continued

POWERSITES--Continued

A mining claim located prior to Aug. 11, 1955, on lands withdrawn for a power project is null and void ab initio. The passage of the Mining Claims Rights Restoration Act of Aug. 11, 1955, 30 U.S.C. § 621 (1976), did not give life to void claims which had been located on withdrawn lands prior to the date of the Act.

J. W. Roberts, Joan Roberts, 79 IBLA 279 (Mar. 16, 1984)

Where Congress has provided in 16 U.S.C. § 818 (1982) that lands sought for a proposed power project shall from the date of the filing of an application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Federal Power Commission or by Congress, and thereafter has further withdrawn these same lands for selection pursuant to sec. 16 of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1615 (1976), BLM may properly convey such lands to a Native corporation selecting same, all else being regular.

Ketchikan Public Utilities, 79 IBLA 286 (Mar. 20, 1984)

Lands withdrawn for a powersite reservation are open to entry for location and patent of mining claims, with certain exceptions, subject to the conditions in the Mining Claims Rights Restoration Act, 30 U.S.C. § 621 (1982). Where the BLM decision declaring mining claims null and void did not consider the effect of this Act on the withdrawal, the decision will be set aside and remanded for appropriate action.

Leslie M. Corriea, 84 IBLA 26 (Nov. 26, 1984)

RECLAMATION WITHDRAWALS

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Water and Power Resources Service has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cogent.

Florence Adkisson, 47 IBLA 121 (Apr. 28, 1980)

Applications filed for temporary withdrawals of land for proposed development under the Carey Act, 43 U.S.C. § 641 (1976), must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources, 48 IBLA 250 (June 26, 1980)

Applications filed for segregation of land for proposed development under the Carey Act must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources (On Reconsideration), 49 IBLA 221 (Aug. 12, 1980)

WITHDRAWALS AND RESERVATIONS--Continued

RECLAMATION WITHDRAWALS--Continued

Mining claims located on lands which are withdrawn for reclamation purposes under the first form are null and void ab initio. A first-form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding the repeal of the statute authorizing the initiation of such withdrawals.

Sam McCormack, 52 IBLA 56 (Jan. 6, 1981)

A mining claim located on land previously withdrawn from appropriation under the mining laws by a first form reclamation withdrawal is null and void ab initio.

Susan E. Mitchell, 53 IBLA 42 (Feb. 26, 1981)

Elmer G. Thomas et al., 66 IBLA 92 (July 30, 1982)

Ronald B. McLean, 77 IBLA 380 (Dec. 7, 1983)

It is proper to declare mining locations null and void ab initio where the locations were not perfected by performance of the condition precedent set forth in the order opening lands in a reclamation withdrawal to mineral location and entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976).

Wayne M. Mann, 54 IBLA 8 (Apr. 6, 1981)

A mining claim located on lands which are withdrawn for reclamation purposes under the first form is null and void ab initio. A first form reclamation withdrawal completed prior to Oct. 21, 1976, remains in effect, subject to review by the Secretary, notwithstanding the repeal of the statute authorizing the initiation of such withdrawals.

William C. Reiman, Richard H. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

A desert land application filed for lands which are withdrawn for reclamation purposes at the time of the filing of the application must be rejected. It cannot be suspended pending the lifting of the withdrawal. Even where the purpose of the withdrawal cannot be met, the withdrawal is nevertheless effective to bar the disposal of the land.

Robert A. Adams, 57 IBLA 370 (Sept. 8, 1981)

Where a homestead entry is on land within a second-form reclamation withdrawal, and compliance with the provisions of the reclamation laws is still required, the mere filing of ordinary homestead final proof is not sufficient to vest the entryman with equitable title.

The revocation of a second-form reclamation withdrawal is effective upon the date specified in the order of revocation, regardless of whether the land had ever been suitable for the purpose for which it was withdrawn. Where an entryman has complied with all the requirements of the ordinary homestead law, but not with the requirements of the reclamation law, the revocation of the reclamation withdrawal does not operate retroactively to vest equitable title in the entryman as of the time final proof under the ordinary homestead law was submitted. Such equitable title cannot be deemed to have vested prior to the effective date of the revocation of the withdrawal.

Vincent Barnard, 66 IBLA 100 (Aug. 4, 1982)

WITHDRAWALS AND RESERVATIONS--Continued

RECLAMATION WITHDRAWALS--Continued

A decision rejecting an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration of lands within a reclamation withdrawal to mineral entry and location will be reversed on appeal where the record fails to disclose any objection to granting the application or any way in which it is contrary to the public interest.

Joe Ashbuen, 66 IBLA 328 (Aug. 25, 1982)

REVOCATION AND RESTORATION

A Presidential proclamation, which extended the boundaries of a forest reserve and which specifically stated that prior proclamations respecting the reserve were "superseded," had the effect of and was construed as restoring to entry lands earlier withdrawn by a Secretarial order which reserved from public entry, for protection of giant sequoia trees, a township situated within the boundaries of the forest reserve. This conclusion is particularly compelling in view of the long continued course of administrative action treating the subject township as having been restored to entry for purposes of prospecting, locating and developing mineral resources, subject to compliance with the rules and regulations pertaining to forest reserves.

Dolores Olsen and Wesley E. Nace, et al., 45 IBLA 232 (Feb. 4, 1980)

In determining whether a national defense withdrawal, within the meaning of § 11(a)(1) of ANCSA, existed on Dec. 18, 1971, only the formal legal status of the withdrawal may be considered, and it is immaterial whether the purpose of the withdrawal has been fulfilled or whether the actual use to which the land is put has changed.

The Army's filing of a notice of intent to relinquish certain property cannot revoke a national defense withdrawal because the Army lacks the authority to revoke such withdrawals.

A notice of intent to relinquish property is not a relinquishment but a method by which an agency of the Federal Government expresses the intention to relinquish the property at a future time, upon completion of required statutory and regulatory procedures.

The issue of whether ANCSA supersedes certain provisions of the Federal Property and Administrative Services Act, as regards administrative actions taken concerning a specific withdrawal, is rendered moot by a finding that the withdrawn lands were never available for selection under ANCSA. When a notice of intention to relinquish affects lands not withdrawn pursuant to ANCSA, BLM is required to follow the provisions of the Federal Property and Administrative Services Act, and the regulations promulgated under that Act.

Appeal of Tanacross, Inc., 4 ANCAB 173 (Apr. 7, 1980)
87 I.D. 123

Appeal of Northway Natives, Inc., 4 ANCAB 207 (Apr. 21, 1980)

An application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration to mineral entry and location of lands within a reclamation withdrawal will ordinarily be rejected when the Water and Power Resources Service has recommended against it, the recommendation is premised upon the requirements of the public interest, and the reasons offered in support of the recommendation are cojent.

Florence Adkisson, 47 IBLA 121 (Apr. 28, 1980)

WITHDRAWALS AND RESERVATIONS--Continued

REVOCATION AND RESTORATION--Continued

An oil and gas lease offer filed for land which has been previously withdrawn from mineral leasing may be properly rejected since it will not be validated by any future modification or revocation of the order of withdrawal. It is immaterial whether the lands are presently being, or have ever been, used for the purpose for which they were withdrawn.

Edward C. Shepardson, 47 IBLA 223 (May 13, 1980)

It is proper to declare mining locations null and void ab initio where the locations were not perfected by performance of the condition precedent set forth in the order opening lands in a reclamation withdrawal to mineral location and entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976).

Wayne M. Mann, 54 IBLA 8 (Apr. 6, 1981)

A mining claim located on lands previously withdrawn from appropriation under the mining laws is null and void ab initio. Lands included in a withdrawal remain withdrawn until there is a formal revocation or modification of the order of withdrawal. It is immaterial whether the lands are presently being used for the purpose for which they were withdrawn and whether a future revocation of the withdrawal is being considered.

William C. Reiman, Richard H. Edmondson, 54 IBLA 103 (Apr. 15, 1981)

Ronald W. Rapp, 67 IBLA 32 (Sept. 7, 1982)

An application for land withdrawn from appropriation under the public land laws is properly rejected and not held pending possible future availability of the land.

An application for land filed but not adjudicated prior to restoration of the land to appropriation under the public land laws under a public land order which expressly provides that all applications filed prior to restoration shall be considered as simultaneously filed as of the date of restoration may be considered as filed as of the date of restoration.

Vaughn K. Leavitt et al., 55 IBLA 59 (May 29, 1981)

The revocation of a second-form reclamation withdrawal is effective upon the date specified in the order of revocation, regardless of whether the land had ever been suitable for the purpose for which it was withdrawn. Where an entryman has complied with all the requirements of the ordinary homestead law, but not with the requirements of the reclamation law, the revocation of the reclamation withdrawal does not operate retroactively to vest equitable title in the entryman as of the time final proof under the ordinary homestead law was submitted. Such equitable title cannot be deemed to have vested prior to the effective date of the revocation of the withdrawal.

Where the Secretary has not expressly made revocation of a withdrawal retroactive, the Board of Land Appeals lacks authority to give the revocation retroactive effect.

Vincent Forward, 66 IBLA 100 (Aug. 4, 1982)

WITHDRAWALS AND RESERVATIONS--Continued

REVOCATION AND RESTORATION--Continued

A decision rejecting an application under the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976), for restoration of lands within a reclamation withdrawal to mineral entry and location will be reversed on appeal where the record fails to disclose any objection to granting the application or any way in which it is contrary to the public interest.

Joe Ashbrook, 66 IBLA 328 (Aug. 25, 1982)

A mining claim located at a time the land is withdrawn from appropriation by the Act of May 29, 1928, is null and void ab initio. It is immaterial whether future revocation of the withdrawal is being considered.

Samuel P. Sprowsirs, 78 IBLA 343 (Jan. 24, 1984)

SPRINGS AND WATERHOLES

The repeal of sec. 704(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2792, of certain statutory authority to reserve land as a waterhole only prohibits future withdrawals or reservations of land under the repealed statutes and does not affect known waterholes withdrawn prior to the repeal. It was proper for the Bureau of Land Management to reject a water pipeline right-of-way application for land containing a waterhole which was withdrawn prior to the Federal Land Policy and Management Act of 1976, and where the water is needed for a public use.

Grant L. Hacking, 50 IBLA 154 (Sept. 30, 1980)

The purpose of reserving land surrounding important springs and waterholes was to prevent monopolization of the surrounding public lands.

Purposes of Executive Order of April 17, 1926, Establishing Public Water Reserve No. 107, M-36914 (Supp. II), (Feb. 16, 1983) 90 I.D. 81

STATE SELECTIONS

An application to make homestead entry on land previously classified for selection by the State of Alaska is properly rejected.

Deborah Lowmaster, 52 IBLA 198 (Jan. 26, 1981)

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of an application by the State of Alaska to select lands segregates those lands from all subsequent appropriations, including locations under the mining law. A mining claim located on land which has been segregated and closed to mineral entry is properly declared null and void ab initio.

Fred Thompson, 74 IBLA 231 (July 19, 1983)

TEMPORARY WITHDRAWALS

Applications filed for temporary withdrawals of land for proposed development under the Carey Act, 43 U.S.C. § 641 (1976), must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources, 48 IBLA 250 (June 26, 1980)

WITHDRAWALS AND RESERVATIONS--Continued

TEMPORARY WITHDRAWALS--Continued

Applications filed for segregation of land for proposed development under the Carey Act must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

Idaho Department of Water Resources (On Reconsideration), 49 IBLA 221 (Aug. 12, 1980)

Where BLM filed an application for a protective withdrawal pursuant to Exec. Order No. 10355 which would reserve the subject land from all forms of appropriation including location and entry under the mining laws and the application was duly noted on the official status plats, the lands were segregated from the date of notation to the extent that the withdrawal, if effected, would prevent such forms of appropriation. A protective withdrawal is not a temporary withdrawal under the Pickett Act, 43 U.S.C. § 141 (1970), and is not limited by the terms of 43 U.S.C. § 142 (1970) which provides that temporarily withdrawn lands shall remain open to location for metalliferous minerals.

Northwest Explorations, Inc., 52 IBLA 87 (Jan. 12, 1981) 88 I.D. 31

WORDS AND PHRASES

"Bona fide purchaser." A bona fide purchaser of an interest in a Federal oil and gas lease must have acquired his interest in good faith, for valuable consideration, and without notice of violation of Departmental regulations. Assignees are deemed to have constructive knowledge of all BLM records pertaining to the lease at the time of assignment.

David Burk et al., 56 IBLA 225 (July 22, 1981)

James Koch et al., 61 IBLA 235 (Jan. 28, 1982)

Ervin Staacke et al., 62 IBLA 278 (Mar. 16, 1982)

David A. Reece et al., 65 IBLA 12 (June 21, 1982)

Beverly J. Macdowell, Dorothy Langley, 71 IBLA 23 (Feb. 15, 1983)

"Copy of the official record of the notice or certificate of location." Under the revised definition of the term at 43 CFR 3833.0-5(i) (1979), a duplicate of a notice of location which has been filed with the local recorder is a "copy of the official record of the notice or certificate of location," even though it is not stamped by the local recorder and does not include a reference to the local record, and is therefore acceptable under 43 CFR 3833.1-2(b) if tendered within 90 days of the date of location.

James E. Strong, 45 IBLA 386 (Feb. 13, 1980)

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. Under 43 CFR 3833.1-2 there is no express requirement that a machine reproduction be provided. Accordingly, a handwritten duplicate of a notice of location is acceptable under the regulations.

W. C. Miles, 48 IBLA 214 (June 16, 1980)

WORDS AND PHRASES--Continued

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. It also includes an exact reproduction, duplicate, or other acceptable evidence, except microfilm, of an amended instrument which may change or alter the description of the claim.

William E. Talbott et al., 52 IBLA 12 (Jan. 5, 1981)

"Copy of the official record of the notice or certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument or recordation of an unpatented mining claim which was or will be filed in the local jurisdiction where the claim is located or other evidence, acceptable to the proper Bureau of Land Management office, of such instrument or recordation. It also includes an exact reproduction, duplicate, or other acceptable evidence except microfilm, of an amended instrument which may change or alter the description of the claim. A quitclaim deed is not an acceptable substitute in the absence of a showing that the certificates of location were unavailable.

John J. Vikarcik, George M. Vrable, 58 IBLA 377 (Oct. 21, 1981)

"Date of location." The date of location of a mining claim is determined in accordance with the law of the State where the claim is situated. Under Washington law, it is the date specified on the notice of location filed with the local recorder's office.

P & S Mining Co., 45 IBLA 115 (Jan. 23, 1980)

"Date of location." The date of location of mining claims is determined in accordance with the law of the State where the claims are situated. Under California law, the time for recordation in the county is measured from the date of the posting of the location notice on the claims.

Lee Resources Management Corp., 50 IBLA 131 (Sept. 24, 1980)

"Date of location." The date of location of a mining claim is determined in accordance with the law of the state where the claim is situated. Under Arizona law, it is the date specified on the notice of location filed with the local recorder's office.

John C. and Theresa K. Buchanan, 52 IBLA 387 (Feb. 19, 1981)

H. Mason Coplin, 54 IBLA 224 (Apr. 27, 1981)

"Date of location." The date of location of a mining claim is determined in accordance with the law of the state where the claim is situated. Under California law, it is the date of posting location notice on the claim.

C. E. Shannon, 55 IBLA 312 (June 26, 1981)

WORDS AND PHRASES--Continued

"Date of location." Although 43 CFR 3833.0-5(h) provides that the date of location of a mining claim shall be determined by state law in the jurisdiction where the claim is located, where the location certificate, as recorded with the county recorder's office as required by state law, recites a specific date of location of the claim, that date will be used as the inception of the 90-day period allowed for recordation by 43 U.S.C. § 1744 (1976), as that is the date upon which the claimant asserts he located the claim and entered upon the public land.

Mrs. George G. Wagner et al., 63 IBLA 146 (Apr. 6, 1982)

"Date of location." Under Colorado State law, as applied by 43 CFR 3833.0-5(h), the date of location of an unpatented mining claim in Colorado is the date specified in the location certificate. Where the claimant fails to file a copy of the official record of the notice of location of this claim with BLM within 90 days of this date, BLM properly rejects the filing, notwithstanding allegations that the actual date of location was different than the date specified in the location certificate.

Amigo Mining, Inc., 68 IBLA 305 (Nov. 19, 1982)

"Extension." An extension of a prospecting permit is a prolongation of the term of the previous interest. Accordingly, it commences as of the expiration date of the primary term of the permit.

Asarco, Inc., 70 IBLA 91 (Jan. 11, 1983)

"Fair market value." Under the Federal Land Policy and Management Act of 1976 and existing Departmental regulations to the extent practicable, a grantee must pay fair market value for a right-of-way on public land. "Fair market value" is the amount in cash, or in terms reasonably equivalent to cash, for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desired but is not obligated to so use.

B & B Service, Inc., 48 IBLA 233 (June 17, 1980)

Northwestern Colorado Broadcasting Co., 49 IBLA 23 (July 15, 1980)

"Good faith." As used in the Color of Title Act, 43 U.S.C. § 1068 (1976), and regulation 43 CFR 2540.0-5, a claim is held in good faith where the claimant lacks knowledge that the land is owned by the United States. In determining whether the claimant honestly believed that there was no defect in his title, the Department may consider whether such belief was unreasonable in light of the facts then actually known to him.

Lawrence E. Willworth, 64 IBLA 159 (May 25, 1982)

"Gross value at the point of shipment to market." The royalty rate for products mined and disposed under sodium leases must be imposed on the "gross value of the sodium compounds and other related products at the point of shipment to market," which means the gross value of a refined product for sale in an established market even when applied to an intermediate product and without deduction for the cost that would be incurred in producing a refined product.

FMC Corp., 54 IBLA 77 (Apr. 14, 1981)

WORDS AND PHRASES--Continued

"Headquarters." A headquarters site application is properly rejected when the applicant has failed to sustain his burden of showing that the site has been used as a headquarters, i.e., as the usual place of business, principal office, or administrative center of his snowmobile camp. The term "headquarters" will not be construed so broadly as to include within its meaning use of a site for recreational purposes with occasional payment of use of the facilities occurring via rendering of services and helping transport building materials to the cabin sites, or by meager and incidental payments of cash.

United States v. Floyd E. Edwards, 50 IBLA 69 (Sept. 17, 1980)

"Interest." Where an oil and gas leasing service selects lands, files offers, and advances funds on behalf of its clients for leases which the service is willing to sell on behalf of any successful client, strictly at the client's option, in return for a percentage commission on the sale, the service has no enforceable right to any portion of the lease, if issued. The option is no more than a mere hope or expectancy that a client will elect to employ the service as sales agent, so that there is no interest in the lease if issued, which must be disclosed.

Bryan J. Powers, 45 IBLA 188 (Jan. 30, 1980)

"Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b).

Geosearch, Inc., 48 IBLA 190 (June 9, 1980)

Harry S. Wells et al., 59 IBLA 241 (Oct. 28, 1981)

"Interest in an oil and gas lease or offer." Where a party to a pooling agreement is authorized to advance funds for filing of drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor with interest and receive a consultation fee from the pooled proceeds of any leases issued, all parties to the agreement have an interest in each lease offer within the meaning of 43 CFR 3102.7, requiring the disclosure of interested parties.

Wayne E. DeBord et al., 50 IBLA 216 (Sept. 30, 1980) 87 I.D. 465

Fisher S. Landis, 54 IBLA 25 (Apr. 6, 1981)

Elmer E. Landis, 59 IBLA 353 (Nov. 9, 1981)

"Interest in an oil and gas lease or offer." Where an oil and gas lease offeror in a written agreement gives another person a security interest in any lease issued pursuant to an offer filed under the agreement to secure only payment of lease rentals advanced by that person, that person does not have an interest in the lease offer within the meaning of 43 CFR 3102.7 (1979), requiring the disclosure of interested parties.

Patrick E. Haas, 57 IBLA 247 (Aug. 28, 1981)

WORDS AND PHRASES--Continued

"Last address of record." Where 43 CFR 1810.2 requires the Bureau of Land Management to deliver communications by mail to the last address of record, such address is the most recent one provided for the case file by the lessee with the declared intent that all required communications be delivered there. Where a party has not so specified, the appearance of a different return address on an envelope or rental payment check received by the Bureau of Land Management does not constitute a change of the address of record.

Arthur M. Solender, Lynn Devereaux, 79 IBLA 70 (Feb. 13, 1984)

"Last address of record." For the purposes of 43 CFR 1810.2(b), in the context of BLM's processing of a lease application, the address stated on the application is to be used as the "last address of record" unless the applicant has filed written notice of a change of address with the BLM office where the application was filed.

Victor E. Cook, Jr., 81 IBLA 144 (May 31, 1984)

"Legal subdivision." The phrase "any legal subdivision" in 43 CFR 3108.1 permitting relinquishment of an oil and gas lease or any legal subdivision thereof is not limited in meaning to whole sections for lands shown on a protracted survey.

James M. Chudnow, 82 IBLA 262 (Aug. 29, 1984)

"Leasing." The word "leasing" in the phrase "no leasing * * * leading to production of oil and gas" in sec. 1003 of the Alaska National Interest Lands Conservation Act includes leasing for the purpose of exploratory activities.

Robert M. Covington et al., 55 IBLA 232 (June 22, 1981) 88 I.D. 601

Pogo Petroleum Corp. et al., 57 IBLA 310 (Aug. 31, 1981)

Kenneth Navarro, 64 IBLA 357 (June 15, 1982)

"Mineral." Geothermal steam, as defined in sec. 4(c) of the Geothermal Steam Act of 1970, 30 U.S.C. § 1001(c), is not a "mineral" as the term is used in the mineral leasing laws. Congress generally did not intend the Steam Act to be treated as a "mineral leasing law."

Geothermal Leasing in Designated Wilderness Areas, M-36937 (June 11, 1981) 88 I.D. 613

"Notation Rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated.

Stephen Kepros et al., 51 IBLA 368 (Dec. 30, 1980)

WORDS AND PHRASES--Continued

"Notation rule." Under the notation rule a millsite claim, located at a time when the master title plat in the local Bureau of Land Management office shows that the lands embraced by the claim are included in a state selection application, is properly declared null and void ab initio because notation of the state selection application on the official records segregates the land from further appropriation. The rule applies even where the notation was posted in error, or where the segregative use so noted is void, voidable, or has terminated.

John C. and Martha M. Thomas, d.b.a. Tungsten Mining Co. (On Reconsideration), 59 IBLA 364 (Nov. 9, 1981)

"Notation rule." Under the "notation rule" when the official records of the Bureau of Land Management have been noted to reflect the devotion of land to a particular use which is exclusive of other conflicting uses, no incompatible rights in that land can attach by reason of any subsequent application or entry until the record has been changed to reflect that the land is no longer so segregated. The rule applies even where the notation was posted to the records in error, or where the segregative use so noted is void, voidable, or has terminated or expired, so long as the records continue to reflect it as efficacious.

Paiute Oil & Mining Corp., 67 IBLA 17 (Sept. 3, 1982)

Kevin D. Ward, Jr., 73 IBLA 210 (May 27, 1983)

Shiny Rock Mining Corp., 75 IBLA 136 (Aug. 15, 1983)

Shiny Rock Mining Corp. (On Reconsideration), 77 IBLA 261 (Nov. 30, 1983)

"Notation rule." Under the notation rule, where land is segregated from mineral entry under the general mining laws and that segregation is noted on the official Bureau of Land Management records, mineral location is foreclosed until the record is changed to reflect that the land is no longer segregated.

O. Glenn Oliver, 73 IBLA 56 (May 12, 1983)

"Oil shale." Rock containing less than 3 gallons per ton of kerogen is not distinguishable from average shale or limestone in the earth's crust and is therefore not "oil shale." Discovery of such shale on a mining claim, without more, does not provide any basis for inferring the presence of oil shale at depth.

United States v. Weber Oil Co. et al., 68 IBLA 37 (Oct. 21, 1982) 89 I.D. 538

"Paying quantities." For the purposes of the extension provision of 30 U.S.C. § 226(j) (1976) relating to leases committed to a unit plan of development, "paying quantities" requires production sufficient to recover the costs of operation and marketing but does not include recovery of drilling expenditures.

Yates Petroleum Corp. et al., 67 IBLA 246 (Sept. 24, 1982) 89 I.D. 480

"Paying quantities." For the purposes of a communitization agreement providing for the extension of such agreement so long as communitized substances are produced in paying quantities, "paying quantities" requires production sufficient for the lessee to

WORDS AND PHRASES--Continued

recover the costs of operation and marketing but not to recoup drilling costs.

Hoover & Bracken Energies, Inc., 71 IBLA 220 (Mar. 17, 1983)

"Pending." Where a Native allotment application was rejected in 1967, and no action seeking review or appeal of that decision was filed until 1975, the application was not "pending" on Dec. 18, 1971, and, therefore, BLM lacks the statutory authority to "reopen" the case.

Mary Olympic (On Reconsideration), 65 IBLA 26 (June 22, 1982)

"Preceding assessment year." The "preceding assessment year" is the assessment year most recently completed. Thus, the requirement that evidence of annual assessment work completed during the "preceding assessment year" be filed on or before Oct. 22, 1979, concerns the assessment year ending at noon on Sept. 1, 1979.

Alaskamin Co., 49 IBLA 43 (July 21, 1980)

"Prevents automated processing." As used in 43 CFR 3112.3(a)(2), 49 FR 2113 (Jan. 18, 1984), an application form is prepared in a manner that "prevents automated processing" where a mistake or omission prevents the computer from fully completing the automated program. An application containing such a deficiency is properly held to be "unacceptable."

Shaw Resources, Inc., 79 IBLA 153 (Feb. 24, 1984) 91 I.D. 122

"Proprietary information." Proprietary information means information which, if disclosed, would do substantial harm to the competitive position of the outside source from which it was obtained and would inhibit the Government's ability to obtain this type of information in the future resulting in a substantial detrimental effect on a Government program. Internally generated Governmental decisions and information are not proprietary.

Southern Union Exploration Co., 51 IBLA 89 (Nov. 5, 1980)

"Proprietary information." Proprietary information means information which, if disclosed, would do substantial harm to the competitive position of the outside source from which it was obtained and would inhibit the Government's ability to obtain this type of information in the future resulting in a substantial detrimental effect on a Government program. Internally generated Governmental conclusions and information are not generally proprietary.

Craig Folson, 82 IBLA 294 (Aug. 31, 1984)

"Public land laws." Under 43 CFR 2091.2-3 (1979), a state exchange application segregated the selected public lands from appropriation under the public land laws, including the mining laws. The term "public land laws" is ordinarily used to refer to statutes governing the alienation of public land, and generally is distinguished from both "mining laws," referring to statutes governing the mining of hard minerals on public lands, and "mineral leasing laws," a term used to designate that group of statutes governing the leasing of public

WORDS AND PHRASES--Continued

lands for oil, gas, and other selected minerals. Udall v. Tallman, 380 U.S. 1, 19 (1965).

Duke E. Armstrong, 53 IBLA 153 (Mar. 12, 1981)

"Public lands." Under 43 CFR 3602.1 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1970).

Pacific Power & Light Co., 45 IBLA 127 (Jan. 23, 1980)

"Public lands." Under 43 CFR 9239.0-7 which defines a trespass, the term "public lands" includes mineral deposits reserved under the Stock-Raising Homestead Act, 43 U.S.C. § 299 (1976).

Texaco, Inc., 59 IBLA 155 (Oct. 26, 1981)

"Public lands." Lands ceded by the Chippewa Indians under the Act of Feb. 20, 1904, 33 Stat. 46, which were unappropriated under the terms of said Act, and which were restored to tribal ownership in 1945, were never "public lands" within the meaning of the Color of Title Act, 43 U.S.C. § 1068 (1976), and a color-of-title application for such land must be rejected.

Marvin Haugen et al., 63 IBLA 12 (Mar. 25, 1982)

"Public lands." Reclamation withdrawn lands on which there are no authorized or constructed reclamation projects are administered by the Bureau of Land Management under a memorandum of agreement between the Bureau of Reclamation and Bureau of Land Management (Mar. 1972). In the absence of contrary language in an order withdrawing lands for reclamation purposes, reclamation withdrawn lands which do not have authorized or constructed projects on them are "public lands" within the meaning of secs. 103(e) and 603(a) of the Federal Land Policy and Management Act of 1976.

George Agar, 63 IBLA 172 (Apr. 8, 1982)

"Public lands." Lands within a powersite withdrawal do not cease being "public lands" by virtue of such withdrawal and continue to remain subject to BLM's wilderness inventory process under the Federal Land Policy and Management Act of 1976, secs. 103(e) and 603(a).

Colorado River Water Conservation District, 67 IBLA 287 (Sept. 28, 1982)

"Reserved," "set apart," "withdrawn." Lands which are "reserved" and "set apart" for the protection and preservation of wildlife pursuant to the Migratory Bird Conservation Act of 1929, as amended, are "withdrawn" for the protection of all species of wildlife within the meaning of 43 CFR 3101.3-3(a)(1).

Richard E. Price, Jr., 82 IBLA 257 (Aug. 29, 1984)

"Resident citizen." As used in sec. 2 of the Act of Mar. 3, 1891, 26 Stat. 1096, 43 U.S.C. § 325 (1976), the term "resident citizen" refers to someone who is actually living in the State at the time of entry, and does not refer to individuals who have established tax

WORDS AND PHRASES--Continued

or voting residency within a state but who are not actually residing therein.

Sandy C. Baicy, 46 IBLA 140 (Mar. 19, 1980)

"Federal installation." The Beaver Falls Hydroelectric Power Project, which is operated by Ketchikan Public Utilities, a nonprofit division of the municipality of Ketchikan, pursuant to a license issued by the Federal Power Commission, is not a "Federal installation" and, therefore, the land occupied by the project is not being used in connection with the administration of any "Federal installation" within the meaning of 43 U.S.C. § 1602(e) (1976).

Ketchikan Public Utilities, 79 IBLA 286 (Mar. 20, 1984)

"Resident citizen." As used in sec. 2 of the Act of Mar. 3, 1891, 26 Stat. 1096, 43 U.S.C. § 325 (1976), the term "resident citizen" refers to someone who is actually living in the state at the time of entry, and does not refer to individuals who have established tax or voting residency or own land within a state but who are not actually residing therein.

Benjamin D. Christensen, 74 IBLA 239 (July 19, 1983)

"Right-of-way grant" is defined in the regulations, 43 CFR 2800.0-5(h), as an instrument issued pursuant to Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761 (1976). By implementing regulation, 43 CFR 2803.4, the Secretary has limited the applicability of sec. 506 of FLPMA, 43 U.S.C. § 1766 (1976), to "right-of-way grants."

James M. Spith (On Reconsideration), 55 IBLA 390 (June 30, 1981)

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

C & K Petroleum Co., 59 IBLA 301 (Nov. 3, 1981)

Conoco, Inc. et al., 61 IBLA 23 (Dec. 29, 1981)

Churchill County Board of Commissioners, 61 IBLA 370 (Feb. 17, 1982)

Marvin Casey et al., 63 IBLA 208 (Apr. 12, 1982)

Don S. Orlando et al., 64 IBLA 7 (May 4, 1982)

Amoco, Inc., et al., 64 IBLA 50 (May 6, 1982)

Arizona State Ass'n of 4-Wheel Drive Clubs, 65 IBLA 126 (June 28, 1982)

Carl M. Clark, 65 IBLA 153 (June 29, 1982)

Gilbert W. Daily, 65 IBLA 223 (July 9, 1982)

Tom W. Ford, 66 IBLA 14 (July 23, 1982)

Kennecott Corp., 66 IBLA 249 (Aug. 17, 1982)

The Wilderness Society et al., 66 IBLA 267 (Aug. 19, 1982)

Square Butte Grazing Ass'n, 67 IBLA 25 (Sept. 7, 1982)

WORDS AND PHRASES--Continued

Ken Brewer, 67 IBLA 124 (Sept. 16, 1982)

Charles Schwenke, 67 IBLA 201 (Sept. 22, 1982)

Charles M. Hauptman, 67 IBLA 207 (Sept. 22, 1982)

Colorado River Water Conservation District, 67 IBLA 287 (Sept. 28, 1982)

Red Rock 4-wheelers, 75 IBLA 140 (Aug. 17, 1983)

Wilford Cothern, 76 IBLA 23 (Sept. 8, 1983)

Edward H. Howe, Fred Huff, Gerald A. Strauss, 76 IBLA 27 (Sept. 8, 1983)

Phelps Dodge Corp., 76 IBLA 31 (Sept. 8, 1983)

"Rule of approximation." The Department of the Interior will not reject an oil and gas lease offer for public domain lands solely for the reason of the offer being for less than 640 acres where the amount by which the offer is under 640 acres is less than the amount by which the offer would exceed 640 acres by including the smallest adjoining subdivision available for leasing, the offer thereby conforming to the rule of approximation.

James M. Chudnow, 47 IBLA 265 (May 13, 1980)

"Service." Where BLM sends a copy of its decision to an adversely affected party at his address of record on Sept. 21; where additional information containing the party's more recent address is filed with BLM on Oct. 5; and where BLM receives the mailed copy back as undeliverable on Oct. 16 but does not mail another copy to the more recent address, BLM has not mailed a copy to the party's last address of record, and there is no "service" under 43 CFR 1810.2. Where BLM has never served a copy of its decision on an adversely affected party, the time for this party to appeal has never commenced, and the decision is not effective per 43 CFR 4.21(a).

Estate of Glenn F. Coy, Resource Service Co., Inc., 52 IBLA 182 (Jan. 26, 1981) 88 I.D. 236

"Signed and fully executed." The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) includes the use of a rubber stamp to affix a signature to a drawing entry card, provided that it is the applicant's intention that the stamp be his signature.

Elizabeth McClellan, 45 IBLA 342 (Feb. 7, 1980)

"Smallest legal subdivision." Where an oil and gas lease offer is made, the smallest legal subdivision which may be encompassed by the offer is a quarter-quarter section (40 acres), unless the offer is for a lot in a fractional section.

Gary E. Strong, 57 IBLA 306 (Aug. 31, 1981)

"Smallest legal subdivision." In general, it is proper to reject an oil and gas lease offer to the extent that it includes a parcel of land smaller than the smallest legal subdivision, i.e., a quarter-quarter section, except where the offer is for a lot in a fractional section. However, an offer which describes land in parcels smaller than a quarter-quarter section may be accepted if it includes all of the land available for leasing within a quarter-quarter section.

Elliott A. Hicks, 65 IBLA 22 (June 21, 1982)

WORDS AND PHRASES--Continued

"Sustained yield." As used in sec. 1 of the Act of Aug. 28, 1937, 43 U.S.C. § 1181a (1976), the term "sustained yield" means that the level of timber harvesting established should be such that, considering present levels of silviculture techniques, a constant amount of timber will be annually available on an indefinite basis.

In re Lick Gulch Timber Sale, 72 IBLA 261 (Apr. 28, 1983) 90 I.D. 189